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An Act To Update the Fair Credit Reporting Act Consistent with Federal Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 209-B is enacted to read:

CHAPTER 209-B

FAIR CREDIT REPORTING ACT

§ 1306. Short title

This chapter may be known and cited as "the Fair Credit Reporting Act."

§ 1307. Statement of purpose

1. Findings. The Legislature makes the following findings.

A. Creditors, insurers and prospective employers are dependent upon fair and accurate consumer reporting. Inaccurate consumer reports directly impair the efficiency of economic decisions, and unfair consumer reporting methods undermine the public confidence that is essential to our economic system.

B. An elaborate mechanism has been developed for investigating and evaluating the creditworthiness, credit standing, credit capacity, character and general reputation of consumers.

C. Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

D. There is a need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality and a respect for the consumer's right to privacy.

2. Purposes. The purposes of this chapter are to:

A. Require consumer reporting agencies to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner that is fair and equitable to the consumer, with regard for confidentiality, accuracy, relevancy and proper use of this information in accordance with the requirements of this chapter; and

B. Supplement the provisions of the United States Fair Credit Reporting Act of the United States Consumer Credit Protection Act, 15 United States Code, Section 1681 et seq.

§ 1308. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. Unless the context otherwise indicates, any word or phrase that is not defined in this chapter but that is defined in the federal Fair Credit Reporting Act has the meaning set forth in the federal Fair Credit Reporting Act.

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

2. Consumer. "Consumer" means an individual about whom a consumer report or an investigative consumer report has been prepared by a consumer reporting agency or an office of a consumer reporting agency.

3. Consumer reporting agency. "Consumer reporting agency" means a person that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to 3rd parties.

4. Federal Fair Credit Reporting Act. "Federal Fair Credit Reporting Act" means the Fair Credit Reporting Act, 15 United States Code, Section 1681 et seq., as amended.

5. Person subject to this chapter. "Person subject to this chapter" means a person subject to the provisions of the federal Fair Credit Reporting Act and a consumer reporting agency.

6. Proper identification. "Proper identification" means that information generally considered sufficient to identify a person.

7. Security freeze. "Security freeze" means a notice placed in a consumer report at the request of the consumer pursuant to section 1310 that prohibits a consumer reporting agency from releasing the consumer report or any information in the report without that consumer's express authorization.

8. Supervised financial organization. "Supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A.

§ 1309. Incorporation by reference of federal law and rulemaking

1. Federal law and regulation. A person subject to this chapter shall comply with the federal Fair Credit Reporting Act and the provisions of 12 Code of Federal Regulations, Section 1022.1 et seq., as amended.

2. Rules. Subject to the limitations in 15 United States Code, Section 1681t, the administrator may adopt rules not inconsistent with the provisions of 12 Code of Federal Regulations, Section 1022.1 et seq., as amended; 16 Code of Federal Regulations, Section 681.1 et seq.; and 16 Code of Federal Regulations, Section 682.1 et seq. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 1310. Additional requirements for persons subject to this chapter

In addition to the compliance requirements of section 1309, subsection 1, a person subject to this chapter shall comply with this section.

1. Security freeze by consumer reporting agency; time in effect. A person subject to this chapter shall comply with the following provisions regarding security freezes.

A. A consumer may place a security freeze on the consumer's consumer report as follows.

(1) A consumer who has been the victim of identity theft may place a security freeze on the consumer's consumer report by making a request in writing by certified mail to a consumer reporting agency with a valid copy of a police report, investigative report or complaint the consumer has filed with a law enforcement agency about unlawful use of personal information by another person. In the case of a victim of identity theft, a consumer reporting agency may not charge a fee for placing, removing or suspending for a specific party or period of time a security freeze on a consumer report.

