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**STATE OF MAINE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the**

**BLUE RIBBON COMMISSION  
TO ESTABLISH A  
COMPREHENSIVE INTERNET POLICY**

**November 2000**

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## Executive Summary

The Blue Ribbon Commission to Establish a Comprehensive Internet Policy was created by law<sup>1</sup> in the 1<sup>st</sup> Regular Session of the 119<sup>th</sup> Legislature. The Commission met and made several recommendations during the interim following the 1<sup>st</sup> Regular Session, but found that it needed more time to fully address its charge. Therefore the commission recommended, and the Legislature approved, a bill reestablishing the Commission during the interim after the 2<sup>nd</sup> Regular Session.<sup>2</sup> The Commission was co-chaired by Senator Carol Kontos and Representative Thomas Davidson, and consisted of 11 voting members and 6 non-voting members.

Voting members included legislators and representatives of the telecommunications industry, the Maine State Bar Association, Internet service providers, the Maine Software Developers Association, the cable television industry and the Maine Civil Liberties Union. Nonvoting members of the Commission included representatives from the University of Maine System, the State Library, the Public Utilities Commission, the Public Advocate's Office, the Department of Economic and Community Development and the Secretary of State.

The Commission reconvened on August 23, 2000 and met four additional times throughout the Fall of 2000. The Commission focused on issues relating to Internet privacy, including the need to provide Internet users with notice of how information is collected and used and the potential for state and local governments to lead the way in implementing fair information practices. The Commission received input on the issue from state information technology officials, private computer industry leaders, providers of information services to governmental entities, and consumer-related state agency officials.

On the basis of its study, the Commission makes the following recommendations:

### A. Continuation of Commission Work

**The Commission recommends that a study group be convened in the next legislative interim to continue work on privacy issues and the coordination of state policy-making, to keep informed on developments in Internet use and technology, and to address new issues such as use of the Internet in the election process. The study group should be composed of parties with interest and expertise in these issues.**

### B. State Electronic Information Policies

**The Commission recommends that the Department of Administrative and Financial Services report back to the joint standing committee having jurisdiction over information technology matters, the joint standing committee having jurisdiction over state and local government matters and the joint standing committee having**

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<sup>1</sup> Resolve 1999, chapter 89

<sup>2</sup> Public Law 1999, chapter 762, section 3

jurisdiction over appropriation matters by February 1, 2001 on coordination of electronic information policy-making within State government, including the duties and responsibilities of each information board and position, how the boards and positions relate, the activities that each board has undertaken and the policies that each board has established. The report must include any recommendations from the Department of Administrative and Financial Services for streamlining and enhancing coordination of the boards and positions, including possible consolidation of the boards and positions. In addition, the Department must report on the implementation of privacy policies for state agency websites.

#### **C. Consumer Privacy Advocate**

The Commission recommends that an independent entity in state government be given the role of educating consumers about information privacy, advocating for fair information practices in the public and private sectors and addressing citizen complaints. This would not be a regulatory agency, but an advisory, advocacy and technical assistance entity. The entity or position could be established within existing resources or could be newly-created.

#### **D. Notice of State and Local Government Information Practices**

The Commission recommends that the Legislature enact a law requiring state and local governments to adopt policies governing their collection and handling of personal information on the Internet and to include notice of those policies on their websites.

#### **E. Development of a Comprehensive Fair Information Practices Law**

The Commission recommends that the study group proposed in Recommendation A examine options for enacting a comprehensive privacy act governing collection and management of personal information by state and local governments via the Internet or any other method, and that the Commission draft and recommend such an act to the 2<sup>nd</sup> Regular Session of the 120<sup>th</sup> Legislature. The act must include a provision for an audit of adherence to the requirements of the act, following a phase-in period.

#### **F. Uniform Computer Information Transactions Act (UCITA)**

The Commission recommends that the Legislature take no immediate action on the Uniform Computer Information Transactions Act (UCITA).

#### **G. Monitoring Implementation of the Uniform Electronic Transactions Act (UETA)**

**The Commission recommends that state agencies continue to review and track the impact on consumers and businesses of state and federal laws relating to electronic transactions.**

#### **H. Include Information Collection and Handling in the Government Evaluation Act**

**The Commission recommends that the State Government Evaluation Act be amended to include review of an agency's implementation of information technologies, their information collection and handling policies and practices, and how well those policies and practices adhere to the Fair Information Practice Principles of notice, choice, access, integrity and enforcement.**

#### **I. Maine Governmental Information Network**

**The Commission supports the Maine Governmental Information Network initiative as established by Public Law 1999, chapter 428 and supports providing assistance to municipalities to enhance their ability to offer services and information through the Internet. The Commission recommends that the study group recommended in Recommendation A evaluate the success of the "Rapid Renewal" pilot project being undertaken by InforME, the Secretary of State's Office and 10 Maine municipalities, and recommend funding, if any, for the Maine Governmental Information Network.**

## I. INTRODUCTION

### A. Commission Reestablishment and Charge

The Blue Ribbon Commission to Establish a Comprehensive Internet Policy was originally established in the First Regular Session of the 119th Legislature by Resolve 1999, chapter 89. The Commission was convened in September of 1999 and completed its first interim of work in December of 1999.

The charge to the Commission was broad. Due to the short time available for the Commission to complete its work and the complexity of the issues before it, the Commission decided to focus on issues relating to the following charges:

- “E-commerce” (specifically, digital and electronic signature verification and amendments to Maine statutes to encourage electronic business transactions on the Internet);
- “E-government” (specifically, payment of agency fees by credit card and other electronic means, requiring agencies to coordinate services on the Internet, and amendments to Maine statutes to encourage electronic governmental transactions on the Internet); and
- “Internet access” (specifically, municipal government linkage to the Internet to coordinate access to services for Maine citizens).

Please refer to the *Final Report of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy*, December 1999.

The following charges to the Commission were not addressed during the first interim:

- Protection of Internet users’ and citizens’ privacy;
- Mitigation of Internet abuses, including transmission of unsolicited bulk e-mail or “spam”;
- Regulation of hate mail and pornography; and
- Elimination of electronic crimes.

The Commission felt that the issues that were not addressed, particularly Internet privacy, were important issues that required further study by the Commission. Therefore, the Commission recommended that the study group be reconvened following the 119<sup>th</sup> Legislature’s Second Regular Session. L.D. 2557, a bill reported out of the Joint Standing Committee on Business and Economic Development, and passed by the Legislature, was signed as Public Law 1999, chapter 762 on May 8, 2000. Chapter 762 amended Resolve 1999, chapter 89 to authorize the Commission to meet following the conclusion of the Second Regular Session of the 119<sup>th</sup> Legislature and required that the Commission submit its 2<sup>nd</sup> report along with any implementing legislation to the First Regular Session of the 120<sup>th</sup> Legislature. **A copy of the amended resolve is included in Appendix A.**

## **B. Membership**

The Commission's structure was unchanged by Public Law 1999, chapter 762. According to the enabling legislation, the Commission was to include 18 members: 12 voting members and 6 nonvoting members. However, one legislative member who served on the Commission during the first interim was unable to continue serving and a replacement member was not appointed. Therefore, the Commission consisted of 17 members with 11 voting members, including legislators and representatives from the telecommunications industry, the Maine Bar Association, Internet service providers, the Maine Software Developers Association, the cable television industry and the Maine Civil Liberties Union. The 6 nonvoting members of the Commission included representatives from the University of Maine system, the State Library, the Public Utilities Commission, the Public Advocate's Office, the Department of Economic and Community Development and the Secretary of State. **A list of Commission members is included in Appendix B.**

## **C. Scope and Focus of Commission Meetings**

The Commission reconvened on August 23, 2000, and held four additional meetings on September 27, October 20, November 1 and November 17, 2000.

1. At its first meeting, the Commission reviewed its duties, reviewed the status of their 1999 recommendations, and received updates on agency actions taken to enhance e-government services, including presentations from the State Treasurer's Office, the Department of Economic and Community Development and InforME. Commission staff summarized federal and national activity in the area of e-government, including enactment of the federal "E-sign law" the moratorium on Internet taxation, federal and state proposals regarding privacy and development of the Uniform Computer Information Transactions Act (UCITA).
2. The second meeting of the Commission focused on privacy of information on the Internet. Commission staff presented information from the Center for Democracy and Technology (CDT), a non-profit group whose interests include Internet privacy. The Commission received a presentation from the Vice President for Governmental Affairs programs at IBM on the future of the Internet, consumer privacy and possible roles that government can play in enhancing Internet privacy. The Commission also received information on privacy policies relating to government websites from the Director of e-Government Initiatives at the National Information Consortium (NIC).
3. The Commission continued its discussion of privacy of information on the Internet at its third meeting. The Commission reviewed other states' laws and policies requiring state agencies and other public entities to post privacy policies on their websites and discussed recommending a law requiring state and local agencies in Maine to post privacy policies complying with the fair information principles. The Commission also

discussed how to inform users about protecting their privacy when they use links to non-state sites. The Commission also discussed the possibility of creating a position within Maine State Government to be an advocate for consumers' privacy interests. The Commission received a presentation from Electronic Data Systems (EDS) on Internet security and cyber crime. Finally, a member of the Maine State Bar Association presented information about the Uniform Computer Information Transactions Act (UCITA).

4. The fourth meeting of the Commission focused on formulating recommendations for the report. In addition, the Commission reviewed and discussed a chart prepared by staff concerning the different electronic information policymaking boards that exist in State government. Finally, Commission staff presented an analysis on the impact of the Federal "E-sign law" on Maine's Uniform Electronic Transactions Act (UETA), specifically in which areas the E-sign law preempts Maine's UETA.
5. At its fifth and final meeting, the Commission took final action on recommendations and reviewed the draft report.

The Commission spent a limited amount of time on the charges relating to electronic crimes, Internet abuses including "spam" and unsolicited email, hate mail and Internet pornography because of current federal legislative proposals being considered on these issues. The Commission members agreed that the State should wait and see what action, if any, the federal government might take on these issues, before Maine acts on similar proposals.

## **II. IMPLEMENTATION OF THE COMMISSION'S 1999 RECOMMENDATIONS**

The Blue Ribbon Commission made a number of recommendations in its report to the 2nd Regular Session of the 119<sup>th</sup> Legislature. When it reconvened in the 2000 interim, members wanted to be informed of which recommendations had been followed, and how they were being implemented.

### **A. Uniform Electronic Transactions Act (UETA)**

The 1999 Blue Ribbon Commission recommended that Maine adopt the Uniform Electronic Transactions Act (known as "UETA"), to ensure the continued expansion of electronic commerce by providing certainty about the legal validity of electronic transactions and uniformity among the states. UETA was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which recommended that it be enacted in all states.

UETA removes legal barriers to the conduct of commercial, governmental and consumer transactions over the Internet. It validates electronic transactions by providing that electronic signatures and records, and electronically-formed contracts have the same legal force and effect as manual signatures, paper records and contracts formed non-electronically.

The model Act includes several provisions designed to clarify the workings of electronic business:

- UETA applies only when the parties to the transaction have agreed to conduct business electronically; it does not require parties to accept electronic records or signatures;
- UETA does not negate laws applying to the creation of wills, codicils and testamentary trusts, or Uniform Commercial Code titles other than the sales and leasing titles; any requirements for written records and manual signatures on documents governed by those laws prevail over UETA;
- State laws requiring notices to be delivered, formatted or displayed in a certain manner also prevail over UETA; a law requiring that notice be sent to a consumer by first class mail with return receipt, must still be complied with;
- Rules for understanding how business is done electronically are provided, such as rules for determining when a record is considered sent and received; the effect of an error in transmitting the record; and when a signature is attributed to a person and what attribution means; and
- State and local governments can decide for themselves whether to conduct business electronically.

The Maine Legislature followed the Commission's recommendation and enacted UETA in substantially the same form as the uniform law drafted by the NCCUSL.<sup>3</sup> In separate legislation, however, the Legislature altered the effect of UETA in Maine by exempting two types of records from the coverage of UETA: documents affecting title to real property and certain powers of attorney.<sup>4</sup> This legislation originated in the Joint Standing Committee on Judiciary, whose members were concerned about the integrity of real estate recording systems and of other important legal documents.

While Maine and 22 other states considered and adopted UETA, Congress was considering national legislation to accomplish the same goal as UETA. In June of 2000, Congress passed and the President signed the Electronic Signatures in Global and National Commerce Act ("E-Sign").<sup>5</sup> E-Sign does not preempt UETA, but it may have an impact in 3 areas of law in Maine.

First, E-Sign impacts legislative attempts to preserve requirements for written records and manual signatures by exempting records from the coverage of UETA. Any Maine law that

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<sup>3</sup> Maine Public Law 1999, chapter 762; effective August 11, 2000.

<sup>4</sup> Maine Public Law 1999, chapter 711.

