LD 1982
Draft Amendment For Consideration at Public Hearing
Proposed by Sponsor, Sen. Rafferty
Changes from original bill shown by strike through; additional language highlighted in red

PROPOSED AMENDMENT: LD 1982, An Act To Protect Consumers' Privacy by Giving Them Greater Control of Their Data and To Establish Consumer Protections Regarding Small Dollar Loans

Amend the bill by striking out all of Part A as follows:

~~**PART A**~~

~~**Sec. A-1. 10 MRSA c. 1057** is enacted to read:~~

~~**CHAPTER 1057**~~

~~**MAINE CONSUMER PRIVACY ACT**~~

~~**§9601. Short title**~~

~~This chapter may be known and cited as "the Maine Consumer Privacy Act."~~

~~**§9602. Definitions**~~

~~As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.~~

~~**1. Aggregate consumer information.** "Aggregate consumer information" means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device. "Aggregate consumer information" does not mean one or more individual consumer records that have been deidentified.~~

~~**2. Biometric information.** "Biometric information" means an individual's physiological, biological or behavioral characteristics, including an individual's deoxyribonucleic acid, or DNA, that can be used, singly or in combination with each other or with other identifying data, to establish the individual's identity. "Biometric information" includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns and voice recordings, from which an identifier template, such as a faceprint, a minutiae template or a voiceprint, can be extracted and keystroke patterns or rhythms, gait patterns or rhythms and sleep, health or exercise data that contain identifying information.~~

~~**3. Business.** "Business" means:~~

~~A. A sole proprietorship, partnership, limited liability company, corporation, association or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners that collects consumers' personal information or on the behalf of which that information is collected and that alone or jointly with others determines the purposes and means of the processing of consumers' personal information, that does business in the State and that satisfies one or more of the following thresholds:~~

~~(1) Has annual gross revenues in excess of $25,000,000, as adjusted pursuant to section 9619, subsection 1, paragraph E;~~

~~(2) Alone or in combination annually buys, receives for the business's commercial purposes, sells or shares for commercial purposes alone or in combination the personal information of 50,000 or more consumers, households or devices; or~~

~~(3) Derives 50% or more of its annual revenues from selling consumers' personal information; or~~

~~B. An entity that controls or is controlled by a business as defined in paragraph A and that shares common branding with the business. For the purposes of this paragraph, "control" or "controlled" means ownership of, or the power to vote, more than 50% of the outstanding shares of any class of voting security of a business; control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a company, and "common branding" means a shared name, service mark or trademark.~~

~~**4. Business purpose.** "Business purpose" means the use of personal information for the business's or a service provider's operational purposes or other purposes of which consumers are given notice, if the use of personal information is reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected. "Business purpose" includes:~~

~~A. Auditing related to a current interaction with the consumer and concurrent transactions, including, but not limited to, counting so-called ad impressions to unique visitors, verifying positioning and quality of ad impressions and auditing compliance with this specification and other standards;~~

~~B. Detecting security incidents, protecting against malicious, deceptive, fraudulent or illegal activity and prosecuting those responsible for that activity;~~

~~C. Debugging to identify and repair errors that impair existing intended functionality;~~

~~D. Short-term, transient use if the personal information is not disclosed to another 3rd party and is not used to build a profile about a consumer or otherwise alter an individual consumer's experience outside the current interaction, including, but not limited to, the contextual customization of ads shown as part of the same interaction;~~

~~E. Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying consumer information, processing payments, providing financing, providing advertising or marketing services, providing analytic services or providing similar services on behalf of the business or service provider;~~

~~F. Undertaking internal research for technological development and demonstration; and~~

~~G. Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for or controlled by the business and to improve, upgrade or enhance the service or device that is owned, manufactured, manufactured for or controlled by the business.~~

~~**5. Collect.** "Collect" means to buy, rent, gather, obtain, receive or access any personal information pertaining to a consumer by any means and includes receiving information from the consumer, either actively or passively, or by observing the consumer's behavior.~~

~~**6. Commercial purposes.** "Commercial purposes" means to advance a person's commercial or economic interests, such as by inducing another person to buy, rent, lease, join, subscribe to, provide~~

~~or exchange products, goods, property, information or services or enabling or effecting, directly or indirectly, a commercial transaction. "Commercial purposes" does not include engaging in speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.~~

~~**7. Consumer.** "Consumer" means a natural person who is a resident of the State.~~

~~**8. Deidentified.** "Deidentified" means cannot reasonably identify, relate to, describe, be capable of being associated with or be linked, directly or indirectly, to a particular consumer, if a business that uses deidentified information:~~

~~A. Has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;~~

~~B. Has implemented business processes that specifically prohibit reidentification of the information;~~

~~C. Has implemented business processes to prevent inadvertent release of deidentified information; and~~

~~D. Makes no attempt to reidentify the information.~~

~~**9. Designated method for submitting requests.** "Designated method for submitting requests" means a mailing address, e-mail address, Internet web page, Internet web portal, toll-free telephone number or other applicable contact information by which a consumer may submit a request or direction under this chapter and any consumer-friendly means of contacting a business as approved by the Attorney General pursuant to section 9619.~~

~~**10. Device.** "Device" means any physical object that is capable of connecting to the Internet, directly or indirectly, or to another device that is capable of connecting to the Internet, directly or indirectly.~~

~~**11. Homepage.** "Homepage" means the introductory page of an Internet website and any Internet web page where personal information is collected. In the case of an online service, such as a mobile application, "homepage" means the application's platform page or download page, a link within the application, such as from the application's configuration, "about," "information" or settings page, and any other location that allows consumers to review the form required by section 9610, subsection 1, including, but not limited to, before downloading the application.~~

~~**12. Person.** "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee and any other organization or group of persons acting in concert.~~

~~**13. Personal information.** "Personal information":~~

~~A. Means information that identifies, relates to, describes, is reasonably capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household and includes, but is not limited to:~~

~~(1) Identifiers such as a real name, alias, mailing address, signature, telephone number, unique identifier, online identifier, Internet protocol address, e-mail address, account name, social security number, driver's license number, nondriver identification card number, passport number or other similar identifiers;~~

~~(2) Physical characteristics or description, insurance policy number, bank account number, credit card number, debit card number or any other financial information, medical information or health information;~~
~~(3) Characteristics of protected classifications under state or federal law;~~
~~(4) Commercial information, including records of personal property, products or services purchased, obtained or considered, or other purchasing or consuming histories or tendencies;~~
~~(5) Biometric information;~~
~~(6) Internet or other electronic network activity information, including, but not limited to, browsing history, search history and information regarding a consumer's interaction with an Internet website, application or advertisement;~~
~~(7) Geolocation data;~~
~~(8) Audio, electronic, visual, thermal, olfactory or similar information;~~
~~(9) Professional or employment-related information;~~
~~(10) Education information, defined as information that is not publicly available personally identifiable information as defined in the Family Educational Rights and Privacy Act of 1974, 20 United States Code, Section 1232g; and~~
~~(11) Inferences drawn from any of the information identified in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities and aptitudes;~~

