



March 4, 2010

Senator Elizabeth Schneider, Chair

Representative Nancy Smith, Chair

Members of the Joint Standing Committee on Business, Research and Economic Development

State of Maine Legislature

Re: Testimony in SUPPORT of LD 1677, An Act to Protect Minors from Pharmaceutical Marketing Practices

Dear Senator Schneider, Representative Smith and distinguished members of the Business Research and Economic Development Committee:

I am here today to testify in SUPPORT of LD 1677, An Act to Protect Minors from Pharmaceutical Marketing Practices with concerns which I will outline in a moment.

We support the intent of LD 1677 as well as the intent of LD 1183, the original legislation. We recognize the importance of protecting minors from unscrupulous predatory marketing practices and we appreciate the opportunity to share our views on how we think that goal is achievable with LD 1677.

I wanted to first quickly lay out who some of the members of the Maine Merchants Association are. Our members include candy makers, bead stores, toy stores, and some retail icons of Maine like LL Bean, Mardens, and Renys. We also have many of the larger merchants like Sears, JCPenney, Target and Macy's. However, we also have a large number of pharmacy members as members of our association.

As we are all aware, the previous legislation known as LD 1183 carried a number of unintended consequences that affected a large swath of our membership. My candy stores feared they could not hold contests for kids, my bead stores worried they could not do birthday club programs and my members that sell contact lenses felt they could not send reminder notices to teens to refill their contact lens prescription. We know that prohibiting that type of marketing to teens was never the intent of the legislation. They were nonetheless caught up in the letter of the law.

Although Maine's Attorney General has stated the existing LD 1183 law is not enforceable, I have a number of members who continue to comply with the law until it is successfully repealed. In fact, if you

go to some of their websites, you will see that they will not permit someone to opt-in for email notifications if they are under the age of 18 only in the state of Maine. They feel that until the law is repealed, there is too much risk to not comply.

So, we strongly support the swift repeal of Public Law, Chapter 230, Sec 1. 10 MRSA c. 1055.

While LD 1677, as drafted, is acceptable for a number of my members, my pharmacy members continue to have some concerns that may adversely impact retail pharmacy. We want to publicly thank Senator Schneider for meeting with some of our pharmacy members recently so they could outline their concerns with LD 1677, as originally drafted. We appreciate her willingness to hear their concerns.

Our concerns include:

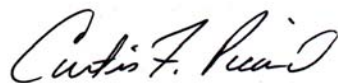
- Retail pharmacy medical records and disclosure and use of such records are covered by provisions set forth in Title 22, § 1711-C and § 1711-E.
- The provisions of § 1711-C at 6B and §1711-E at F-1 regulate and define retail pharmacy marketing prohibitions. (see attachment).
- The provisions of LD 1677 are not intended to regulate retail pharmacy.
- The provisions of LD 1677 should not contradict or conflict with provisions of §1711-C and §1711-E.

To help in your consideration of this bill, we are proposing the attached amendment language that we feel helps alleviate the concerns of our retail pharmacy members. (See attachment).

In summation, while the intent of LD 1677 is noble, this issue remains very complex and is likely to continue to have unintended consequences. The committee is going to hear from a number of parties on both sides of the issue and will have a lot of information to consider.

At the end of the day, if the committee feels that more time is needed to address the issue appropriately, the Maine Merchants Association is willing to be an active participant in the process. However, I want to close by urging the committee to act swiftly on the repeal section of LD 1677. Time is of the essence in that regard and we urge the committee to support LD 1677 with that in mind.

Sincerely,



Curtis Picard
Executive Director