

MAINE STATE LEGISLATURE

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BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 431, L.D. 1183, Bill, "An Act To Prevent Predatory Marketing Practices against Minors Regarding Data Concerning Health Care Issues"

Amend the bill by striking out the title and substituting the following:

'An Act To Prevent Predatory Marketing Practices against Minors'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 10 MRSA c. 1055 is enacted to read:

CHAPTER 1055

MARKETING AND DATA COLLECTION PRACTICES

§9551. Definitions

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

1. Health-related information. "Health-related information" means any information about an individual or a member of the individual's family relating to health, nutrition, drug or medication use, physical or bodily condition, mental health, medical history, medical insurance coverage or claims or other similar data.

2. Marketing purposes. "Marketing purposes," with respect to the use of health-related information or personal information, means the purposes of marketing or advertising products, goods or services to individuals.

3. Person. "Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

4. Personal information. "Personal information" means individually identifiable information, including:

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- 1 A. An individual's first name, or first initial, and last name;
- 2 B. A home or other physical address;
- 3 C. A social security number;
- 4 D. A driver's license number or state identification card number; and
- 5 E. Information concerning a minor that is collected in combination with an identifier
- 6 described in this subsection.

7 **5. Verifiable parental consent.** "Verifiable parental consent" means any reasonable
 8 effort, taking into consideration available technology, including a request for
 9 authorization for future collection, use and disclosure described in the notice, to ensure
 10 that a parent of a minor receives notice of the collection of personal information, use and
 11 disclosure practices and authorizes the collection, use and disclosure, as applicable, of
 12 personal information and the subsequent use of that information before that information is
 13 collected from that minor.

14 **§9552. Unlawful collection and use of data from minors**

15 1. Unlawful collection. It is unlawful for a person to knowingly collect or receive
 16 health-related information or personal information for marketing purposes from a minor
 17 without first obtaining verifiable parental consent of that minor's parent or legal guardian.

18 2. Unlawful use. A person may not sell, offer for sale or otherwise transfer to
 19 another person health-related information or personal information about a minor if that
 20 information:

- 21 A. Was unlawfully collected pursuant to subsection 1;
- 22 B. Individually identifies the minor; or
- 23 C. Will be used in violation of section 9553.

24 **§9553. Predatory marketing against minors prohibited**

25 A person may not use any health-related information or personal information
 26 regarding a minor for the purpose of marketing a product or service to that minor or
 27 promoting any course of action for the minor relating to a product. Use of information in
 28 violation of this section constitutes predatory marketing.

29 **§9554. Enforcement**

30 1. Unfair trade practice. Violation of this chapter is an unfair trade practice as
 31 prohibited by Title 5, section 207. Each unlawful collection of data or unlawful predatory
 32 marketing event in violation of this chapter constitutes a separate violation. The Attorney
 33 General may establish procedures for receiving and investigating complaints of violations
 34 of this chapter. The procedures may include the development of electronic forms,
 35 available over the Internet, by which a person may file a complaint with the Attorney
 36 General alleging a violation of this chapter.

37 2. Civil action; injunction and damages. Notwithstanding Title 5, section 213, a
 38 person about whom information is unlawfully collected or who is the object of predatory

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marketing in violation of this chapter may bring an action in an appropriate state court for either or both of the following:

- A. An injunction to stop the unlawful collection or predatory marketing; and
- B. Recovery of actual damages from each violation or up to \$250 in damages for each violation, whichever is greater.

If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.

If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under paragraph B.

3. Civil violation; penalty. Notwithstanding the penalty provisions of Title 5, section 209, each violation of this chapter constitutes a civil violation for which a fine may be assessed of:

- A. No less than \$10,000 and no more than \$20,000 for a first violation; and
- B. No less than \$20,000 for a 2nd or subsequent violation.

4. Application of federal law. If the Attorney General finds evidence of a violation of the federal Children's Online Privacy Protection Act of 1998, 15 United States Code, Sections 6501 to 6506 (2007), the Attorney General may bring a civil action pursuant to 15 United States Code, Section 6504 (2007).'

SUMMARY

This amendment changes the title of the bill. It adds new definitions for "person," "personal information," "marketing purposes" and "verifiable parental consent," removes the definition for "collect" and prohibits the knowing collection of both health-related and personal information from minors. It also removes the requirement for the Attorney General to establish procedures for complaints and instead allows the Attorney General to establish these procedures. It amends the provision that unlawful collection constitutes the collection of personal information obtained via the Internet or any wireless communications device to more broadly encompass the collection of this information by any method. It changes the penalty provision to clarify that, notwithstanding the provisions of the Maine Unfair Trade Practices Act, each violation constitutes a civil violation for which a fine may be assessed of no less than \$10,000 and no more than \$20,000 for a first violation and no less than \$20,000 for a 2nd violation or any subsequent violation. It also provides that, if the Attorney General finds evidence of a violation of the federal Children's Online Privacy Protection Act of 1998, it may bring a civil action pursuant to 15 United States Code, Section 6504.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



Approved: 05/12/09 *MRC*

124th MAINE LEGISLATURE

LD 1183

LR 597(02)

An Act To Prevent Predatory Marketing Practices against Minors Regarding Data Concerning Health Care Issues

**Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Business, Research and Economic Development
Fiscal Note Required: Yes**

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil violations.
The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.