(2) A consumer who has not been the victim of identity theft may place a security freeze on the consumer's consumer report by making a request in writing by certified mail to a consumer reporting agency. A consumer reporting agency may charge a fee of no more than \$10 to a consumer for each security freeze, removal of a security freeze or temporary suspension of a security freeze for a period of time or for reissuing the same or a new personal identification number if the consumer fails to retain the original personal identification number provided by the agency under paragraph D. A consumer reporting agency may charge a fee of not more than \$12 for a temporary suspension of a security freeze for a specific party.

B. Subject to the exceptions in paragraph M, when a security freeze has been placed on an account the consumer reporting agency may not:

(1) Release the consumer report or any information from it without the express authorization of the consumer; or

(2) Release information from a consumer report to a 3rd party without express authorization of the consumer. This subparagraph does not prevent a consumer reporting agency from advising a 3rd party that a security freeze is in effect with respect to the consumer report.

C. A consumer reporting agency shall place a security freeze on a consumer report no later than 5 business days after receiving a written request from the consumer.

D. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days after receiving a written request from the consumer and shall provide the consumer with a personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer report to a specific party or for a period of time.

E. If a consumer wishes to allow access to a consumer report by a specific party or for a period of time while a security freeze is in place, the consumer may contact the consumer reporting agency, request that the security freeze be temporarily suspended and provide the following:

(1) Proper identification;

(2) The personal identification number or password provided by the consumer reporting agency pursuant to paragraph D; and

(3) The proper information regarding the specific party granted access or the time period for which the consumer report is to be available to users.

F. A consumer reporting agency may develop procedures involving the use of telephone, facsimile transmission, the Internet or other medium of electronic communications to receive and process a request from a consumer to temporarily suspend a security freeze on a consumer report pursuant to paragraph E in an expedited manner. A consumer reporting agency may not charge a fee to a consumer for use of these procedures in excess of those fees otherwise permitted under this section.

G. A consumer reporting agency that receives a request from a consumer to temporarily suspend a security freeze on a consumer report pursuant to paragraph E shall comply with the request no later than 3 business days after receiving the request.

H. A consumer reporting agency shall remove or temporarily suspend a security freeze placed on a consumer report only:

(1) Upon consumer request pursuant to paragraph E or K; or

(2) If the security freeze was due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a security freeze from a consumer report pursuant to this subparagraph, the consumer reporting agency shall notify the consumer in writing prior to removing the security freeze.

I. If a 3rd party requests access to a consumer report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow access to the consumer report for that specific party or period of time, the 3rd party may treat the application as incomplete.

J. If a consumer requests a security freeze pursuant to this subsection, the consumer reporting agency shall disclose to the consumer the processes of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific party or period of time while the security freeze is in place. A consumer reporting agency shall provide a sample copy of the agency's disclosure form to the administrator at the annual registration or reregistration under section 1310-A and any time there is a material change in the disclosure form required by this paragraph.

K. A security freeze must remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within 3 business days of receiving a request for removal from a consumer who provides:

(1) Proper identification; and

(2) The personal identification number or password provided by the consumer reporting agency pursuant to paragraph D.

L. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

M. The provisions of this subsection, including the security freeze, do not apply to the use of a consumer report by:

(1) A person or person's subsidiary, affiliate, agent or assignee with which the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debt or extending credit to a consumer with a prior or existing account, contract or debtor-creditor relationship, subject to the requirements of 15 United States Code, Section 1681b. For purposes of this subparagraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under paragraph E for purposes of facilitating the extension of credit or another permissible use;

(3) A person acting pursuant to a court order, warrant or subpoena;

(4) Child support enforcement officials when investigating a child support case pursuant to Title 19-A or the federal Social Security Act, Title IV-D;

(5) The Department of Health and Human Services or its agents or assignees acting to investigate Medicaid fraud;

(6) The Department of Administrative and Financial Services, Maine Revenue Services; municipal taxing authorities; the Secretary of State, Bureau of Motor Vehicles; or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties and unpaid court orders, or to fulfill any of their other statutory or charter responsibilities;

(7) A person's use of credit information for prescreening as provided by the federal Fair Credit Reporting Act or this chapter;

(8) A person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed;

(9) A consumer reporting agency for the sole purpose of providing a consumer with a copy of that consumer's report upon the consumer's request; and

(10) The administrator pursuant to section 1310-A.