~~B. Does not include publicly available information. For purposes of this paragraph, "publicly available" means information that is lawfully made available from federal, state or local government records. "Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge; and~~

~~C. Does not include consumer information that is deidentified or aggregate consumer information.~~

~~**14. Probabilistic identifier.** "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories enumerated in the definition of "personal information" in subsection 13.~~

~~**15. Processing.** "Processing" means any operation or set of operations that is performed on personal information or on sets of personal information, whether or not by automated means.~~

~~**16. Reidentify.** "Reidentify" means the process of reversal of deidentification techniques, including, but not limited to, the addition of specific pieces of information or data elements that can, individually or in combination, be used to uniquely identify an individual or usage of any statistical method, contrivance, computer software or other means that have the effect of associating deidentified information with a specific identifiable individual.~~

~~**17. Research.** "Research" means scientific, systematic study and observation, including basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes must be:~~

~~A. Compatible with the business purpose for which the personal information was collected;~~

~~B. Subsequently deidentified, or deidentified and in the aggregate, such that the information cannot reasonably identify, relate to, describe, be capable of being associated with or be linked, directly or indirectly, to a particular consumer;~~

~~C. Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;~~

~~D. Subject to business processes that specifically prohibit reidentification of the information;~~

~~E. Made subject to business processes to prevent inadvertent release of deidentified information;~~

~~F. Protected from any reidentification attempts;~~

~~G. Used solely for research purposes that are compatible with the context in which the personal information was collected;~~

~~H. Not be used for any commercial purpose; and~~

~~I. Subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals in a business as are necessary to carry out the research purpose.~~

~~**18. Sell.** "Sell" means sell, rent, release, disclose, disseminate, make available, transfer or otherwise communicate orally, in writing or by electronic or other means, a consumer's personal information by a business to another business or a 3rd party for monetary or other valuable consideration.~~

~~For purposes of this chapter, a business does not sell personal information when:~~

~~A. A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a 3rd party, if the 3rd party does not also sell the personal information, unless that disclosure would be consistent with the provisions of this chapter. An intentional interaction occurs when the consumer intends to interact with the 3rd party via one or more deliberate interactions. Hovering over, muting, pausing or closing a given piece of content does not constitute a consumer's intent to interact with a 3rd party;~~

~~B. The business uses or shares an identifier for a consumer who has opted out of the sale of the consumer's personal information for the purposes of alerting 3rd parties that the consumer has opted out of the sale of the consumer's personal information;~~

~~C. The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if both of the following conditions are met:~~

~~(1) The business has provided notice of that information being used or shared in its terms and conditions consistent with section 9610; and~~

~~(2) The service provider does not further collect, sell or use the personal information of the consumer except as necessary to perform the business purpose; or~~

~~D. The business transfers to a 3rd party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy or other transaction in which the 3rd party assumes control of all or part of the business, if that information is used or shared consistent with the provisions of sections 9605 and 9606. If a 3rd party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices consistent with section 9607. This paragraph does not authorize a business to make material, retroactive privacy policy changes or make other changes in its privacy policy in a manner that would violate the Maine Unfair Trade Practices Act or chapter 206.~~

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19. Service. "Service" means work or labor, including work or labor furnished in connection with the sale or repair of goods.

20. Service provider. "Service provider" means a sole proprietorship, partnership, limited liability company, corporation, association or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, if the contract prohibits the entity receiving the information from retaining, using or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this chapter, including retaining, using or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

21. Third party. "Third party" means a person that is not any of the following:
A. The business that collects personal information from consumers under this chapter; or
B. A person to whom the business discloses a consumer's personal information for a business purpose pursuant to a written contract, if the contract:
(1) Prohibits the person receiving the personal information from:
(a) Selling the personal information;
(b) Retaining, using or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using or disclosing the personal information for a commercial purpose other than providing the services specified in the contract; or
(c) Retaining, using or disclosing the information outside of the direct business relationship between the person and the business; and
(2) Includes a certification made by the person receiving the personal information that the person understands the restrictions in subparagraph (1) and will comply with them.

22. Unique identifier. "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a household or a device that is linked to a consumer or household, over time and across different services, including, but not limited to: a device identifier; an Internet protocol address; cookies, beacons, pixel tags, mobile ad identifiers or similar technology; customer number, unique pseudonym or user alias; telephone numbers; or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device. For purposes of this subsection, "household" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody.

23. Verifiable consumer request. "Verifiable consumer request" means a request that is made by a consumer or by a consumer on behalf of the consumer's minor child, or by a natural person or a person registered with the Secretary of State authorized by the consumer to act on the consumer's behalf, and that the business can reasonably verify, pursuant to rules adopted by the Attorney General pursuant to section 9619, subsection 1, paragraph G to be the consumer about whom the business has collected personal information.

§9603. Consumer's right to request personal information

1. Request. A consumer has the right to request that a business that collects a consumer's personal information disclose to that consumer the categories of personal information the business has collected regarding the consumer.

2. Categories to be collected; purposes. A business that collects a consumer's personal information shall, at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information may be used. A business may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

3. Verifiable consumer request required. A business shall provide the information specified in subsection 1 to a consumer only upon receipt of a verifiable consumer request. A business is not obligated to provide information to the consumer pursuant to this section and sections 9604, 9605 and 9606 if the business cannot verify, pursuant to this subsection and rules adopted by the Attorney General pursuant to section 9619, subsection 1, paragraph G, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer's behalf.

4. Disclose and deliver personal information. A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by this section. The information may be delivered by mail or electronically, and, if provided electronically, the information must be in a portable and, to the extent technically feasible, readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but is not required to provide personal information to a consumer more than twice in a 12-month period.

5. Single, one-time transaction. This section does not require a business to retain any personal information collected for a single, one-time transaction, if such information is not sold or retained by the business or to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

§9604. Consumer's right to request deletion of personal information

1. Request to delete. A consumer has the right to request that a business delete any personal information about the consumer that the business has collected from the consumer.

2. Disclose right to request deletion. A business that collects personal information about a consumer shall disclose, pursuant to section 9609, the consumer's right to request the deletion of the consumer's personal information.

