130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document	**No. 913**
H.P. 669	House of Representatives, March 8, 2021

An Act To Enact the Maine Data Collection Protection Act

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative HASENFUS of Readfield.
Cosponsored by Representatives: HARNETT of Gardiner, MORALES of South Portland, O'NEIL of Saco, WILLIAMS of Bar Harbor, Senator: BALDACCI of Penobscot.

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

Sec. 1. 10 MRSA c. 210-C is enacted to read:

CHAPTER 210-C

MAINE DATA COLLECTION PROTECTION ACT

§1350-C. Short title

This chapter may be known and cited as "the Maine Data Collection Protection Act."

§1350-D. Definitions

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

1. Data collector. "Data collector" means:

A. A person that collects or attempts to collect data, directly or indirectly, from publicly maintained records and sells that data to 3rd parties for any purpose, including but not limited to the determination of an individual's eligibility for consumer credit, employment or residential housing;

B. A person that collects data, directly or indirectly, from publicly maintained records and engages in a pattern and practice of using that data to determine an individual's eligibility for consumer credit, employment or residential housing; or

C. A person that acquires data from any person who meets the definition of "data collector" set forth in paragraph A.

A data collector as defined in paragraph A is considered a consumer reporting agency as defined in section 1308, subsection 3 and is subject to the provisions of the Fair Credit Reporting Act.

2. Consumer. "Consumer" means an individual whose publicly available data is collected by a data collector.

An individual who meets the definition of "consumer" for purposes of this Act is deemed to meet the definition of "consumer" in section 1308, subsection 2 and is entitled to the rights and protections of the Fair Credit Reporting Act.

§1350-E. Prohibited practices

A data collector may not aggregate, sell or use the following documents or the information obtained from the following documents for the purpose of determining a consumer's eligibility for consumer credit, employment or residential housing:

1. No wrongdoing alleged. Documents that are part of a court case or government action or investigation that does not allege wrongdoing by the consumer;

2. Resolution by agreement of consumer. Documents that are part of a court case or government action or investigation that is resolved by the agreement of the consumer;

3. Dismissed or resolved in favor of consumer. Documents that are part of a court case or government action or investigation that is dismissed or resolved in favor of the consumer;

4. Set aside or vacated. Documents that are part of a court case or government action or investigation that is set aside or vacated;

5. Judgment against consumer by default; exception. Documents that are part of a court case or government action or investigation in which judgment is entered against the consumer by default unless the court has made a finding that the plaintiff has proven the alleged wrongdoing by the consumer;

6. Older than 3 years. Documents that are part of a civil court case or government action or investigation that is older than 3 years;

7. Order. Documents that are subject to an order of a court or government agency that prohibits the use of the documents or the information obtained from the documents to determine a consumer's eligibility for consumer credit, employment or residential housing; or

8. COVID-19 public health emergency. Documents that are part of a court case or government action or investigation that results in a judgment of eviction or a consumer debt during the period of the public health emergency resulting from coronavirus disease 2019, or COVID-19, as declared by the Governor in the Proclamation of State of Civil Emergency to Further Protect Public Health, March 15, 2020, pursuant to Title 37-B, section 742 and as renewed and extended by subsequent proclamations.

§1350-F. License required

A person who meets the definition of "data collector" set forth in section 1350-D, subsection 1, paragraph A may not conduct business in this State without a valid license issued by the Superintendent of the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation under the Maine Fair Debt Collection Practices Act.

§1350-G. Civil liability

1. Failure to comply with Act. A data collector that fails to comply with any provision of this Act with respect to any consumer is liable to that person in an amount equal to the sum of:

A. Actual damages sustained by the consumer as a result of such failure;

B. In the case of any action by an individual consumer, such additional damages as the court may allow, not exceeding $2,000;

C. In the case of a class action:

(1) Such amount for each named plaintiff as may be recovered under paragraph A; and

(2) Such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 and 1% of the net worth of the data collector; and

D. In the case of any successful action to enforce liability set out in this subsection, the costs of the action, together with reasonable attorney's fees as determined by the court.

2. Considerations affecting liability. In determining the amount of liability in any action brought under this chapter, the court shall consider, among other relevant factors:

A. In any individual consumer action, the frequency and persistence of noncompliance by the data collector, the nature of that noncompliance and the extent to which the noncompliance was intentional; or

B. In any class action, the frequency and persistence of noncompliance by the data collector, the nature of that noncompliance, the resources of the data collector, the number of persons adversely affected and the extent to which the data collector's noncompliance was intentional.

3. Defense. A data collector may not be held liable in any action brought under this chapter if the data collector shows, by a preponderance of the evidence, that the violation was not intentional and resulted from bona fide error, notwithstanding the maintenance of procedure reasonably adapted to avoid any such error.

4. Action to enforce liability. An action to enforce liability under this section must be brought within one year from the date on which the violation occurred or from the date on which the consumer was reasonably on notice of the violation, whichever is later.

5. Bad faith, harassment. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award the defendant reasonable attorney's fees and costs.

SUMMARY

This bill creates the Maine Data Collection Protection Act, which prohibits data collectors from collecting and aggregating, selling or using specific types of public documents or information from those documents for the purpose of determining a consumer's eligibility for consumer credit, employment or residential housing.