2. Duties of consumer reporting agency if security freeze is in place. If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer report without sending written confirmation of the change to the consumer within 30 days after the change is posted to the consumer's file: name, date of birth, social security number and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings and transposition of numbers or letters. In the case of an address change, the written confirmation must be sent to the new address and the former address.

3. Persons not required to place security freeze. The following persons are not required to place on a consumer report a security freeze pursuant to subsection 1, except that any person that is not required to place a security freeze on a consumer report under the provisions of subsection 1 is subject to a security freeze placed on a consumer report by another consumer reporting agency from which it obtains information:

A. A check services or fraud prevention services company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers or similar methods of payment;

B. A deposit account information services company that issues reports regarding account closures due to fraud, overdrafts, automated teller machine abuse or similar negative information regarding a consumer to inquiring financial institutions for use only in reviewing that consumer's request for a deposit account at the inquiring financial institution; and

C. A consumer reporting agency that:

(1) Acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies; and

(2) Does not maintain a permanent database of credit information from which new consumer reports are produced.

4. Reporting of child support debts. Information regarding child support debt must be provided as required under this subsection.

A. The Department of Health and Human Services, upon request of a consumer reporting agency, shall make available information regarding the amount of overdue child support owed by any parent.

B. Prior to making the information available to a requesting agency, the department shall provide the obligor parent with notice of the proposed action. The parent must be given 20 days in which to contest the accuracy of the information before the information may be made available.

C. The department may impose a fee upon the requesting agency in an amount not exceeding the actual cost of providing the information.

Nothing in this section prevents the department from voluntarily providing information to a consumer reporting agency regarding any individual who is indebted to the department for failure to pay child support.

5. Solicitation of loans using prescreened trigger lead information from consumer report. Solicitation of loans using prescreened trigger lead information from consumer reports is subject to the requirements of this subsection. For the purposes of this subsection, "prescreened trigger lead information" means information in a consumer report provided to a nonaffiliated 3rd party by a consumer reporting agency that the agency has reason to believe will be used to solicit a loan or extension of credit.

A. When using prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a loan with another lender or loan broker, a lender or loan broker may not use unfair or deceptive practices described in paragraph B.

B. Without limitation, it is an unfair or deceptive practice to:

(1) Fail to state in the initial phase of the solicitation from a lender or loan broker that the solicitor is not affiliated with the lender or loan broker with which the consumer initially applied;

(2) Fail in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;

(3) Knowingly or negligently use information regarding consumers who have opted out of prescreened offers of credit or who have placed their contact information on the most current federal do-not-call registry; or

(4) Solicit a consumer with offers of certain rates, terms and costs with intent to subsequently raise the rates or change the terms to the consumer's detriment.

6. Consumer mortgage reports. In any consumer credit transaction involving a consumer report relating to a loan to be secured by a first mortgage on an owner-occupied dwelling, whenever a user has requested such a report and because or partly because of information contained in the report adverse action is taken, the user shall provide a copy of the report to the consumer. This requirement does not apply if the consumer reporting agency provides a copy of the report to the consumer.

7. Dissemination of consumer report information prohibited. Every user of a consumer report or an investigative consumer report is prohibited from disseminating to any other person, other than the consumer who is the subject of the report, any such report other than information contained in its own files as a result of its direct experience with the consumer. Except for information or records obtained directly or indirectly and with the consent of the individual to whom it relates, from a licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, a consumer reporting agency may not by contract or otherwise prohibit a user of any consumer report or investigative consumer report from disclosing the contents of the report to the consumer to whom it relates. A contractual provision in violation of this section is unenforceable.