3. Verifiable consumer request. A business that receives a verifiable consumer request from a consumer to delete the consumer's personal information pursuant to subsection 1 shall delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records. A business is not obligated to provide information to the consumer pursuant to this section and sections 9603, 9605 and 9606 if the business cannot verify, pursuant to this subsection and rules adopted by the Attorney General pursuant to

~~section 9619, subsection 1, paragraph G, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer's behalf.~~

~~**4. Deletion not required.** A business or a service provider is not required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to:~~

~~A. Complete the transaction for which the personal information was collected, fulfill the terms of a written warranty or product recall conducted in accordance with federal law, provide a good or service requested by the consumer or reasonably anticipated within the context of a business's ongoing business relationship with the consumer or otherwise perform a contract between the business and the consumer;~~

~~B. Detect security incidents, protect against malicious, deceptive, fraudulent or illegal activity or prosecute those responsible for that activity;~~

~~C. Debug to identify and repair errors that impair existing intended functionality;~~

~~D. Exercise free speech, ensure the right of another consumer to exercise that consumer's right of free speech or exercise another right provided for by law;~~

~~E. Comply with a warrant under Title 16, chapter 3, subchapter 9-A, 10 or 11;~~

~~F. Engage in public or peer-reviewed scientific, historical or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the business's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent;~~

~~G. To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business;~~

~~H. Comply with a legal obligation; or~~

~~I. Otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.~~

~~§9605. Consumer's right to disclosure of information~~

~~**1. Request.** A consumer has the right to request that a business that collects personal information about the consumer disclose to the consumer the following:~~

~~A. The categories of sources from which the personal information is collected;~~

~~B. The business purpose or commercial purpose for collecting or selling personal information;~~

~~C. The categories of 3rd parties with whom the business shares personal information; and~~

~~D. The specific pieces of personal information it has collected about that consumer.~~

~~**2. Verifiable consumer request.** A business that collects personal information about a consumer shall disclose to the consumer, pursuant to section 9609, subsection 1, paragraph C, the information specified in subsection 1 upon receipt of a verifiable consumer request from the consumer. A business is not obligated to provide information to the consumer pursuant to this section and sections 9603, 9604 and 9606 if the business cannot verify, pursuant to this subsection and rules adopted by the Attorney General pursuant to section 9619, subsection 1, paragraph G, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer's behalf.~~

3. Information disclosed. A business that collects personal information about consumers shall disclose, pursuant to section 9609, subsection 1, paragraph E, subparagraph (2):

A. The categories of personal information it has collected about consumers;

B. The categories of sources from which the personal information is collected;

C. The business purpose or commercial purpose for collecting or selling personal information;

D. The categories of 3rd parties with whom the business shares personal information; and

E. That a consumer has the right to request the specific pieces of personal information the business has collected about that consumer.

4. Actions not required. This section does not require a business to:

A. Retain any personal information about a consumer collected for a single, one-time transaction if, in the ordinary course of business, that information about the consumer is not retained; or

B. Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

§9606. Consumer's rights when information sold or disclosed

1. Request. A consumer has the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to that consumer:

A. The categories of personal information about the consumer that the business collected;

B. The categories of personal information about the consumer that the business sold and the categories of 3rd parties to whom the personal information was sold, by category or categories of personal information for each category of 3rd parties to whom the personal information was sold; and

C. The categories of personal information about the consumer that the business disclosed for a business purpose.

2. Verifiable consumer request. A business that sells personal information about a consumer, or that discloses a consumer's personal information for a business purpose, shall disclose, pursuant to section 9609, subsection 1, paragraph D, the information specified in subsection 1 to the consumer upon receipt of a verifiable consumer request from the consumer. A business is not obligated to provide information to the consumer pursuant to this section and sections 9603, 9604 and 9605 if the business cannot verify, pursuant to this subsection and rules adopted by the Attorney General pursuant to section 9619, subsection 1, paragraph G, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer's behalf.

3. Information disclosed. A business that sells consumers' personal information, or that discloses consumers' personal information for a business purpose, shall disclose, pursuant to section 9609, subsection 1, paragraph E, subparagraph (2):

A. The category or categories of consumers' personal information it has sold, or if the business has not sold consumers' personal information, it shall disclose that fact; and

B. The category or categories of consumers' personal information it has disclosed for a business purpose, or if the business has not disclosed the consumers' personal information for a business purpose, it shall disclose that fact.

4. Sale by 3rd party. A 3rd party may not sell personal information about a consumer that has been sold to the 3rd party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt out pursuant to section 9607.

5. Violations. A person covered by this section that violates any of the restrictions set forth in this chapter is liable for the violations. A business that discloses personal information to a person covered by this section in compliance with this section is not liable under this chapter if the person receiving the personal information uses it in violation of the restrictions set forth in this chapter, if, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation.

§9607. Consumer's right to prohibit sale; right to opt out

1. Right to opt out. A consumer has the right, at any time, to direct a business that sells personal information about the consumer to 3rd parties not to sell the consumer's personal information. This right may be referred to as "the right to opt out."

2. Notice of right to opt out. A business that sells consumers' personal information to 3rd parties shall provide notice to consumers, pursuant to section 9610, subsection 1, that this information may be sold and that consumers have the right to opt out of the sale of their personal information.

3. Right to opt in; consumer's age. Notwithstanding subsection 1, a business may not sell the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of a consumer at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of a consumer less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information. A business that willfully disregards the consumer's age is deemed to have had actual knowledge of the consumer's age.

The affirmative authorization required under this subsection may be referred to as "the right to opt in."

4. Sale prohibited. A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information has not received consent to sell the minor consumer's personal information, is prohibited, pursuant to section 9610, subsection 1, paragraph D, from selling the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.

§9608. Business practices

1. Discrimination based on exercise of rights prohibited. A business may not discriminate against a consumer because the consumer exercised any of the consumer's rights under this chapter, including, but not limited to, by:

A. Denying goods or services to the consumer;

B. Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;

C. Providing a different level or quality of goods or services to the consumer; or

D. Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

Nothing in this subsection prohibits a business from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer's personal information.

2. Financial incentives. A business may offer financial incentives, including payments to consumers as compensation, for the collection of personal information, the sale of personal information or the deletion of personal information. A business may also offer a different price, rate, level or quality of goods or services to the consumer if that price or difference is directly related to the value provided to the business by the consumer's personal information.

A. A business that offers any financial incentives pursuant to this subsection shall notify consumers of the financial incentives pursuant to section 9609.

B. A business may enter a consumer into a financial incentive program only if the consumer gives the business prior opt in consent pursuant to section 9609 that clearly describes the material terms of the financial incentive program, and which may be revoked by the consumer at any time.