<sup>5</sup> Pub. L. No. 106-229 (2000).

attempts to exempt a type of record other than those exempt from UETA or E-Sign would likely be invalid. Any future legislation must be evaluated on this basis.

Second, E-Sign impacts some consumer notice laws.<sup>6</sup> Although UETA specifically preserves the validity of state laws that require notices to be delivered in a certain manner, E-Sign prohibits use of that UETA provision to “circumvent E-Sign by imposing non-electronic delivery methods.”<sup>7</sup> This is interpreted to invalidate certain state laws that require notices to be mailed to consumers. Requirements for mailing utility shutoff notices, insurance cancellations, products recalls and other notices that are exempt from E-Sign may remain valid, but states may not be able to require mailing of consumer notices that are not exempt from E-Sign. This is one of the provisions of E-Sign that would benefit from further clarification.

Finally, E-Sign may require state agencies to accept electronic signatures and records, despite the UETA provision that gives them the option of doing so. At least one prominent commentator appears to read E-Sign as taking away the option to continue to require manual signatures and written applications, reports and other records provided to state agencies.<sup>8</sup>

**A memo addressing these issues is included as Appendix C.**

## **B. Credit Cards**

As individuals become accustomed to using the Internet for private transactions, more demand is being put on state agencies to provide services online. In response to that demand, state agencies are looking for acceptable ways for the public to pay for services delivered via the Internet.

The Commission recommended that Maine law, 5 MRSA §1509-A, be amended during the Second Regular Session of the 119<sup>th</sup> to require state agencies to implement procedures for accepting payment of goods, services, fines and other fees by credit cards or other electronic means. The Legislature followed the Commission’s recommendation and enacted that provision in Public law 1999, chapter 762. Prior to that change in law, State agencies could accept payments by electronic means, but were reluctant to accept payment by credit card because credit card companies charge a merchant fee of 1% to 3% of the amount charged on each payment. This is a fee paid by the merchant (state agency) to the credit card company. These fees are expensive for state agencies to pay and Maine law does not allow an agency to pass that fee on to the consumer in the form of a surcharge. Therefore, state agencies must absorb these costs within their existing budgets. In addition to Maine’s prohibition on passing fees on to consumers, the major credit card companies do not allow governments to pass the merchant fee imposed by credit card companies to consumers.

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<sup>6</sup> E-Sign applies to “transactions in or affecting interstate or foreign commerce,” E-Sign, section 101.

<sup>7</sup> E-Sign, section 102 (c).

<sup>8</sup> Patricia Brumfield Fry, “A Preliminary Analysis of Federal and State Electronic Commerce Laws,” available on the website of the NCCUSL (see appendix for reference). Professor Fry was chair of the drafting committee for UETA.

In response to the reluctance of state agencies to accept payments by electronic means due to the impact of merchant fees on their budgets, the Commission recommended in its 1999 report that the Office of the Treasurer of State initiate the following actions:

1. Negotiate a lower merchant fee on credit card transactions; and
2. Study and develop procedures to enable state agencies to accept payment for goods and services by electronic means.

The State Treasurer reported to the Commission that the following actions have been taken on the recommendation that lower merchant fees be negotiated:

- A new merchant fee of 2.15% has been negotiated with VISA/MASTERCARD. The former merchant fee was 2.34%. The bank will use the data from the previous 6 months to track the use of credit cards by state agencies and lower the merchant fee according to average ticket price.<sup>9</sup> As the average ticket price increases, the merchant fee is decreased based upon a negotiated scale. The agency is also negotiating with AMERICAN EXPRESS to receive a similar rate;
- The Office of the Treasurer of State will pay the merchant fees for all state agencies for FY 2001 to allow agencies that do not currently accept credit cards and have not included the expense into their budgets, to accept credit cards for electronic payments; and
- The Office of Treasurer of State has arranged for next day receipt of funds from credit card companies, which will enable the State to receive returns on the investment of these funds for an extra day. In the past, it has taken two days to receive receipts of funds.

The State Treasurer reported to the Commission that the following actions have been taken on the Commission's recommendation that procedures be developed to enable agencies to accept payment for goods and services electronically:

- The State Treasurer's Office is working with People's Heritage Bank to develop the Treasury Automated Management Information (TAMI) System, a paperless cash receipt and electronic banking system, to allow greater acceptance of electronic payments. TAMI will allow the electronic passage of funds and will allow for the receipt of a larger volume of electronic payments than can currently be handled by agencies, will save time by eliminating duplicate entry of deposits, will enable agencies to achieve more accurate accounting of electronic payments, and will enable the Treasury to reconcile payments with the bank as fast as electronic payments are received. TAMI is being developed by the Treasurer's Office with the assistance of Pine Tree Data Systems and the Bureau of Information Systems. TAMI is scheduled for statewide implementation July 1, 2001.

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<sup>9</sup> Average Ticket Price is equivalent to the average number of credit card transactions divided by the average amount collected per transaction.

In addition, Public Law 1999, chapter 762 required the Bureau of Revenue Services and the Department of Professional and Financial Regulation to report to the Joint Standing Committee on Business and Economic Development and the Joint Standing Committee on Appropriations and Financial Affairs by January 20, 2001 on the budgetary impact of accepting credit card payments. The report must include the total number of agency transactions that included the use of credit cards, the dollar amount attributable to credit card transactions and the cost savings or loss to each agency.

### **C. Municipal Linkage**

Increasingly, Maine citizens are demanding efficient delivery of government services at all levels of government. The use of technology by Maine citizens in both rural and urban areas of the State is also increasing. One way to satisfy citizens' demand for governmental services is to assist municipalities in increasing their use and access to technology. Currently, several hundred municipalities do not have technology in place to enable the coordination of government services using the Internet.

The Internet can potentially provide small local governments with access to a wealth of information and services, and can provide the following:

- Citizen access to community information and governmental services;
- Enhanced communication among municipalities and between municipalities and other levels of government; and
- An electronic link between local governments and state agencies to improve efficiency and accountability.

#### **1. The Maine Governmental Information Network Board**

The Maine Governmental Information Network Board was established by Public Law 1999, chapter 428. The board was established to enhance electronic data exchange among state and local governments and other providers of governmental services. The board oversees the computer network that connects individual municipal governments and other governmental service providers. The board consists of seven members including the Secretary of State and the Director of the Bureau of Information Services, two public members, two members representing municipalities' interests and a member with technical expertise in electronic communications. The Office of the Secretary of State provides administrative support to the board and is responsible for all regular operations of the board.

The board's powers and duties include the following:

- Overseeing the construction and operation of a computer network to connect state, local and regional governments;

- Enabling electronic access to the electronic data resources of any state agency whose data enhances the delivery by a municipal government or county government of state services;
- Providing grants to municipalities and counties for the purchase of computer hardware, software and peripherals necessary to connect the municipalities and county governments with state data and information systems;
- Contracting to provide technical support to municipal and county information network participants;
- Contracting to provide basic computer training and instruction in the operation of the statewide computer network; and
- Employing consultants and accepting and using any funding available to the board.

The majority of the board members have been appointed, but no funds have been appropriated to the Board.

Chapter 428 also created the Maine Governmental Information Network Fund to carry out the purposes of the law. Limited funding of \$1,000 for Fiscal Year 2000-2001 was allocated to the Fund. The Commission supported full funding of the Governmental Information Network in its 1999 recommendations. A proposal was made during the 119<sup>th</sup> Legislature Second Regular Session by the Governmental Information Network Board in L.D. 2510, An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2000 and June 30, 2001, to appropriate \$1,500,000 to the information network fund, but the funding was not finally approved by the Legislature.

## **2. Rapid renewal pilot project**

The Secretary of State's Office and InforME have been working with municipalities on an e-government initiative that would allow citizens to register their motor vehicles and pay their excise taxes online. Initially, the service will be offered as a pilot program in 10 towns and cities throughout Maine. The pilot municipalities are: Bangor, Brunswick, China, Corinna, Hermon, Holden, Lewiston, Portland, Saco and Waterville. The municipalities have agreed to absorb the credit card merchant fees for the excise tax portion of the registration. The pilot project is expected to go into effect at the end of November 2000.

### III. OVERVIEW OF ISSUES DISCUSSED

#### A. Internet Privacy

More and more people are using the Internet to conduct commercial, educational and governmental business. According to a recent federal report, up to 90 million Americans use the Internet on a regular basis.<sup>10</sup> And changes in technology will soon allow us to communicate electronically from a number of locations. The desktop computer will not be the only way you'll enter the World Wide Web; you may have a computer in your wristwatch, your telephone, your television, even your eyeglasses!

With the increase in Internet use has come an increase in concerns about privacy of personal information. Information moves in both directions on the Internet -- while the user is collecting information from an Internet website, the website is often collecting information about the user, often without the user's knowledge. Legitimate website operators use the information to target their marketing efforts and to improve services. Others can use the information to steal identities, divert funds and threaten personal safety.

In a survey cited in a recent Federal Trade Commission report, 92% of consumers said that they were concerned about misuse of personal information online.<sup>11</sup> In another survey, conducted for the IBM Corporation, 95% said they were concerned about misuse, and 80% said they felt that they had lost all control over personal information.<sup>12</sup>

Public policy-makers and private businesses around the country and the world are devoting substantial resources to addressing concerns about privacy, to protect consumers from improper uses of information while enabling the Internet to reach its full potential for providing electronic commerce and government services.

Commission members considered privacy of personal information to be one of the key issues to be addressed during this study. They sought to review efforts underway on the national level and to learn what Maine policymakers can do to protect Internet users in this unique global marketplace.

#### 1. Computers and the rise of privacy concerns in the 1970's

Although the Internet has increased the speed and ease with which information can be collected, it did not create public concern about privacy of personal information. That concern existed well before the Internet was developed. Concern over information privacy even pre-dates computers, although their increasing use brought forth the first major efforts on the federal level to regulate information practices.

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<sup>10</sup> U.S. Federal Trade Commission, Privacy Online: Fair Information Practices in the Electronic Marketplace. A Report to Congress., May 2000, p. 1.

<sup>11</sup> same as note 8, p. 2.

<sup>12</sup> IBM Multi-National Consumer Privacy Survey, prepared by Louis Harris & Associates (October 1999).

In 1972, the Secretary of the United States Department of Health, Education and Welfare created an advisory commission to explore the impact of computers on the collection of personal information by public and private organizations. The advisory commission found the most important and most troubling impact of computer data-gathering was the feeling that individuals had lost control over the use of personal information about themselves.<sup>13</sup>

To address this impact, the advisory commission articulated a “Code of Fair Information Principles”, consisting of the following 5 principles.

- (1) There must be no personal data record-keeping systems whose very existence is secret.
- (2) There must be a way for an individual to find out what information about that person is in a record and how it is used.
- (3) There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without that person’s consent.
- (4) There must be a way for an individual to correct or amend a record of identifiable information about that person.
- (5) Any organization creating, maintaining, using or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data.<sup>14</sup>

## **2. Widespread acceptance of the principles of fair information practice**

The principles articulated by the Secretary of HEW have been incorporated into information management policies by public and private organizations around the world. They formed the basis for the Federal Privacy Act of 1974, which governs collection and use of personal information by federal agencies.<sup>15</sup> Similar laws governing state agency practices have been adopted in a number of states, including California, Minnesota, New York and Virginia.<sup>16</sup> The laws include provisions to address the principles of fair information practice, which have been boiled down to 5 key words, with the following descriptions:

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<sup>13</sup> Summarized in Personal Privacy in an Information Society. The Report of the Privacy Protection Study Commission, July, 1977, p. 501. (The Commission was created by the Federal Privacy Act of 1974, PL 93-579).

<sup>14</sup> U.S. Department of Health, Education and Welfare, Secretary’s Advisory Committee on Automated Personal Data Systems, Records, Computers and the Rights of Citizens (Washington, D.C., 1973).

<sup>15</sup> Pub. L. No. 93-579.

<sup>16</sup> Cal. Civil Code, Title 1.8, chapter 1 (Information Practices Act of 1977); Minn. Stat. c. 13 (Minnesota Government Data Practices Act); Cons. Laws of N.Y. Annot., Public Officers Law, Art. 6A (Personal Privacy Protection Law); Code of Va., Title 2.1, chapter 26 (Privacy Protection Act of 1974).

- **NOTICE:** Data collectors must disclose their information practices before collecting personal information from consumers;
- **CHOICE:** Consumers must be given options with respect to whether and how personal information collected from them may be used for purposes beyond those for which the information was provided;
- **ACCESS:** Consumers should be able to view and contest the accuracy and completeness of data collected about them;
- **SECURITY:** Data collectors must take reasonable steps to assure that information collected from consumers is accurate and secure from unauthorized use; and
- **ENFORCEMENT:** There must be a reliable mechanism to identify and impose sanctions for noncompliance with these fair information principles. (This principle is a fairly recent addition to the list, and is not always included in the list of Fair Information Practices principles.)