8. Medical expenses debts; court or administrative orders. A debt collector may report overdue medical expenses for a minor child to a consumer reporting agency, but only in the name of the responsible party identified in a court order or administrative order and only if the debt collector is notified orally or in writing of the existence of the order. In addition, a report may not be made until after the debt collector has notified, or made a good faith effort to notify, the responsible party of that party's obligation to pay the overdue medical expenses. Existing information regarding overdue medical expenses for a minor child in the name of a person other than the responsible party identified in a court order or administrative order is considered inaccurate information and is subject to correction. A debt collector or consumer reporting agency may request reasonable verification of the order, including a certified copy of the order.

9. Nonliability. A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of this section.

§ 1310-A. Administrative enforcement

1. Authority. The administrator, within the limits provided by law, may:

A. Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter, refer complaints to the Department of Professional and Financial Regulation, Bureau of Financial Institutions pursuant to subsection 9 or refer cases to the Attorney General, who shall appear for and represent the administrator in court;

B. Counsel groups and persons on their rights and duties under this chapter;

C. Establish programs for the education of consumers with respect to the provisions of this chapter;

D. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

E. Issue advisory rulings designed to clarify the applicability of any statutory provision of this chapter necessary or proper to effectuate its purposes;

F. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party; and

G. Request registration and annual reregistration of consumer reporting agencies located in this State or serving users within this State and set an annual registration fee not to exceed \$100, the aggregate of which must be used by the administrator to enforce this chapter.

2. Investigatory powers. The administrator has the following investigatory powers except in cases in which the Department of Professional and Financial Regulation, Bureau of Financial Institutions or the Attorney General has exclusive authority pursuant to subsection 9.

A. The administrator may annually investigate any person whom the administrator believes has engaged in conduct governed by this chapter, except that the administrator may, at any time, investigate any person the administrator believes to be a consumer reporting agency. If the administrator has reasonable cause to believe that any person has violated this chapter, the administrator may investigate that person at any time. During any investigation, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the

identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator finds a violation of this chapter, the administrator shall so notify all parties to the transactions involved.

B. If the records of a person under investigation are located outside this State, the person, at the administrator's option, may either make the original records or facsimiles of the record available to the administrator at a convenient location within this State or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where the records are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located or federal officials, to inspect the records on the administrator's behalf.

C. The expenses of the administrator necessarily incurred in the examination of persons subject to this chapter must be chargeable to that person in the same manner and for the same expenses set forth in Title 9-A, section 6-106, subsection 6, except that users of consumer reports may not be charged examination expenses unless the administrator finds a violation of this chapter.

3. Administrative enforcement orders. After notice and hearing, the administrator may order a person to cease and desist from engaging in violations of this chapter. The administrator may also order affirmative action designed to correct past or future violations of this chapter. Any hearing held under this subsection must be conducted in accordance with the procedures of Title 5, chapter 375, subchapter 4. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may, through the Attorney General, obtain an order of the court for enforcement of its order in the Superior Court. The proceedings for review or enforcement must be initiated and conducted in accordance with Title 5, chapter 375, subchapter 7.

4. Assurance of discontinuance. If it is claimed that a person has engaged in conduct that could be subject to any order by the administrator, the administrator shall first attempt to negotiate an assurance in writing that the person will not engage in the same or similar conduct in the future, prior to initiating an enforcement order under subsection 3. The assurance may include, but is not limited to, admissions of past specific acts by the person or that such acts violated this chapter or other statutes. A violation of an assurance of discontinuance is a violation of this chapter.

5. Civil action. The administrator, through the Attorney General, may bring a civil action against a person to recover a civil penalty for knowingly violating this chapter or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in a knowing violation of this chapter or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the defendant establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, a penalty may not be imposed under this subsection.

6. Remedies not affected. The grant of powers to the administrator in this section does not affect remedies available to the Attorney General or to consumers under this chapter or under other principles of law or equity.

7. Venue. The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division in which a respondent resides or transacts business.

8. Bureau of Insurance. With respect to those examinations authorized by subsection 2, paragraph A, the administrator shall, where applicable, coordinate examinations for compliance with this chapter with examinations conducted by the Department of Professional and Financial Regulation, Bureau of Insurance for compliance with Title 24-A.