C. A business may not use financial incentive practices that are unjust, unreasonable, coercive or usurious in nature.

§9609. Requests for and disclosure of information

1. Requests; disclosure and delivery. In order to comply with sections 9603, 9604, 9605, 9606 and 9608, a business shall, in a form that is reasonably accessible to consumers:

A. Make available to consumers 2 or more designated methods for submitting requests for information required to be disclosed pursuant to sections 9605 and 9606, including, at a minimum, a toll-free telephone number.

(1) A business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information is required to provide only an e-mail address for submitting requests for information required to be disclosed pursuant to sections 9605 and 9606.

(2) If the business maintains an Internet website, the business shall make the Internet website available to consumers to submit requests for information required to be disclosed pursuant to sections 9605 and 9606;

B. Disclose and deliver the required information to a consumer free of charge within 45 days of receiving a verifiable consumer request from the consumer. The business shall promptly take steps to determine whether the request is a verifiable consumer request, but this does not extend the business's duty to disclose and deliver the information within 45 days of receipt of the consumer's request. The time period to provide the required information may be extended once by an additional 45 days when reasonably necessary, if the consumer is provided notice of the extension within the first 45-day period. The disclosure must cover at least the 12-month period preceding the business's receipt of the verifiable consumer request and must be made in writing and delivered through the consumer's account with the business, if the consumer maintains an account with the business, or by mail or electronically at the consumer's option if the consumer does not maintain an account with the business, in a readily useable format that allows the consumer to transmit this information from one entity to another entity without hindrance. The business may require authentication of the consumer that is reasonable in light of the nature of the personal information requested, but may not require the consumer to create an account with the

~~business in order to make a verifiable consumer request. If the consumer maintains an account with the business, the business may require the consumer to submit the request through that account;~~

~~C. For purposes of section 9605, subsection 2:~~

~~(1) To identify the consumer, associate the information provided by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer; and~~

~~(2) Identify by category or categories the personal information collected about the consumer in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information collected;~~

~~D. For purposes of section 9606, subsection 2:~~

~~(1) Identify the consumer and associate the information provided by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer;~~

~~(2) Identify by category or categories the personal information of the consumer that the business sold in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information, and provide the categories of 3rd parties to whom the consumer's personal information was sold in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information sold. The business shall disclose the information in a list that is separate from a list generated for the purposes of subparagraph (3); and~~

~~(3) Identify by category or categories the personal information of the consumer that the business disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describes the personal information, and provide the categories of 3rd parties to whom the consumer's personal information was disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information disclosed. The business shall disclose the information in a list that is separate from a list generated for the purposes of subparagraph (2);~~

~~E. Disclose the following information in its online privacy policy or policies if the business has an online privacy policy or policies and in any description of consumers' privacy rights specific to the State or, if the business does not maintain those policies, on its Internet website and update that information at least once every 12 months:~~

~~(1) A description of a consumer's rights pursuant to sections 9603, 9604, 9605, 9606 and 9608 and one or more designated methods for submitting requests;~~

~~(2) For purposes of section 9605, subsection 3, a list of the categories of personal information it has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information collected;~~

~~(3) For purposes of section 9606, subsection 3, paragraphs A and B, 2 separate lists:~~

~~(a) A list of the categories of personal information it has sold about consumers in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information sold or, if the business has not sold consumers' personal information in the preceding 12 months, the business shall disclose that fact; and~~

~~(b) A list of the categories of personal information it has disclosed about consumers for a business purpose in the preceding 12 months by reference to the enumerated category or categories in subsection 3 that most closely describe the personal information disclosed or, if the business has not disclosed consumers' personal information for a business purpose in the preceding 12 months, the business shall disclose that fact;~~

~~(4) In the case of a business that sells or discloses deidentified patient information not subject to this chapter pursuant to section 9612, subsection 1, paragraph D, subparagraph (1), whether the business sells or discloses deidentified patient information derived from patient information and, if so, whether that patient information was deidentified pursuant to one or more of the following:~~

~~(a) The deidentification methodology described in of 45 Code of Federal Regulations, Section 164.514(b)(1); and~~

~~(b) The deidentification methodology described in 45 Code of Federal Regulations, Section 164.514(b)(2);~~

~~F. Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this chapter are informed of all requirements in sections 9603, 9604, 9605, 9606 and 9608 and this section and how to direct consumers to exercise their rights under those sections; and~~

~~G. Use any personal information collected from the consumer in connection with the business's verification of the consumer's request solely for the purposes of verification.~~

~~**2. Limit.** A business is not obligated to provide the information required by sections 9605 and 9606 to the same consumer more than twice in a 12-month period.~~

~~**3. Categories of personal information.** The categories of personal information required to be disclosed pursuant to sections 9605 and 9606 must follow the enumerated categories set out in the definition of "personal information" in section 9602, subsection 13.~~

~~§9610. Posted links and information~~

~~**1. Required links and information.** A business that is required to comply with section 9607 shall, in a form that is reasonably accessible to consumers:~~

~~A. Provide a clear and conspicuous link on the business's homepage, titled "Do Not Sell My Personal Information," to an Internet webpage that enables a consumer, or a person authorized by the consumer, to opt out of the sale of the consumer's personal information. A business may not require a consumer to create an account in order to direct the business not to sell the consumer's personal information;~~

~~B. Include a description of a consumer's rights pursuant to section 9607, along with a separate link to the "Do Not Sell My Personal Information" Internet webpage in:~~

~~(1) Its online privacy policy or policies if the business has an online privacy policy or policies; and~~

~~(2) Any description of consumers' privacy rights specific to this State;~~

~~C. Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this chapter are informed of all requirements in section 9607 and this section and how to direct consumers to exercise their rights under section 9607 and this section;~~

~~D. For consumers who exercise their right to opt out of the sale of their personal information under section 9607, refrain from selling personal information collected by the business about the consumer;~~

~~E. For a consumer who has opted out of the sale of the consumer's personal information under section 9607, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information; and~~

~~F. Use any personal information collected from a consumer in connection with the submission of the consumer's opt out request pursuant to section 9607 solely for the purposes of complying with the opt out request.~~

~~**2. Location of links and information.** Nothing in this chapter may be construed to require a business to comply with this chapter by including the required links and text on the homepage that the business makes available to the public generally, if the business maintains a separate and additional homepage that is dedicated to consumers in this State and that includes the required links and text, and the business takes reasonable steps to ensure that consumers in this State are directed to the homepage for consumers in this State and not the homepage made available to the public generally.~~

~~**3. Authorized person.** A consumer may authorize another person solely to opt out of the sale of the consumer's personal information on the consumer's behalf, and a business shall comply with an opt out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the Attorney General pursuant to section 9619.~~

~~§9611. Unaffected ability; continued application~~

~~**1. Business ability not restricted.** The obligations imposed on businesses by this chapter do not restrict a business's, service provider's or 3rd party's ability to:~~