### 3. The Internet and data collection

While computers made information collection faster and easier, the Internet has enabled collection to be invisible to the user and, often, involuntary. The Center for Democracy and Technology, an independent non-profit organization active in tracking and developing Internet policy, describes the threat to privacy this way:

The Internet is a microcosm of the debate over privacy and technology's impact on the collection of personal information. Internet use generates detailed information about individuals – revealing where they “go” on the Net (via URLs), whom they associate with (via list-servs, chat rooms and news groups), and how they engage in political activities and social behavior. Various tracking tools can mine and manipulate your online data trail (or “clickstream”) to build a detailed database of personal information without your knowledge or consent.<sup>17</sup>

The ability of Internet site operators and 3<sup>rd</sup> party advertisers to collect this information without knowledge or consent of the individual creates risks such as the following:

- A network advertiser can place a cookie on your computer to collect information about your browsing activities over a sustained period of time, gathering hundreds of bits of information and combining that with information from off-line sources to create a complex profile of you that you may consider to be inherently intrusive;

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<sup>17</sup> CDT's Guide to Online Privacy. Chapter One: Getting Started. Found on the Internet at [www.cdt.org/privacy/guide/start/](http://www.cdt.org/privacy/guide/start/).

- Your employer can purchase a list of the books you've purchased online, combine that with your membership in various organizations, and draw inferences about your political interest and leanings, which may not be to his or her liking; and
- A stalker can learn your address, phone number and vacation plans.

#### **4. National efforts to protect privacy**

Efforts to address Internet users' concerns are underway on a number of fronts – there are legislative proposals, technological innovations and voluntary industry efforts.

##### **(a) Federal studies and legislation**

On the federal level, the Federal Trade Commission has tracked the development of the Internet and its impact on businesses and consumers, and has reported its findings to Congress almost annually since 1995. One of its earliest reports recommended that information collection from children be regulated nationally, and Congress responded by passing the Children's Online Privacy Protection Act.<sup>18</sup> The FTC delayed recommending legislation on the collection of personal information from adults, deferring to voluntary efforts by Internet advertisers and website operators to improve their information collection practices. However, in its July 2000 report, Online Profiling: A Report to Congress, the FTC recommended by a 4-1 vote that Congress enact legislation to require notice of "online profiling" practices and to provide consumer choice. Congress has not enacted legislation regulating online profiling to date.

Congress has responded to concerns about particular types of information in particular industries, notably financial and medical information. The Financial Services Modernization Act (popularly referred to as the 'Gramm-Leach-Bliley Act')<sup>19</sup> regulates the sharing of personal information by banks, insurers and other financial institutions. It requires financial institutions to notify their customers that they intend to share the personal information about the customer with companies not affiliated with the institution. The institution must allow the customer to "opt-out" of the information sharing. Federal and state regulators, including the Maine Bureau of Insurance, are working on regulations to implement the requirements of this law. The requirements of the law will take effect July 1, 2001.

Medical information in electronic form is governed to some extent by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>20</sup> One of the important goals of the Act was to simplify administration of health care by providing for standardized, electronic transactions. Regulations implementing this administrative reform require data custodians to use the records only for legitimate health purposes

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<sup>18</sup> 15 U.S.C. § 6501 et. seq.

<sup>19</sup> Pub. L. No. 106-102, codified at 15 U.S.C. sec. 6801 et. seq.

<sup>20</sup> Pub. L. No. 104-191, codified at 42 U.S.C. 1320d- 1320d-8.

and to provide security to prevent misuse or improper disclosure. The regulations also allow consumers to see and correct their records and to know who has received the records.

### **(b) State legislation**

Legislation has been introduced in a number of states as well. To date, no state has enacted a law regulating online profiling or data collection by privately-operated websites. The laws that have been enacted have sought to control the practices of entities over which the State clearly has control: state and local website operators. Virginia law requires all public bodies maintaining a website to develop and post their privacy policies on their websites.<sup>21</sup> The policies at a minimum must address what information is collected and how it is to be used. Maryland law also requires posting of privacy policies of state agencies and encourages county and municipal entities to do the same.<sup>22</sup> The policies must conform to Maryland's privacy law, which incorporates most of the fair information practices described in section A (2) of this report. The Maryland law requires executive agency data custodians to collect information directly from the individual who is the subject of the information, and to inform that person of:

- The purpose for which the information is being collected;
- Any consequences for refusing to provide the information;
- The right to inspect, amend or correct personal information about that person;
- Whether the information is available for public inspection; and
- Whether it is shared with, or transferred to, any other entity.<sup>23</sup>

In Washington State, Governor Gary Locke accomplished the goal of improving agency information management practices by issuing an Executive Order requiring state agencies to take a number of steps to protect personal information, including posting privacy notices on their websites.<sup>24</sup>

Other efforts on the state level included proposals to educate consumers, prohibit disclosure of certain personal information by Internet service providers, prohibit an employer from monitoring an employee's e-mail and require private websites to include privacy policy notices.

### **(c) Maine government efforts**

Many state agencies are in the process of reviewing their data management practices, to enable them to increase their efficiency by using electronic systems while ensuring protection of confidential information. The departments of Labor, Corrections and Human Services in particular are working to protect the security of their databases

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<sup>21</sup> Code of Va. §2.1 – 380, ¶B.

<sup>22</sup> Annot. Code of Md. §10-624 (C) (4).

<sup>23</sup> Annot. Code of Md. §10-624 )(C)(3).

<sup>24</sup> Washington State Executive Order; EE-00-03, April 2000.

with cross-agency confidentiality agreements, password protections and other security measures. Often this work is performed by staff funded by the federal government, which sets rigid standards for how information is managed in federally-funded or federally-regulated programs such as unemployment compensation and Medicaid.

**(d) Voluntary industry efforts**

website operators and advertisers have undertaken voluntary programs to alleviate consumer concerns about privacy, primarily focusing on seal programs and development and posting of privacy policies.

Private companies such as TRUSTe and BBBOnline offer online seal programs, under which a website that agrees to comply with fair information practices and to submit to 3<sup>rd</sup> party monitoring, can display a seal on their sites alerting consumers that they meet the standards of the certification company.

Commercial websites are also posting notice of their information practices in increasing numbers. In 1998, while 92% of sites in a random sample were collecting personal information about users, only 14% revealed that they were doing so.<sup>25</sup> By 2000, the number of sites informing users that they were collecting information had increased from 14% to 88%. Both surveys indicated that the posting of notices by the 100 most popular commercial websites was higher than in the random sample: 71% posting in 1998 and 100% in 2000.<sup>26</sup>

**(e) Technology**

Finally, technology offers several tools for consumers to protect their privacy. Consumers can block websites from placing “cookies” on their computers or hide their identity altogether using currently-existing technologies with clever names like “Anonymizer” and “Cookie Crusher.” Another technology being developed would alert consumers whenever a website they are accessing lacks the privacy protections that the consumer wants. The technology is called the Platform for Privacy Preferences, or “P3P”. **See Appendix D for a list of technology tools.**

**5. Advice to the Commission from industry participants**

The Commission invited representatives of commercial participants and non-profit watchdog organizations to give their perspectives and advice on privacy issues to the Commission.

**(a) International Business Machines Corporation**

Chris Caine, Vice President of Governmental Programs at the IBM Corporation, addressed the Commission at its September 27<sup>th</sup> meeting. He reviewed the results of a multinational survey of public attitudes toward the Internet and privacy, conducted for IBM. The survey found that, while Internet users are overwhelmingly concerned

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<sup>25</sup> U.S. Federal Trade Commission, Privacy Online: A Report to Congress June 1998.

<sup>26</sup> U.S. Federal Trade Commission, Privacy Online: Fair Information Practices in the Electronic Marketplace. A Report to Congress, May 2000.

about misuse of information collected on the Internet, the majority of them also support the personalized marketing that such information collection makes possible.<sup>27</sup> This combination of attitudes shows that the answer to users' concerns is not to stop collecting information, but to engage in a dialogue among Internet users and data custodians to find the right balance. Mr. Caine suggests that the solution to privacy concerns is a combination of market-based mechanisms, laws and technology.

One of the most effective regulators of private sector information practices is the market itself, says Mr. Caine. Consumers will gravitate toward the websites of companies that respect their privacy preferences; companies that fail to do so will not survive. Companies that understand the importance of privacy to consumers have already engaged in voluntary efforts to address consumer concerns, including the adoption of seal programs and adoption of privacy policies that incorporate the principles of fair information practices.

Technological solutions also hold great promise. Mr. Caine provided the Commission with a list of 27 privacy-enhancing technologies, many of which are free to all consumers. These technologies allow the consumer to take an active part in protecting privacy.

IBM has taken a number of steps to promote privacy protection. It has adopted high-quality privacy standards worldwide; it uses its significant advertising market power to encourage use of privacy notices by advertising only on websites that have privacy notices; it helps develop technologies; assists business and government customers to establish privacy strategies and programs; and leads industry efforts such as the Online Privacy Alliance and the Privacy Leadership Initiative.

Industry can do more, says Mr. Caine, by incorporating more fair information practices in their privacy notices, making privacy notices more clear and conspicuous, adopting online seal programs and continuing to educate consumers and companies about privacy.

Government has a role to play, too, but not necessarily a heavily regulatory role, according to Mr. Caine. Global media like the Internet are not governed effectively by state patchworks. It's not even clear what legal authority states have to regulate the Internet, since due process requires that a regulated entity have a certain level of contact or relationship with a state before the state can exercise jurisdiction, and the law is not yet clear on how a state can exercise jurisdiction over cyberspace.

Among the recommendations that Mr. Caine made were for state and federal governments to do the following:

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<sup>27</sup> IBM Multi-National Consumer Privacy Survey, prepared by Louis Harris & Associates (October 1999).

- Lead by example: Adopt leading-edge fair information principles governing information collection, use and management by governmental entities;
- Crack down on identity theft and fraud;
- Balance a citizens' privacy rights with government access to information;
- Complete federal legislative action on 2 areas of particularly sensitive information – medical information and financial information;
- Support research and technologies related to privacy; and
- Educate citizens.

**(b) Center for Democracy and Technology**

The Center for Democracy and Technology is an independent, nonprofit organization that tracks and participates in the development of Internet policy. The Commission had invited staff from the Center to address the Commission, but scheduling conflicts prevented Paula Bruening, a staff attorney for the Center, from attending the scheduled meeting. Nonetheless, Ms. Bruening sent along some comments and advice to the Commission. She advised the Commission to focus on making sure governmental information practices respect the privacy of citizens and on helping consumers understand the threats to their privacy and how to protect themselves when they use the Internet. The Center does not discourage states from experimenting with other ways to address privacy concerns, but it is difficult for states to effectively regulate the Internet because a State's jurisdiction over the Internet is not clear. Also, although federal legislation is not likely to be enacted this year, the federal government is likely to act next year, and their efforts will probably preempt state laws on this issue.

**(c) National Information Consortium – eGovernment service providers**

Kara LaPierre is Director of eGovernment Initiatives for the National Information Consortium (NIC), a company that provides electronic government services to several states, including Maine. NIC is the network manager for InforME, the official State of Maine webpage. Ms. LaPierre told the commission about NIC's involvement in the eGovernment Web Privacy Coalition, a group of government organizations and technology providers that will develop a set of standards for information practices on governmental websites and will develop a certification program for government websites, which will be similar to the seal programs operated by TRUSTe and BBBOnline in the private sector.

Ms. LaPierre responded to data from a Brown University study showing that governmental websites rarely have privacy policies that adhere to the fair information

practices.<sup>28</sup> She said that although the number of states that post privacy policies is small (17), the number has increased. She also said that governmental websites have constraints that private sites do not, namely state freedom of information laws, which require disclosure of information.

She urged the Commission to respond to citizen concerns about collection of information by government websites by weighing the benefit to government and citizens from transacting certain business over the Internet with the risk to individual privacy. Some data elements may not be appropriate for the Internet, or may need to be kept private to guard against development of a complete profile that would violate privacy.

## **6. Commission discussion**

Commission discussion following the presentations on September 27<sup>th</sup> focused on three issues: the need for a resource in state government to study and advocate for consumer privacy; the need for adoption and posting of privacy policies on Maine governmental web pages; and the need for a comprehensive privacy act to govern information collected by state agencies by any method – electronic or otherwise. **Commission findings and recommendations on these issues are found in IV of this report.**

### **B. Protection of Consumer Privacy**

As more and more personal information becomes available electronically, consumers are becoming concerned about how that information is being used by others. Consumers are also concerned about who will protect their privacy interests. Currently, Maine State Government does not have a position that focuses specifically on privacy issues and consumer protection of privacy. Although there are several state agencies that are charged with protecting the public from fraud, crime and unfair practices, including the Attorney General's office, the Bureau of Consumer Credit Protection and the Public Advocate, these agencies have specific and limited jurisdictions. A privacy advocate position or a consumer ombudsman would receive and investigate complaints about confidentiality of information and provide legal representation, if necessary; make recommendations concerning privacy issues to policy-makers; assist both public and private entities in the development of policies and procedures to protect confidentiality; and conduct research, coordinate state agency handling of personal data and educate the public. Although the Commission members did not decide upon a specific location within State government for this type of position, the members did agree that the position should be independent from political and private influences, much like the Public Advocate's Office.