9. Bureau of Financial Institutions. When a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A is a person subject to this chapter and the Department of Professional and Financial Regulation, Bureau of Financial Institutions charters or regulates the supervised financial organization, the Bureau of Financial Institutions has exclusive authority pursuant to this chapter over the supervised financial organization. This authority is in addition to the authority of the Bureau of Financial Institutions in Title 9-B. The Attorney General has authority to enforce the provisions of this chapter for any other supervised financial organization that is a person subject to this chapter.

§ 1310-B. Criminal violations

1. Obtaining information under false pretenses. A person who knowingly and intentionally obtains information on a consumer from a consumer reporting agency under false pretenses commits a Class D crime.

2. Unauthorized provision of information. An officer or employee of a consumer reporting agency who knowingly and intentionally provides information concerning an individual from the agency's files to a person not authorized to receive that information commits a Class D crime.

§ 1310-C. Civil liability for willful noncompliance

A consumer reporting agency or user of information that willfully and knowingly fails to comply with a requirement imposed under this chapter with respect to a consumer is liable to that consumer for and the court may award an amount equal to the sum of:

1. Actual damages. Actual damages sustained by the consumer as a result of the failure;
2. Treble damages. An amount equal to 3 times the actual damages according to subsection 1; and

3. Costs and attorney's fees. In the case of a successful action to enforce a liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 1310-D. Civil liability for negligent noncompliance

A consumer reporting agency or user of information that is negligent in failing to comply with a requirement imposed under this chapter with respect to a consumer is liable to that consumer in an amount equal to the sum of:

- 1. Actual damages.** Actual damages sustained by the consumer as a result of the failure;
- 2. Additional damages.** Such amount of additional damages as the court may allow, but not less than \$100 for each violation of this chapter involving negligence, and for each consumer report containing any item of information that was inaccurate and that contributed in whole or in part to the decision to take adverse action against the consumer; and
- 3. Costs and attorney's fees.** In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 1310-E. Jurisdiction of courts; limitation of actions

An action to enforce liability created under this chapter may be brought in any court of competent jurisdiction within 2 years from the date on which the liability arises, except that when a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this chapter, the action may be brought at any time within 2 years after the discovery by the individual of the misrepresentation.

§ 1310-F. Relation to other laws and the powers of the Superintendent of Financial Institutions

This chapter does not limit the obligations of a supervised financial organization to comply with other state and federal laws to which the supervised financial organization is subject, or the authority of the Superintendent of Financial Institutions conferred by Title 9-B, including the authority to examine and supervise a supervised financial organization to ensure compliance with state and federal laws and regulations as set forth in Title 9-B, section 211, subsection 3.

§ 1310-G. Enforcement powers in addition to those in federal law

The enforcement powers of the administrator under this chapter are in addition to the State's enforcement powers authorized under federal law.

§ 1310-H. Additional state-specific provisions

- 1. Fee for disclosure.** In addition to any rights to which a consumer is entitled under federal law, a consumer reporting agency may not impose a fee for a consumer report provided to a consumer upon request once during any 12-month period. For a 2nd or subsequent report provided during a 12-month period, a consumer reporting agency may charge a consumer a fee not to exceed \$5.

2. Time to reinvestigate. Notwithstanding any provision of federal law, if a consumer disputes any item of information contained in the consumer's file on the grounds that it is inaccurate and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall reinvestigate and record the current status of the information within 21 calendar days of notification of the dispute by the consumer, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous.

3. Nonliability. A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of subsections 1 and 2.

Sec. 2. 10 MRSA c. 210, as amended, is repealed.

Sec. 3. Revisor's review; cross-references. The Revisor of Statutes shall review the Maine Revised Statutes and include in the errors and inconsistencies bill submitted to the Second Regular Session of the 126th Legislature pursuant to Title 1, section 94 any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Act.

SUMMARY

This bill incorporates federal fair credit reporting laws into state law while preserving enhanced protections found in current state law.