~~A. Comply with federal, state or local laws;~~

~~B. Comply with a civil, criminal or regulatory inquiry, investigation, subpoena or summons by federal, state or local authorities;~~

~~C. Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider or 3rd party reasonably and in good faith believes may violate federal, state or local law;~~

~~D. Exercise or defend legal claims;~~

~~E. Collect, use, retain, sell or disclose consumer information that is deidentified or aggregate consumer information; or~~

~~F. Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of the State. For purposes of this chapter, commercial conduct takes place wholly outside of the State if the business, service provider or 3rd party collected that information while the consumer was outside of the State, no part of the sale of the consumer's personal information occurred in the State and no personal information collected while the consumer was in the State is sold. This paragraph does not permit a business, service provider or 3rd party to store, including on a device, personal information about a consumer when the consumer is in the State and then collect that personal information when the consumer and stored personal information is outside of the State.~~

~~**2. Violation of evidentiary privilege.** The obligations imposed on businesses by sections 9605 to 9610 do not apply when compliance by the business with those sections would violate an~~

~~evidentiary privilege under the law of this State and do not prevent a business from providing the personal information of a consumer to a person covered by an evidentiary privilege under the law of this State as part of a privileged communication.~~

~~**3. Credit reporting agency information.** Except for section 9614, this chapter does not apply to an activity involving the collection, maintenance, disclosure, sale, communication or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living by a consumer reporting agency, as defined in 15 United States Code, Section 1681a(f), by a furnisher of information, as set forth in 15 United States Code, Section 1681s-2, who provides information for use in a consumer report, as defined in 15 United States Code, Section 1681a(d), and by a user of a consumer report as set forth in 15 United States Code, Section 1681b.~~

~~This subsection applies only to the extent that such activity involving the collection, maintenance, disclosure, sale, communication or use of such information by that agency, furnisher or user is subject to regulation under the Fair Credit Reporting Act, 15 United States Code, Section 1681 et seq., and the information is not used, communicated, disclosed or sold except as authorized by the Fair Credit Reporting Act.~~

~~Personal information covered by this subsection may be the subject of an action under section 9614.~~

~~**4. Gramm-Leach-Bliley Act information.** Except for section 9614, this chapter does not apply to personal information collected, processed, sold or disclosed pursuant to the federal Gramm-Leach-Bliley Act, Public Law 106-102, and implementing regulations.~~

~~Personal information covered by this subsection may be the subject of an action under section 9614.~~

~~**5. Driver's Privacy Protection Act information.** Except for section 9614, this chapter does not apply to personal information collected, processed, sold or disclosed pursuant to the Driver's Privacy Protection Act of 1994, 18 United States Code, Section 2721 et seq.~~

~~Personal information covered by this subsection may be the subject of an action under section 9614.~~

~~**6. Vehicle information or ownership information.** Section 9607 does not apply to vehicle information or ownership information retained or shared between a new motor vehicle dealer, as defined in section 1171, subsection 12, and the vehicle's manufacturer, as defined in section 1171, subsection 10, if the vehicle information or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vehicle repair covered by a vehicle warranty or a recall conducted pursuant to 49 United States Code, Sections 30118 to 30120, as long as the new motor vehicle dealer or vehicle manufacturer with which that vehicle information or ownership information is shared does not sell, share or use that information for any other purpose.~~

~~For purposes of this subsection:~~

~~A. "Vehicle information" means the vehicle information number, make, model, year and odometer reading; and~~

~~B. "Ownership information" means the name or names of the registered owner or owners and the contact information for the owner or owners.~~

7. Extensions; reasons for not taking action; manifestly unfounded or excessive requests. Notwithstanding a business's obligations to respond to and honor consumer rights requests pursuant to this chapter:

A. A time period for a business to respond to any verifiable consumer request may be extended by up to 90 additional days where necessary, taking into account the complexity and number of the requests. The business shall inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay;

B. If the business does not take action on the request of the consumer, the business shall inform the consumer, without delay and at the latest within the time period permitted for response by this section, of the reasons for not taking action and any rights the consumer may have to appeal the decision to the business; and

C. If requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business shall bear the burden of demonstrating that any verifiable consumer request is manifestly unfounded or excessive.

8. Disclosure to service provider. A business that discloses personal information to a service provider is not liable under this chapter if the service provider receiving the personal information uses it in violation of the restrictions set forth in this chapter, if, at the time of disclosing the personal information, the business does not have actual knowledge or reason to believe that the service provider intends to commit such a violation. A service provider is likewise not liable under this chapter for the obligations of a business for which it provides services as set forth in this chapter.

9. Ordinary course of business. This chapter may not be construed to require a business to collect personal information that it would not otherwise collect in the ordinary course of its business, retain personal information for longer than it would otherwise retain such information in the ordinary course of its business or reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

10. Rights and freedoms of other consumers. The rights afforded to consumers and the obligations imposed on a business under this chapter may not adversely affect the rights and freedoms of other consumers.

§9612. Medical and health information

1. Nonapplicability. This chapter does not apply to any of the following:

A. Health care information governed by Title 22, section 1711-C or protected health care information that is collected by a covered entity or business associate governed by the privacy, security and breach notification rules issued by the United States Department of Health and Human Services, 45 Code of Federal Regulations, Parts 160 and 164, established pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the federal Health Information Technology for Economic and Clinical Health Act, Title XIII of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5;

B. A health care practitioner governed by Title 22, section 1711-C or a covered entity governed by the privacy, security and breach notification rules issued by the United States Department of

~~Health and Human Services, 45 Code of Federal Regulations, Parts 160 and 164, established pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, to the extent the provider or covered entity maintains, uses and discloses patient information in the same manner as health care information or protected health care information as described in paragraph A;~~

~~C. A business associate of a covered entity governed by the privacy, security and data breach notification rules issued by the United States Department of Health and Human Services, 45 Code of Federal Regulations, Parts 160 and 164, established pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the federal Health Information Technology for Economic and Clinical Health Act, Title XIII of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, to the extent that the business associate maintains, uses and discloses patient information in the same manner as health care information or protected health care information as described in paragraph A;~~

~~D. Information that meets both of the following conditions:~~

~~(1) It is deidentified in accordance with the requirements for deidentification set forth in 45 Code of Federal Regulations, Section 164.514; and~~

~~(2) It is derived from patient information that was originally collected, created, transmitted or maintained by an entity regulated by the federal Health Insurance Portability and Accountability Act of 1996 or 45 Code of Federal Regulations, Part 46.~~

~~Information that met the requirements of subparagraphs (1) and (2) but is subsequently reidentified is no longer eligible for the exemption in this paragraph and is subject to applicable federal and state data privacy and security laws, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 and this chapter; and~~