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<sup>28</sup> West, Assessing E-Government: The Internet, Democracy and Service Delivery by State and Federal Governments. Brown University. September 2000. (Found on the web at [www.INSidePolitics.org/egovreport00.html](http://www.INSidePolitics.org/egovreport00.html)).

## **1. Federal and state actions**

Several states, including Hawaii and California, have recently created consumer advocate agencies within their state government to address consumer privacy concerns. Hawaii created an Office of Information Practices in 1998 to enforce its Uniform Information Practices Act, including the responsibility to investigate consumer complaints concerning governmental treatment of information requests and the responsibility to inform citizens about what privacy and information rights exist in the governmental arena.<sup>29</sup> California in September 2000 created the Office of Privacy Protection within the Department of Consumer Affairs to protect the privacy of individuals' personal information by identifying consumer problems and facilitating development of fair information practices, including educating the public about options for protecting their personal information. In addition, the California legislation requires each state agency to adopt a privacy policy and to designate a position responsible for the enforcement of the agency's privacy policy.<sup>30</sup>

On the Federal level, the United States Department of Justice enforces the Federal Privacy Act, and has established a Chief Privacy Officer position to oversee the Act's implementation and enforcement. In addition, Attorney General Janet Reno established a Privacy Council within the Department of Justice to advise department officials and Congress on privacy issues. The Council is reviewing a number of issues related to privacy, including the Department of Justice's compliance with the Federal Privacy Act; the sharing of information among federal, state, and local law enforcement agencies; and the impact of new law enforcement technology on individual privacy.

## **2. Other governmental actions**

Canada has been a leader in the protecting consumer privacy. The Canadian government has a Privacy Commissioner whose role is to be an ombudsman for Canadians in their privacy concerns, to represent and advise Parliament on those issues and to serve as the primary national resource for research, education and information on privacy. The Privacy Commissioner is appointed by Parliament and serves as an independent resource. In addition, the majority of Canada's provinces have established their own comprehensive privacy policies and the Legislature in each province appoints a person to enforce that province's privacy act.

## **3. Private businesses actions**

Following several recent lawsuits concerning the use of consumers' information by online businesses, and new laws and regulations concerning privacy, private sector companies are paying attention to consumers' privacy concerns and are creating "Chief Privacy Officer" (CPO) positions to coordinate and oversee their privacy-related activities. The CPO positions report to the company Chief Executive Officer and are responsible for oversight of network security, keeping abreast of regulations and guidelines concerning online

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<sup>29</sup> Hawaii Revised Statutes §92F-41, §92F-42.

<sup>30</sup> 2000 California Statutes, Chapter 984.

privacy and ensuring that the policies are being enforced throughout the company. Chief Privacy Officers are being hired from the university community and are also being promoted from government affairs and policy positions within companies. Corporations such as American Express, Citigroup Inc, Electronic Data Systems (EDS), Microsoft, Prudential Insurance Company and American Telephone and Telegram are just a few of the companies that have recently hired chief privacy officers. In addition, a newly created Association of Privacy Officers has been created by both online and offline businesses to provide support and services to its members, with a focus on their professional development and education on privacy developments.

### **C. Uniform Computer Information Transactions Act**

The Uniform Computer Information Transactions Act (UCITA) is a model state law that seeks to create a unified approach to licensing of transactions involving computer software and electronic information. UCITA establishes a new commercial law for creating, modifying, transferring or licensing computer information, including the purchase of computer software, computer games, on-line databases, multimedia products and the distribution of information over the Internet.

#### **1. Development of the uniform law**

UCITA was drafted and approved for adoption in the states by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). NCCUSL is comprised of lawyers, judges, law professors and other experts appointed by the states and includes representatives from each state. NCCUSL’s primary task is to determine the areas of the law that would benefit from uniformity, and to develop and recommend uniform laws to state legislatures for enactment. The UCITA drafting committee originally proposed a new article to the Uniform Commercial Code (UCC) that was referred to as UCC Article 2B or UCC 2B. The American Law Institute (ALI) was working with NCCUSL to draft the new Article 2B provision, but because of controversy over a perceived imbalance and lack of fairness to software users, the ALI wanted fundamental revisions in Article 2B’s provisions that impacted consumer rights. When agreement between NCCUSL and ALI could not be achieved, the ALI withdrew from the Article 2B process. NCCUSL then renamed UCC 2B to UCITA, continued drafting the model Act and adopted UCITA in July of 1999. UCITA raises a number of complex legal and operational concerns, and therefore has generated controversy since the model law was adopted.

#### **2. Proponents of UCITA**

Proponents of UCITA, including the software industry, state that the purpose of the Act is to enhance commerce in an economy that is becoming increasingly dependent upon information services, and to enable and support expanding commercial practices. Proponents argue that UCITA will bring predictability and uniformity to licensing.

Without UCITA, developers of software and information say that they will be less able to control the use and copying of information that they have created. Uncontrolled use and copying prevents the information developer from receiving fair value for his or her product, and discourages developers from putting effort into developing other information products. This loss of development would be a detriment to the economy and to the development of information resources. Proponents see the role of a contract changing as more and more commercial business is conducted electronically. According to Professor Raymond Nimmer, the chief drafter of UCITA, the contract will control the quality and character of the product because the contract will be the product.<sup>31</sup> UCITA does contain a list of existing contract law rules that are not altered by UCITA.

### **3. Opponents of UCITA**

Opponents of UCITA include consumer organizations, insurance companies, state attorneys general, state bar associations, libraries, the entertainment industry and consumer groups. Many opponents of UCITA question whether the Act is necessary or whether it may be premature. Opponents believe that existing common law and copyright law are developing appropriately to handle the new types of information-based transactions emerging in the information economy. Among the specific concerns of the opponents of UCITA are the following:

- UCITA could validate “shrink-wrap” licenses – agreements that accompany software programs and that are enclosed with the product in shrink-wrapped cellophane and “click-on” licenses. Purchasers see such a license for the first time after purchasing the product and after the purchaser has already agreed to the license terms.
- UCITA introduces uncertainty regarding the duration of the acquirer’s right to use the licensed software;
- UCITA could permit the vendor to restrict the number of users under an enterprise-wide license. Currently, software licenses have permitted an unlimited number of users;
- UCITA’s “self-help” remedy allows software vendors to shutdown software remotely without going to court first and without court approval if the vendor feels the license agreement has not been met;
- UCITA could restrict a user to a limited period to discover defects in the software, thus impacting warranty protections under current law; and
- UCITA could have an impact on copyright law, including how material can be used and duplicated.

### **4. State Actions on UCITA**

Two states -- Maryland and Virginia – have enacted UCITA as state law. Virginia enacted UCITA in March 2000, but with a delayed implementation date of July 1, 2001. A study commission will examine UCITA’s impact on businesses, libraries and consumers

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<sup>31</sup> Professor Raymond Nimmer presentation on UCITA to the Maine Legislature, Fall 2000.

before the implementation date.<sup>32</sup> Maryland was the second state to enact UCITA. The Maryland General Assembly enacted UCITA in April 2000 and established its implementation date as October 1, 2000. Maryland's legislation amended the model Act to include new provisions that apply consumer protection laws to software licensing. In addition, the Maryland legislation created an oversight panel to provide an on-going review of UCITA.<sup>33</sup>

The Iowa Legislature, concerned about the potential impacts of UCITA on businesses and others in the State, amended their Uniform Electronic Transactions Act (UETA) to protect Iowa citizens from UCITA's provisions. The provision declares voidable the choice of UCITA as the governing law, and substitutes Iowa law if the person against whom enforcement is sought is an Iowa resident.<sup>34</sup> Language was also added in the Iowa legislation to sunset this provision in July 1, 2001. In addition, the legislation recommends that the Iowa Legislature consider UCITA in the 2001 session.

Five other states and the District of Columbia considered UCITA legislation this year, but did not enact UCITA into law.<sup>35</sup>

#### **D. Coordination of Electronic Information Policymaking**

Currently, there are several policymaking bodies established within State government that are responsible for setting policies and standards concerning electronic information. These bodies are the Information Services Policy Board, Information Resource of Maine Board, the Information Systems Managers Group and the Maine Criminal Justice Information System Policy Board. **A chart that depicts the different policymaking boards and positions based on statutory language is contained in Appendix E.**<sup>36</sup>

##### **1. Information Services Policy Board**

The Information Services Policy Board (ISPB) was created by the Legislature in 1988 to assist the Commissioner of Administrative and Financial Services with information technology policies and procedures.<sup>37</sup> The board consists of 11 voting members and 8 advisory members. The voting members represent Commissioners of the Department of Administrative and Financial Services, Human Services, Labor, Transportation and the Secretary of State; four members appointed by the Governor from the Executive Department; and two members appointed by the Governor who are involved with information technology companies. Advisory members represent the Legislature, the

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<sup>32</sup> Title 59.1 Code of Virginia, Chapter 43.

<sup>33</sup> 2000 Maryland Laws, Chapter 11.

<sup>34</sup> Iowa 2000 legislation, HF 2205, sec. 4.

<sup>35</sup> Delaware SB 307; D.C. 13-607; Hawaii HB 2373, SB 2385; Illinois SB 1039; Oklahoma SB 1337; New Jersey SB 1201.

<sup>36</sup> The chart was created from the statutory language which established each board or position and is not meant to show all relationships that exists between the boards and positions.

<sup>37</sup> 5 MRSA §1891.

Judiciary, Maine State Housing Authority, the Finance Authority of Maine, the Maine State Retirement System, the Maine Turnpike Authority, the University of Maine System and the Maine Technical College System. The chair of the board is appointed by the Governor from an Executive Department and is currently the Commissioner of Administrative and Financial Services. The Director of the Bureau of Information Services and the newly-created Chief Information Officer position provide assistance to the ISPB.

The duties of the board include establishing written standards related to geographic information systems, data processing and telecommunications; developing strategic and departmental planning processes; development and approval of rules, policies and fees; review of information processing and telecommunications operations in State Government; and making recommendations to the Governor, the Commissioner and other agency heads for improving services and efficiency and for reducing costs. Among the policies and standards that the ISPB has established for state agencies are: *Policy on Access to Public Records, Policy on Administration of Standards, Internet and E-mail Policy, Computer Virus Policy, Fee Setting Policy, Use of Software on State Computers, and Use Statement of Principles and the Electronic Commerce Data Interchange Standard.*

## **2. Information Resource of Maine (InforME) Board**

In 1996, an interagency subcommittee was created by the Information Services Policy Board to review how public information was being disseminated by state government and to recommend actions that the ISPB could take to increase access to public information. The Public Access work group recommended that a new value-added service be established to create a mechanism governing agencies' charges for value-added access to public information. The Attorney General opined that the Legislature was required by law to authorize the new value-added service. Therefore, the ISPB convened a team to draft legislation to submit to the Legislature that created the new value added service. The legislation was approved by the ISPB in January 1998 and was submitted to the Legislature for enactment. The Legislature created the Information Resource of Maine (InforME) in the Public Information Access Act, which called for the establishment of a long-term public/private partnership to build a gateway network to public information.<sup>38</sup>

InforME is run by a Network Manager whose contract is approved by the InforME board. In April of 1999, New England Interactive, a subsidiary of the National Information Consortium (NIC) was awarded the contract to manage InforME. The Network is operated with oversight by the InforME Board. The InforME Board is a 15-member entity that combines government and private business interests, education and association representation. Board members include state agencies that are major data custodians, a representative from the University of Maine System, one member from an association of municipalities, a non-profit organization advancing citizens' rights of access to

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<sup>38</sup> 1 M.R.S.A. §531; 1997 Laws of Maine, chapter 713, §1.

information, a representative from the libraries, a representative from the Maine Trial Lawyers Association, a representative from the Maine Association of Realtors and a representative from the Maine Bankers Association. The Secretary of State is the current chair of the InforME board and staff services are provided by InforME and the Secretary of State's office.

InforME is funded through negotiated portions of existing statutory fees and the sale of value-added services. No General Fund money is appropriated to InforME. Agencies voluntarily enter into Service Level Agreements (SLAs) with InforME. The Service Level Agreements itemize the services to be performed by InforME and the associated fee. InforME is currently authorized 10 staff positions.

InforME reports annually to the joint standing committee of the Legislature having jurisdiction over state and local government matters on the services it offers and the fees it charges, along with the criteria for setting fees. In addition, InforME provides an annual audit to the Commissioner of the Department of Administrative and Financial Services. The Governor or the Legislative Council may request that an additional audit of InforME be conducted.

