

# ADVERTISING, MARKETING & PROMOTIONS

>> ALERT

## NEW MAINE LAW RESTRICTS MARKETING TO MINORS

Maine recently enacted a law that has the potential to significantly change the way many companies market products and services to minors in that state.

While the law imposes restrictions upon the collection of health-related and personal information from minors, it also effectively eliminates the ability of marketers to use this information. The Act to Prevent Predatory Marketing Practices Against Minors (the Act) takes effect on September 12, 2009, and is likely to significantly change the way companies conduct promotions and market to minors in Maine.

### THE ACT

Under the Act, it is impermissible to:

- >> Knowingly collect or receive health-related information or personal information for marketing purposes from a minor without first obtaining verifiable parental consent of that minor's parent or legal guardian
- >> Sell, offer for sale, or otherwise transfer to another person health-related information or personal information about a minor if that information was unlawfully collected pursuant to the above bullet point or individually identifies the minor

- >> Use any health-related or personal information regarding a minor 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 (defined as predatory marketing).

The restriction on information collection is similar to restrictions that currently exist under federal law pursuant to the Children's Online Privacy Protection Act (COPPA), however the Maine law applies to all minors (not just children under 13 as set forth by COPPA), and the Maine law applies to offline as well as online information collection practices.

Under Maine law, a minor is a person under the age of 18.

### DEFINITIONS

"Health-related information" is defined as "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."

### THE BOTTOM LINE

Maine recently enacted a law that restricts the collection of health-related and personal information from minors and effectively eliminates the ability of marketers to use this information. The Act to Prevent Predatory Marketing Practices Against Minors (the Act) takes effect on September 12, 2009. The ultimate effect of this new law will require marketers to significantly alter their practices in the state of Maine.

"Personal information" is defined as "individually identifiable information, including:

- A. an individual's first name, or first initial, and last name
- B. a home or physical address
- C. a social security number
- D. a driver's license or state identification card number
- E. information concerning a minor that is collected in combination with an identifier described in this section."

## ENFORCEMENT AND REMEDIES

The Act provides three potential remedies for violation of the statute:

1. The statute provides that a violation of the Act constitutes an unfair trade practice, which can be enforced by both the Maine Attorney General and as a private right of action.
2. The Act also provides a private right of action for a person about whom information is unlawfully collected or who is the object of predatory marketing. This individual is entitled to seek an injunction to stop the unlawful collection or predatory marketing as well as monetary damages, plus reasonable attorneys' fees and treble damages.
3. Each violation of the statute constitutes a civil violation which carries substantial monetary fines (no less than \$10,000 and no more than \$20,000 for a first violation and no less than \$20,000 for a second or subsequent violation).

## IMPACT

Under the Act, marketers will not be able to collect or receive personal information from a minor without first obtaining verifiable parental consent. However, even if the verifiable parental consent is obtained, marketers will still not be able to use this information for the purpose of marketing products or services to minors.

This broad restriction on information usage under the Act, even if the information has been collected with parental consent, is a new concept that has not appeared in any state or federal law to date. While it is always important for marketers to pay attention to and observe new laws that affect their marketing practices, the existence of a private right of action should cause all marketers to be especially diligent since claims can be brought by countless individuals.

## FOR MORE INFORMATION

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