~~E. Information that is collected, used or disclosed in research, as defined in 45 Code of Federal Regulations, Section 164.501, including, but not limited to, a clinical trial, and that is conducted in accordance with applicable ethics, confidentiality, privacy and security rules of 45 Code of Federal Regulations, Parts 46 and 164, good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or successor organization, or human subject protection requirements of the United States Food and Drug Administration.~~

~~**2. Terms.** For purposes of this section:~~

~~A. "Business associate" has the same meaning as in 45 Code of Federal Regulations, Section 160.103;~~

~~B. "Covered entity" has the same meaning as in 45 Code of Federal Regulations, Section 160.103;~~

~~C. "Health care information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company or contractor regarding a patient's medical history, mental or physical condition or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, mailing address, e-mail address, telephone number or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity;~~

~~D. "Health care practitioner" means a person licensed by this State to provide or otherwise lawfully providing health care or a partnership or corporation made up of health care practitioners or an officer, employee, agent or contractor of a health care practitioner acting in the course and~~

~~scope of employment, agency or contract related to or supportive of the provision of health care to individuals;~~

~~E. "Identifiable private information" has the same meaning as in 45 Code of Federal Regulations, Section 46.102;~~

~~F. "Individually identifiable health information" has the same meaning as in 45 Code of Federal Regulations, Section 160.103;~~

~~G. "Patient information" means identifiable private information, protected health information, individually identifiable health information or health care information; and~~

~~H. "Protected health information" has the same meaning as in 45 Code of Federal Regulations, Section 160.103.~~

~~§9613. Reidentification of information~~

~~1. Reidentification prohibited; exceptions.~~ ~~A business or other person may not reidentify, or attempt to reidentify, information that has met the requirements of section 9612, subsection 1, paragraph D, except for one or more of the following purposes:~~

~~A. Treatment, payment or health care operations conducted by a covered entity or business associate acting on behalf of, and at the written direction of, the covered entity. For purposes of this paragraph, "treatment," "payment" and "health care operations" have the same meanings as in 45 Code of Federal Regulations, Section 164.501 and "covered entity" and "business associate" have the same meanings as in 45 Code of Federal Regulations, Section 160.103;~~

~~B. Public health activities or purposes as described in 45 Code of Federal Regulations, Section 164.512;~~

~~C. Research, as defined in 45 Code of Federal Regulations, Section 164.501, that is conducted in accordance with 45 Code of Federal Regulations, Part 46;~~

~~D. Pursuant to a contract where the lawful holder of the deidentified information that met the requirements of section 9612, subsection 1, paragraph D expressly engages a person or entity to attempt to reidentify the deidentified information in order to conduct testing, analysis or validation of deidentification, or related statistical techniques, if the contract bans any other use or disclosure of the reidentified information and requires the return or destruction of the information that was reidentified upon completion of the contract; and~~

~~E. If otherwise required by law.~~

~~2. Information reidentified subject to data privacy and security laws.~~ ~~In accordance with section 9612, subsection 1, paragraph D, information reidentified pursuant to this section is subject to applicable federal and state data privacy and security laws including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 and this chapter.~~

~~3. Statements; further disclosure.~~ ~~A contract for the sale or license of deidentified information that has met the requirements of section 9612, subsection 1, paragraph D, when one of the parties is a person residing or doing business in the State, must include the following, or substantially similar, provisions:~~

~~A. A statement that the deidentified information being sold or licensed includes deidentified patient information;~~

~~B. A statement that reidentification, and attempted reidentification, of the deidentified information by the purchaser or licensee of the information is prohibited pursuant to this section; and~~

~~C. A requirement that, unless otherwise required by law, the purchaser or licensee of the deidentified information may not further disclose the deidentified information to any 3rd party unless the 3rd party is contractually bound by the same or stricter restrictions and conditions.~~

~~§9614. Civil action based on violation~~

~~1. Civil action based on violation.~~ ~~A consumer whose nonencrypted and nonredacted personal information is subject to an unauthorized access and exfiltration, theft or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:~~

~~A. To recover damages in an amount not less than $100 and not greater than $750 per consumer per incident or actual damages, whichever is greater;~~

~~B. Injunctive or declaratory relief; and~~

~~C. Any other relief the court determines proper.~~

~~In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct and the defendant's assets, liabilities and net worth.~~

~~2. Notice of alleged violation; opportunity to cure; exception.~~ ~~Actions pursuant to this section may be brought by a consumer if, prior to initiating any action against a business for statutory damages on an individual or classwide basis, a consumer provides a business 30 days' written notice identifying the specific provisions of this chapter the consumer alleges have been or are being violated. In the event a cure is possible, if within the 30 days the business actually cures the noticed violation and provides the consumer an express written statement that the violations have been cured and that no further violations will occur, no action for individual statutory damages or classwide statutory damages may be initiated against the business. Notice is not required prior to an individual consumer's initiating an action solely for actual pecuniary damages suffered as a result of the alleged violation of this chapter. If a business continues to violate this chapter in breach of the express written statement provided to the consumer under this section, the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the chapter that postdates the written statement.~~

~~3. Defined violations; no basis for private right of action under other law.~~ ~~The cause of action established by this section applies only to violations as defined in subsection 1 and may not be based on violations of any other section of this chapter. Nothing in this chapter may be interpreted to serve as the basis for a private right of action under any other law. This section may not be construed to relieve any party from any duties or obligations imposed under other law or the United States Constitution or the Constitution of Maine.~~

~~§9615. Compliance; civil penalties~~

~~1. Guidance of Attorney General.~~ ~~Any business or 3rd party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of this chapter.~~

2. Failure to cure; civil penalties. A business violates this chapter if it fails to cure any alleged violation within 30 days after being notified of alleged noncompliance. A business, service provider or other person that violates this chapter is subject to an injunction and liable for a civil penalty of not more than $2,500 for each violation or $7,500 for each intentional violation, which must be assessed and recovered in a civil action brought in the name of the State by the Attorney General. The civil penalties provided for in this section must be exclusively assessed and recovered in a civil action brought in the name of the State by the Attorney General.

3. Consumer Privacy Fund. Any civil penalty assessed for a violation of this chapter and the proceeds of any settlement of an action brought pursuant to subsection 2 must be deposited in the Consumer Privacy Fund created pursuant to section 9616, subsection 1.

§9616. Consumer Privacy Fund

1. Consumer Privacy Fund created. A special fund to be known and referred to in this section as "the Consumer Privacy Fund" is created within the General Fund in the State Treasury. The purpose of the fund is to offset any costs incurred by the courts in connection with actions brought to enforce this chapter and any costs incurred by the Attorney General in carrying out the Attorney General's duties under this chapter.