### **3. Information Systems Managers Group**

The Information Systems Managers Group (ISMG) was created by the Information Services Policy Board in 1996 as a subcommittee to do research and development, and provides technical advice to the ISPB. The ISMG consists of all Information Technology managers within State Government, including those from the legislative and judicial branches of government. The ISMG's goal is to promote the effective use of information technology in state government and the effective management of information technology organizations within state government.

### **4. Maine Criminal Justice Information System Policy Board**

The Maine Criminal Justice Information System Policy Board (MCJUSTIS) was established by the Legislature in 1993 to establish policies and information standards for accessing shared, uniform information on criminal offenders and crime data.<sup>39</sup> The board consists of 13 members including the Attorney General, the Commissioner of Public Safety, the Commissioner of Corrections, the State Court Administrator, the Chief of the State Police, the Associate Commissioner for Adult Services within the Department of Corrections, the Director of the Bureau of Information Services, a representative of the Maine Prosecutors Association, a representative of the Maine Chiefs of Police Association, a representative of the Maine Sheriff's Association, a representative of a federal criminal justice agency, a representative of a nongovernmental agency that provides services to victims of domestic violence and a public member who represents private users of criminal offender record information.

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<sup>39</sup> 16 MRSA §633.

The board reports annually to both the Joint Standing Committee on Criminal Justice and the Joint Standing Committee on Judiciary concerning the status of the development, implementation and operation of the system. The Department of Public Safety provides administrative oversight for the board's policies and responsibilities.

## **5. Other electronic information policy boards and positions**

In addition to these State government policymaking boards, the University System Network for Education and Technology Services (UNET) has an Information Technology Council established to advise UNET, develop goals for how the UMaine system should employ information technology to meet the overall goals of the UMaine system for teaching, learning and research and development, reviews technology system acquisitions, coordinates development of guidelines for standards, training and user support and establishes a technology plan for the UMaine system. Also, the Maine School and Library Network has an advisory board that oversees the implementation of the Network and makes recommendations concerning the Network to the Public Utilities Commission.

There are also several positions established within state government, including the Director of the Bureau of Information Services and the newly created Chief Information Officer position, which have responsibilities related to electronic information policies.

The Director of the Bureau of Information Services (BIS) is appointed by the Commissioner of the Department of Administrative and Financial Services. The Director of BIS is responsible for supervising data processing throughout State government; approving the acquisition and use of equipment; maintaining central telecommunications services; protecting information files; and developing and administering written standards for data processing and telecommunications. The Director of BIS oversees three divisions: Development Services, Network Services, and Production Services. In addition, the Director of BIS serves on the InforME board, the Governmental Network Board and the Criminal Justice Information Systems Policy Board and provides staff assistance to the Information Services Policy Board. The Director of BIS is required to report annually to the Joint Standing Committee on Appropriations and Financial Affairs on the written standards for data processing and telecommunications that have been established by BIS with approval from the ISPB. BIS is an Internal Service Fund, one of several within the Department of Administrative and Financial Services, and thus is authorized to charge customers for its services based on rates approved by the Information Services Policy Board. BIS receives no direct funding.

During the Second Regular Session, the Legislature approved<sup>40</sup> the creation of a Chief Information Officer (CIO) position within the Department of Administrative and Financial Affairs (DAFS). The CIO is responsible for establishing technology policy; assisting with strategy and planning for the DAFS; establishing technology standards; reviewing contracts; and statewide coordination of compliance with the Americans with Disabilities

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<sup>40</sup> FY 2000 Supplemental Budget Bill, Public Law 1999, c. 731.

Act (ADA). The Chief Information Officer position is being financed by realigning resources and functions within both DAFS and BIS. The CIO reports to the Commissioner and is expected to work with the Governor's Office on information technology issues. The Office of the CIO includes four positions: the CIO, a secretary and two other staff positions.

#### **IV. FINDINGS and RECOMMENDATIONS**

##### **A. Continuation of Commission Work**

###### **Recommendation:**

**The Commission recommends that a study group be convened in the next legislative interim to continue work on privacy issues and the coordination of state policy-making, to keep informed on developments in Internet use and technology, and to address new issues such as use of the Internet in the election process. The study group must be composed of parties with interest and expertise in these issues.**

**Draft legislation to implement this recommendation is included in Appendix F.**

###### **Finding:**

The Commission finds that the Internet is changing every day, and that policymakers need to stay informed about the changes, to monitor developments, and to continue work on important issues, such as privacy. Although the Commission makes several recommendations in this report about privacy on the Internet, it understands that more work may need to be done in the next interim to fully flesh out its proposals.

##### **B. State Electronic Information Policies**

###### **Recommendation:**

**The Commission recommends that the Department of Administrative and Financial Services report back to the joint standing committee having jurisdiction over information technology matters, the joint standing committee having jurisdiction over state and local government matters and the joint standing committee having jurisdiction over appropriation matters by February 1, 2001 on coordination of electronic information policy-making within State government, including the duties and responsibilities of each information board and position, how the boards and positions relate, the activities that each board has undertaken and the policies that each board has established. The report must include any recommendations from the Department of Administrative and Financial Services for streamlining and enhancing coordination of the boards and positions, including possible consolidation of the boards and positions. In addition, the Department must report on the implementation of privacy policies for state agency websites.**

**Finding:**

There are several boards and positions established within state government that have responsibilities for setting policies related to electronic information. The Commission is uncertain as to the coordination of those boards and position and their impact on the establishment of policies and standards for information technology throughout State government.

**C. Consumer Privacy Advocate**

**Recommendation:**

**The Commission recommends that an independent entity in state government be charged with educating consumers about information privacy, advocating for fair information practices in the public and private sectors and addressing citizen complaints. This would not be a regulatory agency, but an advisory, advocacy and technical assistance entity. The entity or position could be established within existing resources or could be newly-created.**

**Proposed legislation to implement this recommendation, in the form of a concept draft, is included in Appendix G.**

**Finding:**

The Commission finds that there is no single entity within state government with authority and responsibility for protecting the privacy of personal information collected on the Internet or otherwise, by public and private entities. The Attorney General and the Bureau of Consumer Credit Protection have some authority to protect consumers from fraud and unfair business practices, but they do not have responsibility for developing broad policies relating to privacy, advocating on behalf of consumers' privacy, educating the public and addressing consumer complaints. The Commission finds that there is a need in Maine for such a person, persons or entity, and finds that submitting a concept draft to the 120<sup>th</sup> Legislature will allow for a broad discussion of the concept and consideration of a number of options for fulfilling the function of consumer privacy advocate. One member of the Commission, Senator Harriman, supports this recommendation only if the advocate function is performed with existing resources.

## **D. Notice of State and Local Government Information Practices**

### **Recommendation:**

**The Commission recommends that the Legislature enact a law requiring state and local governments to adopt policies governing their collection and handling of personal information on the Internet and to include notice of those policies on their websites.**

**Draft legislation to implement this recommendation is included in Appendix H.**

### **Finding:**

State and local governments can improve citizen comfort with doing government business over the Internet – and can serve as a role model for private websites – by developing policies for collecting and handling personal information and posting their policies on their websites. A handful of other states – including Virginia, California and Minnesota – require state websites to include such notices. In those states, the notices must address a number of issues, including what information is being collecting, how it will be used, who has access to it, and how information can be corrected. Maine government websites should follow suit. The Commission understands that the Department of Administrative and Financial Services is developing model policies for use on state websites.

## **E. Development of a Comprehensive Fair Information Practices Law**

### **Recommendation:**

**The Commission recommends that the study group proposed in Recommendation A examine options for enacting a comprehensive privacy act governing collection and management of personal information by state and local governments via the Internet or any other method, and that the Commission draft and recommend such an act to the 2<sup>nd</sup> Regular Session of the 120<sup>th</sup> Legislature. The act must include a provision for an audit of adherence to the requirements of the act, following a phase-in period.**

**This recommendation is included in the draft legislation for Recommendation A, which is found in Appendix F.**

### **Finding:**

Maine currently has no general law requiring state or local agencies to protect citizens' personal information. Several states and the federal government have comprehensive privacy laws that adhere to the Fair Information Practice principles by providing notice, access, choice, integrity and enforcement. The rise of the Internet and the related increase in concerns about privacy is the appropriate time for Maine policymakers to examine options for enacting a comprehensive code of fair information practices. A study group, as recommended in recommendation A can conduct such an examination, with the goal of drafting and recommending a comprehensive privacy act for enactment in the 2<sup>nd</sup> Regular Session of the 120<sup>th</sup> Legislature.

## **F. Uniform Computer Information Transactions Act (UCITA)**

### **Recommendation:**

**The Commission recommends that the Legislature take no immediate action on the Uniform Computer Information Transactions Act (UCITA).**

### **Finding:**

The Uniform Computer Information Transactions Act (UCITA) was adopted by the National Conference of Commissioners on Uniform State Laws as a proposed new commercial law for creating, modifying, transferring or licensing computer information. UCITA is a complex law with a pervasive impact on software developers, consumers and businesses. There are many groups who oppose UCITA. The Commission does not support the implementation of UCITA at this time and the Commission further advises the Legislature that any proposal to adopt UCITA in Maine requires extensive review and analysis

## **G. Monitoring Implementation of the Uniform Electronic Transactions Act**

### **Recommendation:**

**The Commission recommends that state agencies continue to review and track the impact on consumers and businesses of state and federal laws relating to electronic transactions.**

### **Finding:**

Maine's enactment of the Uniform Electronic Transactions Act (UETA) clears some of the legal barriers that might have slowed the development of electronic commerce and electronic government in the State. It gives electronic signatures and electronic records the same legal validity as manual signatures and paper records. A federal law governing the same matters was passed after Maine enacted UETA, and may have some impact on electronic commerce and government in Maine. In particular, some of the provisions of the federal law may impact consumer notice provisions and state agency choices in the matter of electronic records. State agencies, especially those with roles in consumer protection, should pay attention to the impact of UETA and E-Sign and the relationship between the two.

## **H. Include Information Collection and Handling in the Government Evaluation Act**

### **Recommendation:**

**The Commission recommends that the State Government Evaluation Act be amended to include review of an agency's implementation of information technologies, their information collection and handling policies and practices, and how well those policies and practices adhere to the Fair Information Practice Principles of notice, choice, access, integrity and enforcement.**

**Draft legislation to implement this recommendation is included in Appendix I.**

**Finding:**

Governmental agencies, boards and commissions undergo an evaluation process every 10 years under the State Government Evaluation Act, 3 MRSA c. 35 (§§951 – 963). Part of the process is a self-evaluation by the agency, board or commission covering a list of issues set forth in the Act. Commission members felt that this would be an appropriate tool for the agencies, boards and commissions to review and evaluate implementation of electronic information technologies, their information practices, and for the Legislature to review how well the agency, board or commission met its information needs while also protecting public privacy. An appropriate standard by which to judge performance is the Fair Information Practice Principles of notice, choice, access, integrity and enforcement.

**I. Maine Governmental Information Network**

**Recommendation:**

**The Commission supports the Maine Governmental Information Network initiative as established by Public Law 1999, chapter 428 and supports providing assistance to municipalities to enhance their ability to offer services and information through the Internet. The Commission recommends that the study group established in Recommendation A evaluate the success of the “Rapid Renewal” pilot project being undertaken by InforME, the Secretary of State’s Office and 10 Maine municipalities, and recommend funding, if any, for the Maine Governmental Information Network.**

**Finding:**

Currently, there are many municipalities in Maine who do not have an online presence. The Commission finds that in order to adequately serve the citizens of Maine in the electronic age, local governments need to enhance their ability to offer online access to information and services for their citizen. One member of the Commission, Senator Harriman, supports providing technical assistance to municipalities, but not funding.

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**APPENDIX A**  
**Authorizing Legislation**

**RESOLVES of 1999**  
**CHAPTER 89,**  
**as amended by Public Law 1999, chapter 762, section 3**

**S.P. 763 - L.D. 2155**

**Resolve, to Establish the Blue Ribbon Commission to  
Establish a Comprehensive Internet Policy**

**Emergency preamble.** Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Internet and its use continues to grow and it is essential to ensure delivery of social and economic benefits to the State; and

**Whereas,** it is necessary to consider what type of statewide computing and communications investment strategy will stimulate public investment and create more opportunities and incentives for information technology business to locate in the State; and

**Whereas,** it is imperative to address how to develop and maintain a highly qualified information technology workforce to support business growth; and

**Whereas,** it is essential to create a business and regulatory policy that will ensure that Maine is an attractive location for information technology companies and their employees; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Commission established. Resolved:** That the Blue Ribbon Commission to Establish a Comprehensive Internet Policy, referred to in this resolve as the "commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 12 voting members and 6 nonvoting members.

