



August 10, 2009



## SPECIAL UPDATE: Maine Privacy Bill Threatens All Marketing Efforts to Kids

**The state of Maine has just passed a bill that in its current form would severely restrict, and in some cases entirely prohibit, the ability of marketers to promote their products and services to minors in that state.**

The bill, titled “An Act to Prevent Predatory Marketing to Minors,” was originally intended to prohibit the use of health-related information obtained from a minor over the Internet or a wireless device for purposes of marketing products and services to that minor. Somewhere in the legislative process, however, the bill was expanded to apply not only to the use of health-related information obtained over the Internet or via a wireless device, but to all personal information regarding a minor irrespective of the medium through which the information was obtained. Personal information is defined to include (1) an individual’s first name or first initial and last name, (2) a home or other physical address, (3) a social security number, (4) a driver’s license number or state identification card number, and (5) any information that is collected in combination with one of the identifiers described above.

The bill as currently drafted broadly prohibits the use of any health-related information 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. Use of information in violation of this section is deemed to be predatory marketing.

The consequences of this bill for the marketing community are enormous, and the prohibitions of this bill extend far beyond the provisions of the Children’s Online Privacy Protection Act, which currently governs the collection and use of data over the Internet from children under the age of 13.

Unlike COPPA, the Maine bill has no definition of “minor.” Thus the bill



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would seemingly apply to any individual under the age of 18 – which is the current age of majority in Maine. In addition, unlike COPPA, this bill applies to information collected both online and offline and there is no exception to the statutory prohibition even if parental consent is obtained.

From a practical standpoint this essentially means that marketers will be precluded from marketing their products or services to or engaging minors in any promotional activity if the marketer has obtained personal information from that individual. This would mean, for example, that marketers could not offer any premiums or other incentives to minors or invite minors in the state of Maine to participate in sweepstakes or contests, as such activity would necessarily require the collection of personal information. In addition, since marketers typically do not know the state of residence of individuals who respond to offers via the Internet or via a wireless device, marketers may have to implement compliance procedures on a nationwide basis unless they have a mechanism in place to screen for age and residency.

Marketers and industry associations, including the [Promotion Marketing Association](#), are taking a close look at the possible options for challenging or effectuating a modification of the bill. We will continue to report on developments in this area as they occur.

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