2. Uses. Funds transferred to the Consumer Privacy Fund must be used exclusively to offset any costs incurred by the state courts and the Attorney General in connection with this chapter. These funds may not be subject to appropriation or transfer by the Legislature for any other purpose, unless the Commissioner of Administrative and Financial Services determines that the funds are in excess of the funding needed to fully offset the costs incurred by the state courts and the Attorney General in connection with this chapter, in which case the Legislature may appropriate excess funds for other purposes.

§9617. Privacy protection

This chapter is intended to further the right of privacy and to supplement existing laws relating to consumers' personal information. The provisions of this chapter are not limited to information collected electronically or over the Internet, but apply to the collection and sale of all personal information collected by a business from consumers. Wherever possible, law relating to consumers' personal information must be construed to harmonize with the provisions of this chapter, but in the event of a conflict between other laws and the provisions of this chapter, the provisions of the law that afford the greatest protection for the right of privacy for consumers control.

§9618. Preemption

This chapter is a matter of statewide concern and supersedes and preempts all rules, regulations, codes, ordinances and other laws adopted by a municipality, county or local agency regarding the collection and sale of consumers' personal information by a business.

§9619. Rules

~~**1. Rules.** On or before January 1, 2023, the Attorney General shall solicit broad public participation and adopt rules to further the purposes of this chapter, including, but not limited to, the following areas:~~

~~A. Updating as needed additional categories of personal information to those enumerated in section 9602, subsection 13 in order to address changes in technology, data collection practices, obstacles to implementation and privacy concerns;~~

~~B. Updating as needed the definition of "unique identifiers" to address changes in technology, data collection, obstacles to implementation and privacy concerns, and to add categories to the definition of "designated methods for submitting requests" to facilitate a consumer's ability to obtain information from a business pursuant to section 9609;~~

~~C. Establishing any exceptions necessary to comply with state or federal law, including, but not limited to, those relating to trade secrets and intellectual property rights, within one year of passage of this chapter and as needed thereafter;~~

~~D. Establishing rules and procedures for the following:~~

~~(1) To facilitate and govern the submission of a request by a consumer to opt out of the sale of personal information pursuant to section 9607;~~

~~(2) To govern business compliance with a consumer's opt out request; and~~

~~(3) For the development and use of a recognizable and uniform opt out logo or button by all businesses to promote consumer awareness of the opportunity to opt out of the sale of personal information;~~

~~E. Adjusting the monetary threshold in section 9602, subsection 3, paragraph A, subparagraph (1) in January of every odd-numbered year to reflect any increase in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index;~~

~~F. Establishing rules, procedures and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this chapter are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities and are available in the language primarily used to interact with the consumer, including establishing rules and guidelines regarding financial incentive offerings, within one year of passage of this chapter and as needed thereafter; and~~

~~G. Establishing rules and procedures to further the purposes of sections 9605 and 9606 and to facilitate a consumer's or the consumer's authorized agent's ability to obtain information pursuant to section 9609, with the goal of minimizing the administrative burden on consumers, taking into account available technology, security concerns and the burden on the business, to govern a business's determination that a request for information received from a consumer is a verifiable consumer request, including treating a request submitted through a password-protected account maintained by the consumer with the business while the consumer is logged into the account as a verifiable consumer request and providing a mechanism for a consumer who does not maintain an account with the business to request information through the business's authentication of the consumer's identity, within one year of passage of this chapter and as needed thereafter.~~

~~**2. Additional rules.** The Attorney General may adopt additional rules as follows:~~

~~A. To establish rules and procedures on how to process and comply with verifiable consumer requests for specific pieces of personal information relating to a household in order to address obstacles to implementation and privacy concerns; and~~

~~B. As necessary to further the purposes of this chapter.~~

3. Time of enforcement action. The Attorney General may not bring an enforcement action under this chapter until 6 months after the adoption of the final rules issued pursuant to this section or July 1, 2023, whichever is sooner.

4. Routine technical rules. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

§9620. Series of steps or transactions

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f a series of steps or transactions were component parts of a single transaction intended from the beginning to be taken with the intention of avoiding the reach of this chapter, including the disclosure of information by a business to a 3rd party in order to avoid the definition of "sell," a court shall disregard the intermediate steps or transactions for purposes of effectuating the purposes of this chapter.

§9621. Waiver or limit of rights void and unenforceable

Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this chapter, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to request information from a business, declining to opt out of a business's sale of the consumer's personal information or authorizing a business to sell the consumer's personal information after previously opting out.

§9622. Liberal construction

This chapter must be liberally construed to effectuate its purposes.

§9623. Effective date

This chapter takes effect January 1, 2023.

Sec. A-2. 35-A MRSA c. 94, as amended, is repealed.

Sec. A-3. Effective date. That section of this Part that repeals the Maine Revised Statutes, Title 35-A, chapter 94 takes effect January 1, 2023.

PART B

Sec. B-1. 9-A MRSA §2-301 is amended to read:

§2-301. Authority to make or service supervised loans

Unless a person is a supervised financial organization, a financial institution holding company as defined in Title 9-B, section 1011, subsection 1 or a mutual holding company as defined in Title 9-B, section 1052, subsection 2 or has first obtained a license pursuant to this Act from the administrator

authorizing the person to make or service supervised loans, the person may not engage in the business of:

1. Making supervised loans;

2. Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans; ~~or~~

3. Servicing mortgage loans~~.~~; or

4. On behalf of a lender, soliciting, negotiating or aiding in the arranging of a small dollar loan as defined in Title 9-A, §2-802, subsection 2.

Sec. B-2 ~~B-1~~. 9-A MRSA §2-701, as enacted by PL 2021, c. 297, §1, is amended to read:

§2-701. Engaging in pretense to evade requirements of this Article prohibited

An entity covered by this Article may not engage in any device, subterfuge or pretense to evade the requirements of this Article, including, but not limited to, making a loan disguised as a personal property sale and leaseback transaction~~,~~ or disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services ~~or making, offering, assisting or arranging a debtor to obtain a loan with a greater rate of interest, consideration or charge than is permitted by this Article through any method~~. A loan made in violation of this Part is void and uncollectible as to any principal, fee, interest or charge.

Sec. B-3 ~~B-2~~. 9-A MRSA §2-702, as enacted by PL 2021, c. 297, §1, is repealed.

Sec. B-4 ~~B-3~~. 9-A MRSA Art. 2, Pt. 8 is enacted to read:

PART 8

MAINE SMALL DOLLAR CONSUMER PROTECTION ACT

§2-801. Short title

This Part may be known and cited as "the Maine Small Dollar Consumer Protection Act."