1. The commission consists of 12 voting members as follows:

A. Three members of the Senate, at least one of whom is a member of the Joint Standing Committee on Business and Economic Development, appointed by the President of the Senate;

B. Two members of the House of Representatives, at least one of whom is a member of the Joint Standing Committee on Business and Economic Development, appointed by the Speaker of the House;

C. One representative of the large Internet service providers industry, appointed by the President of the Senate;

- D. One representative of the small Internet service providers industry, appointed by the Speaker of the House;
  - E. One representative of the Maine Software Developers Association, appointed by the Speaker of the House;
  - F. One representative of the telecommunications industry, appointed by the President of the Senate;
  - G. One representative of the cable television industry, appointed by the Speaker of the House;
  - H. One representative of the Maine Bar Association, appointed by the President of the Senate; and
  - I. One representative of the Maine Civil Liberties Union, appointed by the Speaker of the House.
2. The commission consists of 6 nonvoting members as follows:
- A. One representative of the University of Maine System, appointed by the Chancellor of the University of Maine System;
  - B. The Commissioner of Economic and Community Development or the commissioner's designee;
  - C. The Secretary of State or the secretary's designee;
  - D. The State Librarian or the State Librarian's designee;
  - E. One representative of the Public Advocate's Office, appointed by the Governor; and
  - F. One representative of the Public Utilities Commission, appointed by the Governor.

**Sec. 3. Appointments; meetings. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. Within 15 days after appointment of all members, the Chair of the Legislative Council shall call and convene the first meeting of the commission. The first named Senate member is the Senate chair and the first named House member is the House chair; and be it further

**Sec. 4. Duties. Resolved:** That the commission shall study issues related to the future of information technology in the State, including, but not limited to:

1. The facilitation of electronic commerce for Maine citizens and businesses;
2. Making government more accessible to the citizens;

3. The use of the Internet and related technologies to improve education throughout the State;
4. The protection of Internet users' and citizens' privacy;
5. The mitigation of Internet abuses including transmission of unsolicited bulk e-mail or spam;
6. The regulation of hate mail and pornography;
7. The elimination of electronic crimes;
8. The promotion of Internet access for citizens throughout the State; and
9. The promotion of business development in the areas of electronic, Internet-based and information technology businesses throughout the State; and be it further

**Sec. 5. Staff assistance. Resolved:** That the commission may request staffing assistance from the Legislative Council; and be it further

**Sec. 6. Compensation. Resolved:** That legislative members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the commission; and be it further

**Sec. 7. Report. Resolved:** That no later than December 1, 1999, the commission shall submit its initial report, together with any necessary implementing legislation, to the Joint Standing Committee on Business and Economic Development of the 119<sup>th</sup> Legislature and the Executive Director of the Legislative Council. The Joint Standing Committee on Business and Economic Development is authorized to report out a bill during the Second Regular Session of the 119<sup>th</sup> Legislature concerning the findings and recommendations of the commission.

The Commission is authorized to meet following the conclusion of the Second Regular Session of the 119<sup>th</sup> Legislature to continue its work. The commission shall end its work by November 15, 2000. The commission shall submit its 2<sup>nd</sup> report, together with any necessary implementing legislation, to the First Regular Session of the 120<sup>th</sup> Legislature.

If the commission requires an extension, it may apply to the Legislative Council, which may grant the extension; and be it further

**Sec. 8. Appropriation. Omitted**

**Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.

**APPENDIX B**  
**Commission Membership**

**BLUE RIBBON COMMISSION TO ESTABLISH A COMPREHENSIVE  
INTERNET POLICY**

**Chapter 89, Resolves of 1999,  
as amended by Public Law 1999, chapter 762, sec. 3**

**Membership 2000**

**Voting Members**

Senator Carol Kontos, **Chair**  
PO Box 1785  
Windham, Maine 04062

Representative Thomas M. Davidson, **Chair**  
PO Box 446  
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Senator Neria Douglass  
465 West Auburn Road  
Auburn, Maine 04210

Senator Philip Harriman  
PO Box 790  
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Paul Russinoff, Director  
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Representing a Large Internet Service Provider

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Representing Small Internet Service  
Provider Industry

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Association

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One Portland Square  
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Representing the Telecommunications Industry

Michael L. Edgecomb  
83 Anthony Avenue  
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Representing Cable Television Industry

Anthony E. Perkins, Esq.  
Bernstein, Shur, Sawyer & Nelson  
100 Middle Street, West Tower  
PO Box 9729  
Portland, Maine 04104-1200

Representing the Maine Bar Association

Sally Sutton  
Executive Director, MCLU  
233 Oxford Street, Suite 32K  
Portland, Maine 04101

Representing Maine Civil Liberties Union

### **Non-Voting Members**

Hon. Dan A. Gwadosky  
Secretary of State  
148 State House Station  
Augusta, Maine 04333

Secretary of State

Gary J. Nichols  
State Librarian  
64 State House Station  
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State Librarian

Phillip Lindley  
Maine Public Utilities Commission  
18 State House Station  
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Representing Maine Public Utilities  
Commission

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Office of the Public Advocate  
112 State House Station  
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Sam Levy  
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107 Maine Avenue  
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Representing the University of Maine System

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59 State House Station  
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Commissioner's Designee for the Department of  
Economic and Community Development

Staff: Deborah Friedman, Senior Legislative Analyst, Office of Policy and Legal Analysis  
Darlene Shores Lynch, Senior Researcher, Office of Policy and Legal Analysis

**APPENDIX C**  
**Memo on Uniform Electronic Transactions Act (UETA)**  
**and Federal Electronic Signatures in**  
**Global and National Commerce Act (E-Sign)**

November 1, 2000

To: Blue Ribbon Commission to Establish a Comprehensive Internet Policy  
From: Deborah C. Friedman, Esq., Senior Legislative Analyst

Re: Impact of Federal "E-Sign" on Maine UETA and other Maine Law

At the urging of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy, the Maine Legislature in 2000 passed and the Governor signed the Uniform Electronic Transactions Act (UETA).<sup>1</sup> Maine-UETA validates electronic records and electronic signatures by granting them the same status under law as paper records and manual signatures in business, governmental and commercial transactions, provided the parties to the transaction have agreed to conduct the transaction electronically.

Later in 2000, Congress passed and the President signed the "Electronic Signatures in Global and National Commerce Act,"<sup>2</sup> popularly known as "E-Sign." E-Sign also validates electronic records and signatures, but differs in some respects from UETA. E-Sign preempts most state laws, with two exceptions. E-Sign does not preempt UETA, nor does it preempt non-UETA laws that are consistent with E-Sign, are technology-neutral and, if enacted or adopted after E-Sign was enacted, make specific reference to E-Sign.<sup>3</sup>

Despite the general non-preemption of UETA, E-Sign does have an impact in Maine and other UETA states. First, it invalidates exemptions that are not consistent with UETA or E-Sign. Second, it invalidates state laws that require non-electronic delivery of records, such as mailing requirements for consumer notices. Finally, it may limit a state agency's ability to impose additional requirements on filings or records retention. This memo reviews some of the ways in which E-Sign impacts Maine law.

## **Exemptions**

Neither UETA nor E-Sign applies to contracts and records governed by laws relating to wills, codicils and testamentary trusts or by the Uniform Commercial Code, other than Articles 2 and 2A and sections 1-206 and 1-207.<sup>4</sup> As adopted in Maine, the UETA itself did not include any other exemptions. But in a separate piece of legislation put forth by

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<sup>1</sup> Public Law 1999, c. 762, sec. 2, effective August 11, 2000. This law is codified at 10 MRSA c. 1051.

<sup>2</sup> P.L. 106-229, generally effective October 1, 2000. Referred to in notes as "E-Sign"

<sup>3</sup> E-Sign, section 102(a)(1) and 102(a)(2)

<sup>4</sup> 10 MRSA §9403, sub-§2, ¶¶A and B. E-Sign section 103(a)(1) and 103(a)(3)

the Judiciary Committee, records purporting to affect title to real property and powers of attorney were exempted from the coverage of any law that validates electronic records and signatures.<sup>5</sup>

Because these exemptions are not part of the uniform UETA, they must be evaluated under section 102(a)(2) of E-Sign to determine whether they are preempted by E-Sign. E-Sign preempts any non-UETA law that bases validity of electronic records or signatures on alternative procedures or requirements, unless the procedure or requirement is consistent with E-Sign, is technology-neutral and, if enacted after E-Sign, makes specific reference to E-Sign.<sup>6</sup> Neither of the 2 additional exemptions in Maine-UETA are consistent with E-Sign and are therefore preempted. It is worth noting, however, that real estate records and powers of attorney are subject to UETA only if they are part of a business, governmental or commercial transaction in which the parties have agreed to conduct business electronically.<sup>7</sup>

If state policy-makers wish to consider additional exemptions to UETA in the future, they must determine whether the exemption is included in E-Sign. At the moment, those exemptions include the following: records relating to adoption, divorce and other matters of family law; court orders or notices; documents for transporting hazardous wastes; and a number of consumer notices including utility cut-off notices, default, eviction or notice to cure mortgage agreements, product recalls, and insurance cancellation. Note, however, that these exemptions are subject to review by the Secretary of Commerce and by federal regulatory agencies to determine whether the exemptions are necessary.<sup>8</sup>

### **Consumer Disclosures and Notices**

Although Maine UETA provides that electronic records and electronic signatures have the same legal force as paper records and manual signatures, Maine UETA also provides that laws requiring that notices be posted, displayed, delivered or formatted in a certain manner are still valid.<sup>9</sup> For example, even if the parties have agreed to conduct a certain transaction electronically, if a law requires certain records to be delivered by first class mail, return receipt requested, that law must be complied with, even if it means putting a computer disk in the mail.

E-Sign, however, specifically prohibits states from using that UETA section to “circumvent” E-Sign by imposing non-electronic delivery methods.<sup>10</sup> So any Maine law that requires non-electronic delivery of records is invalidated by E-Sign. There is some question as to whether non-electronic delivery laws relating to records excluded from E-

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<sup>5</sup> Public Law 1999, c. 711, codified at 33 MRSA §331, 18-A MRSA §5-509 and 5-802

<sup>6</sup> E-Sign section 102(a)(2)

<sup>7</sup> See Drafting Comments to the Uniform Electronic Transactions Act, section 2, subsection 12, which notes that “a transaction must include interaction between 2 or more persons. Consequently, to the extent that the execution of a will, trust or health care power of attorney or similar health care designation does not involve another person and is a unilateral act, it would not be covered by this Act because not occurring as a part of a transaction as defined in the Act.”

<sup>8</sup> E-Sign section 103(c)

<sup>9</sup> 10 MRSA §9408, sub-§2

<sup>10</sup> E-Sign, section 102(c)

Sign are still valid. For example, E-Sign does not apply to consumer utility cut-off notices, so a law requiring mailing and return receipt for such notices is not inconsistent with E-Sign and may still be valid. Commentators have not remarked on this possibility.

Interestingly, E-Sign includes a provision that limits use of electronic methods to provide notices. If a law enacted prior to E-Sign requires verification or acknowledgement of receipt, that law can be complied with electronically only if the method used provides verification or acknowledgement of receipt, whichever is required.<sup>11</sup> If Maine policy-makers are concerned about E-Sign's invalidating non-electronic delivery methods, they might consider placing in Maine law a similar provision to that found in E-Sign. Since it is consistent with E-Sign and is technology-neutral, there should not be a problem with preemption.

### **State Agency Regulatory Powers**

The third area in which E-Sign impacts Maine law is the ability of state agencies to regulate the use of electronic records and signatures in their regulatory roles. State agencies have many different relationships to records. First, state agencies use records in their procurement activities. UETA and E-Sign clearly allow states to continue to set their own standards for these types of records.<sup>12</sup>

Second, state agencies maintain and create their own records for internal activities, and there doesn't seem to be any dispute that they have the right to make their own decisions about those records.

Third, state agencies receive filings and other records from 3<sup>rd</sup> parties that are created solely to send to the agency, e.g., corporate filings, workers' compensation reports of injury and occupational licensing applications. UETA clearly allows state agencies to determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons.<sup>13</sup> There is some doubt at least with some commentators, whether E-Sign impacts this choice.

Fourth, state agencies often impose record-keeping and retention standards on businesses that they regulate, such as insurance companies and banks. Records are retained for a certain period of time to enable regulators to audit files or to serve as evidence if the company's actions are challenged. UETA provides that laws enacted before passage of UETA may not be used to prohibit electronic record retention, provided the method of retention meets the standards set forth in UETA to ensure integrity and future access. A state may, however, reimpose non-electronic standards if it enacts a law after the effective date of Maine UETA that specifically prohibits the use of an electronic record for the specified purpose.

