

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

CHAPTER 1055

MARKETING AND DATA COLLECTION PRACTICES

§ 9521. Definitions

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

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

2. 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.

§ 9522. Unlawful collection and use of data from minors

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

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

- A. Was unlawfully collected pursuant to subsection 1;
- B. Individually identifies the minor; or
- C. Will be used in violation of section 9523.

§ 9523. Predatory marketing against minors prohibited

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

§ 9524. Enforcement

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

2. Civil action; injunction and damages. Notwithstanding Title 5, section 213, a person about whom information is unlawfully collected or who is the object of predatory 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. Each violation of this chapter constitutes a civil violation for which a fine may be assessed of:

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

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

SUMMARY

This bill addresses the current practices of persons using the Internet and other wireless communications devices, with or without promotional incentives, to acquire health-related information about minors and then using that information unscrupulously. Under this bill, it is unlawful to solicit or collect health-related information about a minor who is not emancipated without the express written consent of the minor's parent or guardian, to transfer any health-related information that identifies a minor

or to use any of that information to market a product or service to a minor regardless of whether or not the information was lawfully obtained. Unlawful marketing includes promoting a course of action relating to a product. The bill provides 3 potential remedies for a violation: relief as an unfair trade practice, a private right of action and a civil violation with substantial monetary fines.