§2-802. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Renew. "Renew" means to renew, repay, refinance or consolidate an existing small dollar loan with the proceeds of another small dollar loan.

2. Small dollar loan. "Small dollar loan" means a loan made by a supervised lender that:
A. Is made to one or more individuals for personal, family or household use;
B. Has a principal amount that does not exceed $2,500;

C. Is unsecured and payable in substantially equal installments;
D. Has a repayment schedule consisting of installment payments of substantially equal amounts of principal and service fees amortizing over the term of the loan such that the loan is repaid in full by the maturity date; and
E. Has a maturity date that is not less than 90 days or more than 365 days after the date of the loan agreement.

§2-803. Small dollar loans

A supervised lender may make a small dollar loan to a consumer pursuant to this Part. The administrator shall adopt rules to carry out the purposes of this Part. The rules must include, at a minimum, the following:

1. Copy. A requirement for a supervised lender to immediately provide a consumer with a signed copy of the small dollar loan agreement;

2. Payment. Provisions allowing for payment of a small dollar loan to a consumer by check, money order, cash or other mutually agreed upon means, but that prohibit the supervised lender from charging the consumer additional fees based on the method of payment;

3. Right to cancel. The right of a consumer to cancel a small dollar loan agreement by notifying the supervised lender and returning the total original loan amount within 3 business days after the date the consumer entered into the loan agreement;

4. Right to file complaint. The right of a consumer to file a complaint against a supervised lender for a violation of any provision of this Part; and

5. Modification. An allowance for a supervised lender and a consumer to mutually agree to modify the repayment schedule to allow for different payment amounts over the term of the small dollar loan, as long as the modified repayment schedule does not include a payment due at the date of maturity that is substantially larger than any previously scheduled installment payment.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§2-804. Limitations on multiple small dollar loans

A supervised lender may not enter into a small dollar loan agreement with a consumer if the consumer has an open small dollar loan agreement with the supervised lender or another supervised lender in the State. A supervised lender may rely on a consumer's representation of open small dollar loan agreements with any other supervised lender.

§2-805. Renewal of small dollar loans

A supervised lender may not renew a small dollar loan agreement unless:

1. Payments as scheduled. A consumer has made payments as scheduled; and

2. Percentage of payments. A consumer has made at least 30% of all scheduled payments or has retired at least 50% of the principal amount of the small dollar loan.

§2-806. Consideration of ability to repay

1. Considerations. In determining the amount and duration of the loan as part of the underwriting, making or negotiating of a small dollar loan, a supervised lender shall take into consideration a consumer's financial ability to repay the loan in the time and manner provided in the prospective small dollar loan agreement. The supervised lender's consideration must include, but is not limited to, a consumer's:

A. Credit and borrowing history;

B. Gross income;

C. Representation of major financial obligations; and

D. Estimated basic living expenses, including, but not limited to, expenses for food, utilities, regular medical costs and other costs associated with the consumer's health, welfare and ability to produce income and the health and welfare of members of the consumer's household who are financially dependent on the consumer. A supervised lender may rely on a consumer's representation of estimated basic living expenses when determining the consumer's ability to repay a small dollar loan.

2. Ability to pay. A supervised lender may enter into a small dollar loan agreement only with a consumer whom the supervised lender has determined pursuant to subsection 1 to be able to repay the small dollar loan in the time and manner provided in the prospective small dollar loan agreement. A supervised lender may not enter into a small dollar loan agreement with a consumer if the supervised lender determines that the prospective small dollar loan agreement would result in a monthly payment that would exceed 12% of the consumer's gross monthly income.

§2-807. No prepayment penalty

A consumer may prepay in full the unpaid balance of the small dollar loan at any time without additional interest, fees or penalties.

§2-808. Limitations on collections

A supervised lender may not use or threaten to use criminal proceedings in order to collect upon the terms of a small dollar loan agreement under this Part.

§2-809. Report to credit reporting agency required

A supervised lender shall report to a credit reporting agency or agencies the terms of a small dollar loan agreement and a consumer's performance pursuant to those terms.

§2-810. Required consumer disclosures

1. Public notice. A supervised lender shall post prominently at its place of business in a way designed to be seen by a consumer before the consumer enters into a small dollar loan agreement and

on any website designed to be seen by a consumer before the consumer enters into a small dollar loan agreement a written notice that, at a minimum, informs the consumer that:

A. State law prohibits a supervised lender from entering into a small dollar loan agreement with a consumer who already has a small dollar loan in effect with the supervised lender or with another supervised lender in the State;

B. If a consumer enters into a small dollar loan agreement, a copy of the signed agreement must be immediately provided to the consumer;

C. The proceeds of a small dollar loan are payable to a consumer by check, money order, cash or any other mutually acceptable means and that the consumer may not be subjected to additional fees based on the method of payment;

D. State law guarantees to a consumer the right to cancel a small dollar loan agreement and that, in order to cancel an agreement, the consumer must notify the supervised lender and return the original dollar value received within 3 business days after the date the consumer entered into the loan agreement;

E. State law prohibits a supervised lender from using or threatening to use any criminal proceedings to collect on a small dollar loan agreement; and

F. State law entitles a consumer to information regarding how to file a complaint against a supervised lender if the consumer has reason to believe that the supervised lender has violated the law and that a consumer who believes the supervised lender is acting unlawfully should contact the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation.

Notices posted at the place of business must be in at least 36-point type. Notices posted on a website must be located in a prominent place easily located by a consumer.

2. Public notice of fees and charges. A supervised lender shall post prominently at its place of business in a way designed to be seen by a consumer before the consumer enters into a small dollar loan agreement and on any website designed to be seen by a consumer before the consumer enters into a small dollar loan agreement a schedule of all fees and charges to be imposed for small dollar loans. Notices posted at the place of business must be in at least 36-point type. Notices posted on a website must be located in a prominent place easily located by a consumer.

SUMMARY

~~Part A of this bill establishes the Maine Consumer Privacy Act. It applies to the collection and sale of all personal information collected by a business from consumers. Because the new Act covers Internet service providers, this bill repeals the Maine Revised Statutes, Title 35-A, chapter 94 to keep all entities on equal footing, allowing consumers to opt out of the sale of personal information.~~

~~The Maine Consumer Privacy Act takes effect January 1, 2023. The repeal of Title 35-A, chapter 94 is effective January 1, 2023.~~

Part B of this bill establishes the Maine Small Dollar Consumer Protection Act. It outlines the process for supervised lenders to offer small dollar loans, which are defined as loans not exceeding $2,500, and the rights that consumers have when entering into small dollar loan agreements. It also makes clear that a person that solicits, negotiates or aids in the arranging of a small dollar loan must be licensed.