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<sup>11</sup> E-Sign, section 101(c)(2)(B)

<sup>12</sup> 10 MRSA §9418. E-Sign section 102(b)

<sup>13</sup> 10 MRSA §9418, sub-§1

E-Sign section 104, which generally governs application of the law to federal and state governments, limits state regulatory agency powers to impose a requirement that records be in a tangible printed or paper form, although they retain the ability to set standards for accuracy, integrity and accessibility. Most commentators appear to believe that section 104 is not applicable in states that have adopted UETA,<sup>14</sup> although one notable commentator -- Professor Patricia Fry, chair of the drafting committee for UETA -- believes that the limitations of section 104 do apply even in UETA states.<sup>15</sup> This is one area of the law that may need clarification on the federal level. If section 104 of E-Sign does apply in UETA states, state agencies will be limited in their ability to require non-electronic retention of records.

Finally, any effort by the Legislature or by state regulatory agencies to impose requirements on records and signatures in transactions between private parties will have to be measured against E-Sign as well as UETA.

## **SUMMARY**

Federal E-Sign invalidates the Maine law that removes powers of attorney and real estate records from the coverage of UETA. Therefore, electronic real estate records and powers of attorney are valid if they are used in business, governmental or commercial transactions. Any additional exceptions to UETA must be evaluated to see if they are consistent with E-Sign.

Maine laws that require non-electronic delivery of records, such as requirements to mail notices with return receipt requested, are invalid under E-Sign to the extent they "circumvent" E-Sign. It is not clear whether such laws relating to records excluded from E-Sign continue to be valid. If so, then mailing requirements for product recalls, utility shutoff notices and certain insurance and credit notices would continue to be valid. In order to save some of the protections that may be provided by certain delivery laws, Maine may want to consider enacting an E-Sign provision that saves requirements for verification or acknowledgement of receipt.

It is unclear whether E-Sign limits a state agency's ability to require 3<sup>rd</sup> parties to retain records in non-electronic form, an option that UETA preserves. Even UETA, though, in an effort to ease the way for businesses to keep records electronically, requires states to re-enact any law that requires non-electronic records retention.

Finally, any law or rule relating to records and signatures used in business, governmental or commercial transactions must be evaluated in light of E-Sign.

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<sup>14</sup> See, e.g., Whittier, "What Governors Need to Know About E-Sign", p. 6. Prepared for the National Governors Association, September 22, 2000.

<sup>15</sup> Fry, "A Preliminary Analysis of Federal and State Electronic Commerce Laws." Found at [www.nccusl.org/uniformact\\_articles/uniformacts-article-ueta.htm](http://www.nccusl.org/uniformact_articles/uniformacts-article-ueta.htm)

**APPENDIX D**  
**List of Internet Privacy Technology Tools**

# PRIVACY TECHNOLOGY IN THE DIGITAL AGE

-----VERSION 1.0-----

With technology permeating every aspect of daily life, consumer demand for privacy has created a flourishing marketplace for innovative, privacy-enhancing technologies. The products and services described here give users unprecedented control over the information they share. These tools are easy to find, often free, and the first fruit of a vibrant privacy marketplace.

## SURF ANONYMOUSLY

Prices subject to change; based on Web site information 9/00.

<b>Anonymity 4 Proxy</b>	Uses network of hundreds of fast proxy servers to protect identity. Allows user to create fake address, block or alter browser information, share anonymous connections with others.	<a href="http://www.intelprivacy.com">www.intelprivacy.com</a>	\$35.00
<b>Anonymizer</b>	Acts as intermediary between user and Web site, go to Anonymizer Web site and begin surfing from the site. Control panel allows anonymous access to sites. Free for basic service.	<a href="http://www.anonymizer.com">www.anonymizer.com</a>	\$14.99 3 mos. premium service
<b>Internet Junkbuster Proxy</b>	Blocks requests for Internet files that match customizable "block file." Blocks unauthorized cookies. Users share information about which sites collect personal data and should be blocked.	<a href="http://www.junkbusters.com">www.junkbusters.com</a>	Free
<b>Naviscape</b>	A browser plug-in to protect privacy and speed browsing. Allows user to manage delivery of cookies, banner ads or other Web objects. Employs "prefetching" of content to speed Web page delivery.	<a href="http://www.naviscope.com">www.naviscope.com</a>	Free
<b>Privada Proxy</b>	Web Incognito encrypts requests for Web pages and routes through the Privada network; cookies are given a network profile rather than a personal one. Messaging Incognito extends privacy to email.	<a href="http://www.privada.com">www.privada.com</a>	\$5.00/month

## PURCHASE ANONYMOUSLY

<b>ZixCharge</b>	Transaction authorization system using "charge slips" to conceal personal information while purchasing online. Software routes purchase through account and masks personal identity.	<a href="http://www.zixcharge.com">www.zixcharge.com</a>	Free
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## MANAGE COOKIES

<b>AOL Netscape Cookie Manager</b>	Allows users to view, block and delete cookies based on privacy preferences.		Free to AOL members
<b>Buzof</b>	Automatically answers, closes, minimizes recurring windows, including cookie prompts.	<a href="http://www.basta.com">www.basta.com</a>	\$15.00
<b>Complete Cleanup</b>	Software allows user to delete cookies cache files, URLs and non-Internet files, including "recent document" list.	<a href="http://www.softdd.com">www.softdd.com</a>	\$30.00
<b>Cookie Crusher</b>	Software automates cookie refusal, refuses all later requests from same site.	<a href="http://www.thelimitsoft.com">www.thelimitsoft.com</a>	30 days Free
<b>Cookie Master</b>	Software tracks cookies in browser, displays cookie details, logs cookies activity.	<a href="http://www.barefootinc.com">www.barefootinc.com</a>	Free
<b>Cookie Pal</b>	Automatically accepts or rejects cookies, allows viewing of stored cookies, customizable.	<a href="http://www.kburra.com">www.kburra.com</a>	\$15.00
<b>Cookie Terminator</b>	Manages hidden cookies, set to automate cookie termination, shows where cookies on system have originated.	<a href="http://www.4developers.com">www.4developers.com</a>	\$14.95
<b>Cookie Web Kit</b>	Software that deletes cookies manually or automatically; also deletes cache directory and history logs.	<a href="http://www.cookiecentral.com">www.cookiecentral.com</a>	Free
<b>Internet Explorer 5.5</b>	Enhanced cookie controls let users delete all cookies and provide detailed data when third-party Web sites try to place cookies. Allows users to designate preferences.	<a href="http://www.microsoft.com">www.microsoft.com</a>	Free
<b>NoCookie</b>	Cookie management for MAC OS, disables Netscape cookies, inspects cookie information.	<a href="http://www.onepiotoh.com">www.onepiotoh.com</a>	Free
<b>NSClean &amp; IEClean</b>	Rids cookies from Netscape or Internet Explorer. Enables use alias, deletes bookmarks, history base, erases newsgroup activities.	<a href="http://www.nsclean.com">www.nsclean.com</a>	\$40.00
<b>PGPcookie.cutter</b>	Collects all cookies, keeps cookies secure until user decides to share data or disable the cookie.	<a href="http://www.pgp.com">www.pgp.com</a>	\$19.95

## ENCRYPT EMAIL

<b>Disappearing Email</b>	Encrypts email and allows user to control who accesses the email and for how long. Time-sensitive keys located in Disappearing Inc. server. Message expiration dates customizable.	<a href="http://www.disappearing.com">www.disappearing.com</a>	Free
<b>HushMail</b>	Web-based service offering 1,024-bit encryption of email and attachments. Can set up alternate email address and notification system. Source code released to cryptographic community.	<a href="http://www.hushmail.com">www.hushmail.com</a>	Free
<b>PGP (Pretty Good Privacy)</b>	One of first cryptography products to encrypt private email. Available through MIT. Works as plug-in with major software platforms. Compatible with Microsoft Outlook and Eudora Pro.	<a href="http://www.mit.edu/network/pgp.html">www.mit.edu/network/pgp.html</a>	Free
<b>ZipLip Mail</b>	Uses database storage model to maintain security, includes "digital shredding" option, protections against unwanted printing, cutting and pasting of text. Web-based, records kept on ZipLip server.	<a href="http://www.ziplip.com">www.ziplip.com</a>	Free

## MANAGE YOUR IDENTITY

<b>Digitalme</b>	Uses "business card" to manage personal information, complete online forms and store passwords for various Web sites. Auto fill-in. User can maintain different cards to deliver tailored information to various sites.	<a href="http://www.digitalme.com">www.digitalme.com</a>	Free
<b>Freedom</b>	Three components in software allow users to create pseudonyms for online use, encrypts all online activities performed under pseudonym, routes messages through Freedom Network servers.	<a href="http://www.freedom.net">www.freedom.net</a>	\$49.95
<b>Persona/Child Persona</b>	PersonaAgent software installed on user's computer protects all information behind a password; allows auto fill-in of forms; tools to manage online identity. Separate program designed for children.	<a href="http://www.privaseek.com">www.privaseek.com</a>	Free

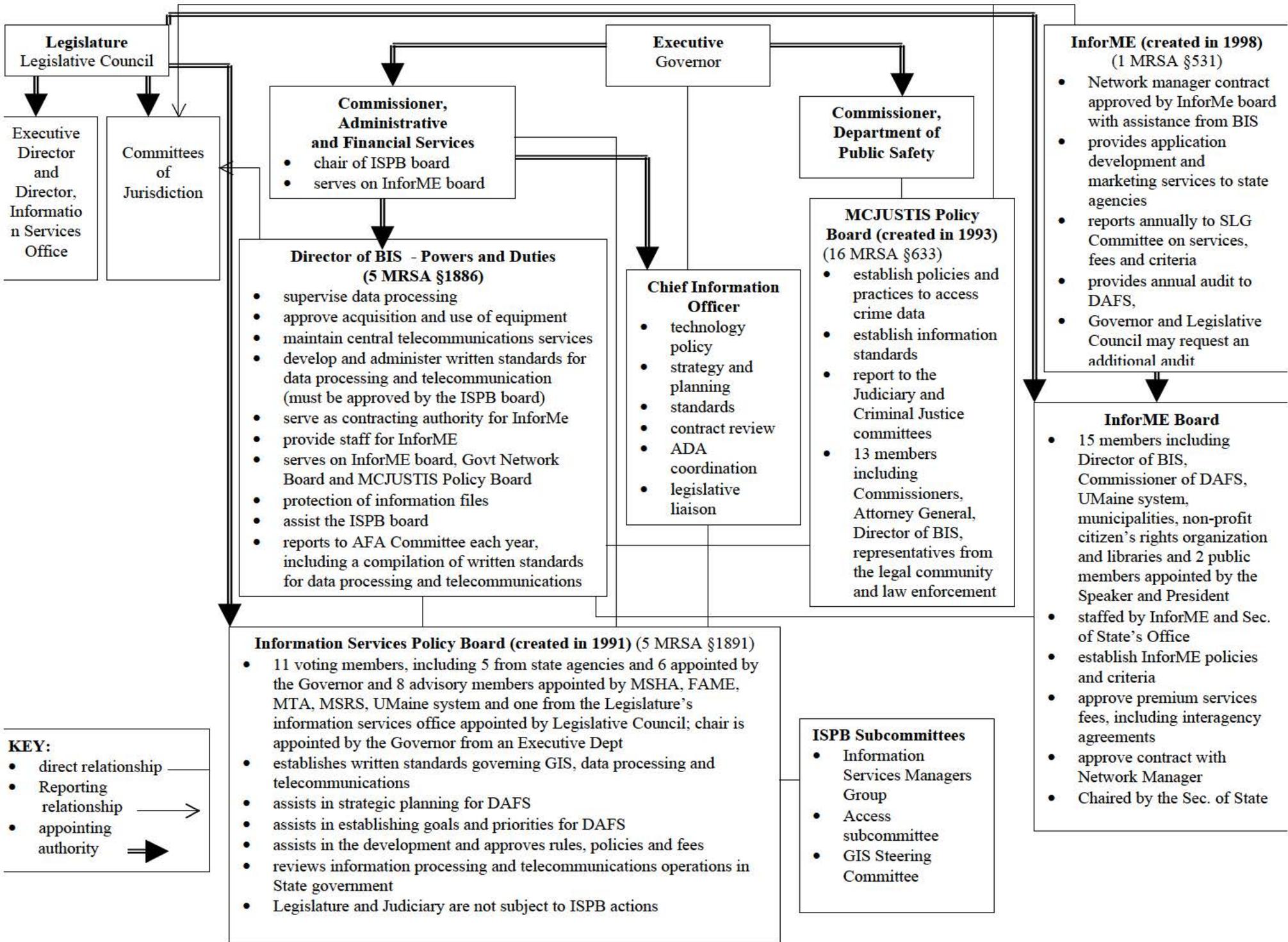
## PLATFORM FOR PRIVACY PREFERENCES (P3P)

