

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1183

S.P. 431

In Senate, March 25, 2009

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

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SCHNEIDER of Penobscot.
Cosponsored by Representative PERRY of Calais and
Senator: BRANNIGAN of Cumberland, Representatives: AUSTIN of Gray, CAMPBELL of
Newfield, HUNT of Buxton, MacDONALD of Boothbay, PRESCOTT of Topsham, SMITH of
Monmouth, TREAT of Hallowell, WRIGHT of Berwick.

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

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

3 CHAPTER 1055

4 MARKETING AND DATA COLLECTION PRACTICES

5 §9521. Definitions

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

8 1. Collect. "Collect" means to solicit, elicit or ask for, with or without any form of
9 incentive or enticement.

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

14 §9522. Unlawful collection and use of data from minors

15 1. Unlawful collection. A person may not collect or receive health-related
16 information over the Internet or any wireless communications device from an individual
17 who is in fact an unemancipated minor without the express written consent of that minor's
18 parent or legal guardian.

19 2. Unlawful use. A person may not sell, offer for sale or otherwise transfer to
20 another person health-related information about a minor obtained over the Internet or any
21 wireless communications device if that information:

22 A. Was unlawfully collected pursuant to subsection 1;

23 B. Individually identifies the minor; or

24 C. Will be used in violation of section 9523.

25 §9523. Predatory marketing against minors prohibited

26 A person may not use any health-related information regarding a minor obtained over
27 the Internet or any wireless communications device for the purpose of marketing a
28 product or service to that minor or promoting any course of action for the minor relating
29 to a product. Use of information in violation of this section constitutes predatory
30 marketing.

31 §9524. Enforcement

32 1. Unfair trade practice. Violation of this chapter is an unfair trade practice as
33 prohibited by Title 5, section 207. Each unlawful collection of data or unlawful predatory
34 marketing event in violation of this chapter constitutes a separate violation. The Attorney
35 General shall establish procedures for receiving and investigating complaints of

1 violations of this chapter. The procedures may include the development of electronic
2 forms, available over the Internet, by which a person may file a complaint with the
3 Attorney General alleging a violation of this chapter.

4 **2. Civil action; injunction and damages.** Notwithstanding Title 5, section 213, a
5 person about whom information is unlawfully collected or who is the object of predatory
6 marketing in violation of this chapter may bring an action in an appropriate state court for
7 either or both of the following:

8 A. An injunction to stop the unlawful collection or predatory marketing; and

9 B. Recovery of actual damages from each violation or up to \$250 in damages for
10 each violation, whichever is greater.

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

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

16 **3. Civil violation; penalty.** Each violation of this chapter constitutes a civil violation
17 for which a fine may be assessed of:

18 A. Up to \$20,000 for a first violation; and

19 B. No less than \$20,000 for a 2nd or subsequent violation.

20 SUMMARY

21 This bill addresses the current practices of persons using the Internet and other
22 wireless communications devices, with or without promotional incentives, to acquire
23 health-related information about minors and then using that information unscrupulously.
24 Under this bill, it is unlawful to solicit or collect health-related information about a minor
25 who is not emancipated without the express written consent of the minor's parent or
26 guardian, to transfer any health-related information that identifies a minor or to use any of
27 that information to market a product or service to a minor regardless of whether or not the
28 information was lawfully obtained. Unlawful marketing includes promoting a course of
29 action relating to a product. The bill provides 3 potential remedies for a violation: relief
30 as an unfair trade practice, a private right of action and a civil violation with substantial
31 monetary fines.