

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1677

S.P. 649

In Senate, January 6, 2010

An Act To Protect Minors from Pharmaceutical Marketing Practices

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary 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 Representatives: CLEARY of Houlton, JOHNSON of Greenville and
Representatives: RUSSELL of Portland, SMITH of Monmouth, TREAT of Hallowell.

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

2 Sec. 1. 10 MRSA c. 1055, as amended, is repealed.

3 Sec. 2. 10 MRSA c. 1057 is enacted to read:

4 CHAPTER 1057

5 PHARMACEUTICAL MARKETING TO MINORS

6 §9561. Unlawful pharmaceutical marketing to minors

7 1. Definition. As used in this section, "minor" means a person who is at least 13
8 years of age and under 17 years of age.

9 2. Prohibition. A person may not collect and use personal information collected on
10 the Internet from a minor for the purposes of pharmaceutical marketing in violation of
11 rules adopted by the Attorney General under subsection 3.

12 3. Rules. In order to ensure the health and safety of minors, no later than one year
13 after the effective date of this section, the Attorney General shall adopt rules governing
14 the collection and use of personal information collected on the Internet from a minor for
15 the purposes of pharmaceutical marketing. The rules must be consistent with and to the
16 extent possible the same as those established under the federal Children's Online Privacy
17 Protection Act of 1998, 15 United States Code, Sections 6501 to 6506 (2007) and 16
18 Code of Federal Regulations, Part 312 (1999). The rules must define "pharmaceutical
19 marketing" in a manner that includes the business of advertising or otherwise promoting
20 the sale of prescription and over-the-counter drugs, as regulated by the United States
21 Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21
22 United States Code, Chapter 9, and that ensures the adequate protection of the health and
23 safety of minors. Rules adopted pursuant to this subsection are routine technical rules as
24 defined in Title 5, chapter 375, subchapter 2-A.

25 4. Unfair trade practice. Violation of subsection 2 is an unfair trade practice as
26 prohibited under Title 5, section 207. The Attorney General may establish procedures for
27 receiving and investigating complaints of violations of subsection 2.

28 SUMMARY

29 This bill prohibits the collection and use of personal information collected on the
30 Internet from a minor who is at least 13 years of age and under 17 years of age for the
31 purposes of pharmaceutical marketing in violation of rules adopted by the Attorney
32 General. The bill requires the Attorney General to adopt rules consistent with the federal
33 Children's Online Privacy Protection Act of 1998, 15 United States Code, Sections 6501
34 to 6506 (2007) and 16 Code of Federal Regulations, Part 312 (1999), which regulates the
35 collection and use of personal information from children under 13 years of age on the
36 Internet.

1 The rules, which are routine technical rules, must define "pharmaceutical marketing"
2 in a manner that includes the business of advertising or otherwise promoting the sale of
3 prescription and over-the-counter drugs, as regulated by the United States Food and Drug
4 Administration, and ensures the adequate protection of the health and safety of minors
5 who are at least 13 years of age and under 17 years of age. The bill establishes that a
6 violation is an unfair trade practice as prohibited by the Maine Unfair Trade Practices
7 Act.