	The World Wide Web Consortium, made up of 400 leading technology companies, has created a new programming language to enhance greater individual control over privacy. Under P3P, Web site will have privacy policies imbedded into each page. Users will surf with P3P-enabled browsers, set with their privacy preferences. The browser will then automatically let them know if a Web site has practices at odds with the users' wishes.		
<b>Privacy Companion</b>	Allows you to see who has placed a cookie, either a site or "third party" advertising company or profiler.	<a href="http://www.idcide.com">www.idcide.com</a>	Free
<b>Orby Privacy Plus</b>	Permission-based personalization software that allows users to select settings: private, cautious, trusting and open.	<a href="http://www.youpowered.com">www.youpowered.com</a>	Free

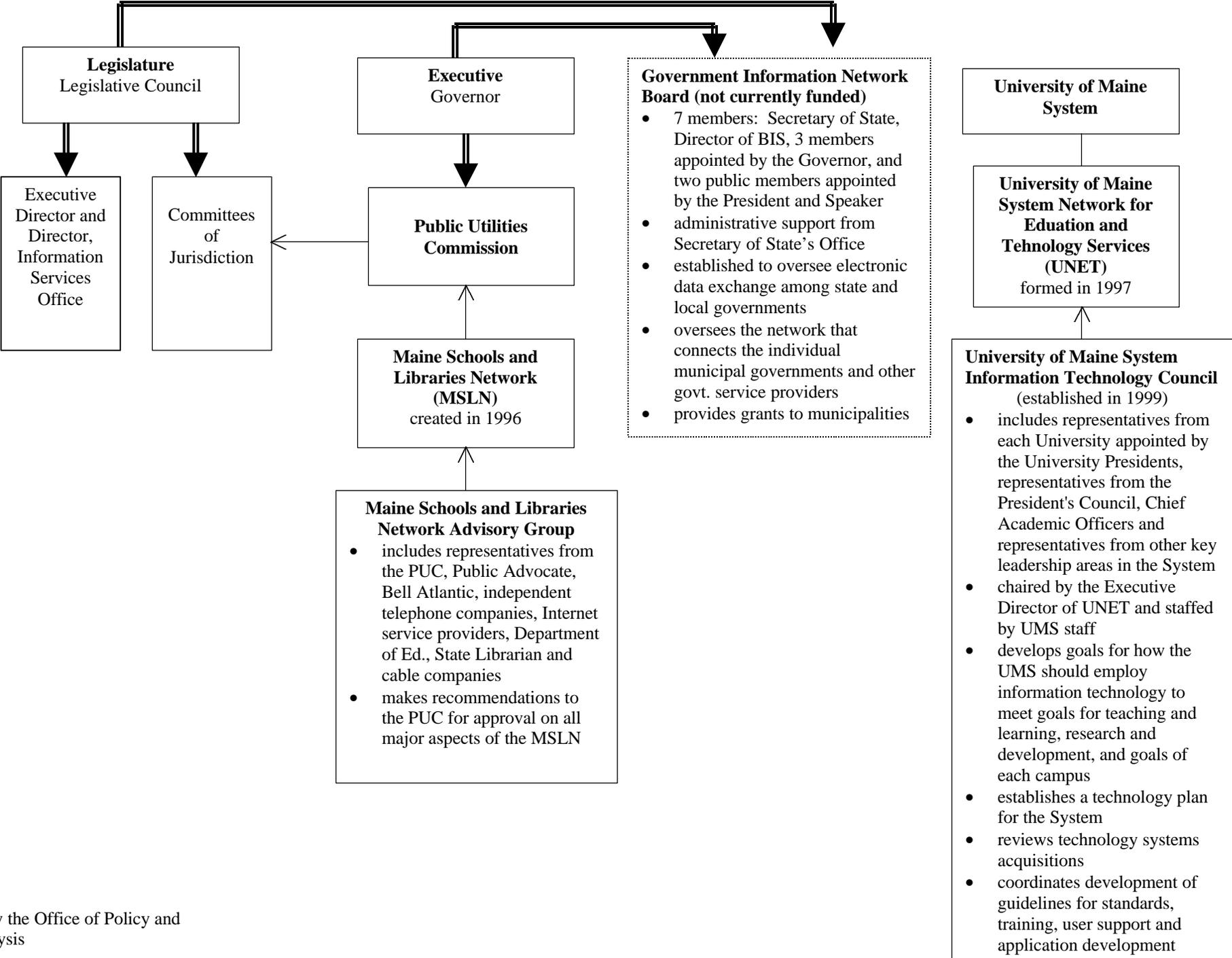
Sponsored by The Privacy Leadership Initiative: American Association of Advertising Agencies, Association of National Advertisers, AT&T, Compaq Computer, Dell Computer Corporation, Direct Marketing Association, DoubleClick, Inc., E\*TRADE, European-American Business Council, Eastman Kodak Company, Engage, Experian, Ford Motor Company, Harris Interactive, Internet Advertising Bureau, IBM, Intel Corporation, Information Technology Industry Council, Kraft Foods, Inc., National Association of Manufacturers, NetCoalition.com, Network Solutions Inc., Online Privacy Alliance, Procter & Gamble, Sony, Travelocity.com, US Bank Corp.

**APPENDIX E**  
**State Electronic Policymaking Bodies Chart**

# State Government Electronic Information Policymaking Bodies



# State Government and Other Electronic Policymaking Boards



**APPENDIX F**  
**Draft Legislation to Continue Commission Work**

## **Recommendation A**

### **Continue to Study Privacy and Other Internet Issues -- RESOLVE**

#### **RESOLVE, to Create a Study Commission to Review Internet and Information Policy**

**Preamble.** **Whereas,** the Internet continually presents new opportunities and new challenges to policy-makers and the public; and

**Whereas,** concerns about the collection of information on the Internet have caused policy-makers to examine governmental policies regarding the collection and use of personal information via the Internet as well as by more traditional means; and

**Whereas,** the Legislature believes that commissions consisting of policy-makers and other interested parties provide the best forum for discussing these issues and promoting solutions; now, therefore, be it:

**Sec. 1. Commission established. Resolved:** That the Blue Ribbon Commission to Review Internet and Information Policy, referred to in this resolve as the “commission” is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the Commission consists of 12 voting members and 7 non-voting members. The voting members are as follows:

- A. Three Senators, one from the Joint Standing Committee on Business & Economic Development, appointed by the Senate President;
- B. Two House members, one from Joint Standing Committee on Business & Economic Development, appointed by the House Speaker;
- C. One representative of the Internet service provider industry, appointed by the Senate President;
- D. One representative of a Maine-based company providing commercial services over the Internet, appointed by the Speaker;
- E. One representative of the Maine Software Developers Association, appointed by the Speaker;
- F. One representative of the telecommunications industry, appointed by the Senate President;
- G. One representative of the cable television industry, appointed by the House Speaker;

H. One representative of the Maine Bar Association, appointed by the Senate President; and

I. One representative of the Maine Civil Liberties Union, appointed by the House Speaker.

The 7 nonvoting members are as follows.

A. One representative of the University of Maine system, appointed by the chancellor of the University of Maine System;

B. The Commissioner of Economic and Community Development or the commissioner's designee;

C. The Chief Information Officer, Department of Administrative and Financial Services, or the Chief Information Officer's designee;

D. The Secretary of State or the Secretary's designee;

E. The State Librarian or the State Librarian's designee;

F. One representative of the Public Utilities Commission, appointed by the Governor;

G. One representative of the Public Advocate's Office, appointed by the Governor; and be it further

**Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair. The first-named House member is the House chair; and be it further

**Sec. 4. Appointments; convening meetings. Resolved:** That all appointments must be made no later than 30 days following the effective date of this Resolve. The appointing authorities must notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs shall call and convene the first meeting of the Commission; and be it further

**Sec. 5. Duties. Resolved:** That the Commission shall study issues relating to the Internet and information policy, including the following:

A. Internet users' concerns about privacy of information collected on the Internet by commercial and governmental websites;

B. Development of a comprehensive information practices act governing collection and management of personal information by state and local governmental entities;

C. Coordination of the state's Internet policy-making structures;

D. The possibility of using the Internet to assist in the election process; and

E. Other issues described in the charge to the Blue Ribbon Commission to Establish a Comprehensive Internet Policy, created by the 119<sup>th</sup> Legislature; and be it further

**Sec. 6. Staff assistance. Resolved:** That upon approval of the Legislative Council, the Office of Policy & Legal Analysis shall provide necessary staffing services to the Commission; and be it further

**Sec. 7. Compensation. Resolved:** That legislators who are members of the commission are entitled to receive legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at meetings of the commission; and be it further

**Sec. 8. Report. Resolved:** That the commission shall submit a report of its findings and recommendations, including any recommended legislation, to the 2<sup>nd</sup> Regular Session of the 120<sup>th</sup> Legislature by December 1, 2001. If the commission requires an extension of time to makes its report, it may apply to the Legislative Council, which may grant the extension.

#### **SUMMARY**

This Resolve creates a commission to study Internet and information policy issues, including privacy, use of the Internet in the election process such as use for registration or voting, development of a comprehensive information practices act and other issues.

**APPENDIX G**  
**Concept Draft to Establish a Consumer Privacy Advocate**

**Recommendation C**  
**Consumer Advocate – Concept Draft**

**An Act to Create a Resource within State Government to Protect the Privacy of Personal Information**

**SUMMARY**

This bill is a concept draft providing for a person or persons within state government to protect the privacy of personal data about the people of Maine. The person would not have regulatory authority, but would be charged with the following duties:

- conduct research and studies, gather facts and evaluate procedures regarding the treatment of personal data by public and private entities;
- investigate complaints about information confidentiality, make recommendations for policy, rule and legislative changes, where appropriate, and make referrals to, and cooperate with, enforcement entities;
- advise, consult and assist the legislative and executive branches of government on development of policies and procedures related to confidential personal data;
- coordinate communication and cooperation among components of state government; and
- educate the public about the status of personal data and how to protect their privacy.

The person performing this function must be in a position that, to the greatest extent possible, is not subject to political or economic pressure. This person would have authority to maintain the confidentiality of information in his or her possession.

**APPENDIX H**  
**Draft Legislation on Notice of State and Local Government**  
**Information Practices**

**Recommendation D.**  
**Legislation – An Act to Require Notice of Information Practices on State and Local Government Websites**

Sec. 1. 1 MRSA c.14-A is enacted to read:

**CHAPTER 14-A**  
**NOTICE OF INFORMATION PRACTICES**

**§551. Definitions.**

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

1. **Personal information.** “Personal information” means information about a natural person that is readily identifiable to that specific person.

2. **Public entity.** “Public entity” means:

- A. The Legislature;
- B. The Judicial Department;
- C. A state agency or authority;
- D. The University of Maine System, the Maine Maritime Academy, and the Maine Technical College System;
- E. A county, municipality, school district or any regional or other political or administrative subdivision; and
- F. An advisory organization established, authorized or organized by law or resolve or by Executive Order issued by the Governor.

**§552. Notice of Information Practices**

Each public entity that has a website associated with it shall develop a policy regarding its practices relating to personal information and shall post notice of those practices on its website. The policy must include the following:

1. **Information collected.** A description of the personal information collected on the website;

**2. Use and disclosure of information.** A summary of how the personal information is used by the entity, and the circumstances under which it may be disclosed to others;

**3. Choice.** The extent to which the user has a choice of whether to provide personal information via the website and the consequences of refusing to give that information;

**4. Procures for access and correction.** The procedures, if any, by which the user may request access to personal information about himself or herself and may request correction of that information; and

**5. Security.** Steps taken to protect personal information from misuse or unauthorized access.

## SUMMARY

This bill requires state and local entities that have websites to develop policies regarding personal information practices and to post notice of those policies on their websites.

**APPENDIX I**  
**Draft Legislation to Amend the Government Evaluation Act**

**Recommendation. H.**  
**GEA Amendment**

**An Act to Include Analysis and Review of Information Practices in the Government  
Evaluation Act Process**

**Sec. 1. 3 MRSA §956, sub-§2, ¶D-1** is enacted to read:

D-1. Agency policies for collecting, managing and using personal information over the Internet and non-electronically, an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement, and information on the agency's implementation of information technologies.

**Sec. 2. 3 MRSA §957, sub-§1** is amended to read:

**1. Authority.** For each agency or independent agency or a component part of each agency or independent agency subject to review pursuant to section 952, the committee of jurisdiction may conduct an analysis and evaluation that may include, but need not be limited to, an evaluation of the program evaluation report, the extent to which the agency or independent agency operates in accordance with its legislative authority, the extent to which the agency or independent agency adheres to fair information principles and the degree of success achieved by the agency or independent agency in meeting its statutory and administrative mandate. In consultation with the Legislative Council, the committee shall select agencies or independent agencies for review either in accordance with the scheduling guidelines provided in this chapter or at any time determined necessary or warranted by the committee.

**SUMMARY**

This bill amends the State Government Evaluation Act to add information practices and implementation of information technologies to the list of issues that must be addressed in the agency's self-evaluation report and to include adherence to fair information practices principles to the list of issues that the legislative committee of jurisdiction may analyze and evaluate.