

Proposed Amendment from Senator Schneider to LD 1677

An Act To Protect Minors from ~~Pharmaceutical~~ Prescription Drug Marketing Practices

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

Sec. 1. 10 MRSA c. 1055, as amended, is repealed.

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

CHAPTER 1057

PHARMACEUTICAL PRESCRIPTION DRUG MARKETING TO MINORS

§ 9561. Unlawful ~~pharmaceutical~~ marketing of prescription drugs to minors

1. Definitions. As used in this section, "minor" means a person who is at least 13 years of age and under 17 years of age. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

A. Minor. "Minor" means a person who is under 17 years of age and a resident of the State of Maine.

B. Personal information. "Personal information" means an individual's first name or first initial and last name in combination with a physical address, telephone number or other information sufficient to contact the minor.

C. Marketing prescription drugs. "Marketing prescription drugs" means the business of advertising or otherwise promoting the purchase or use of a prescription drug as regulated by the United States Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21 United States Code, Chapter 9. "Marketing prescription drugs" does not include pharmacy reimbursement, formulary compliance, pharmacy file transfers in response to a patient request or as a result of the sale or purchase of a pharmacy, patient care management, utilization review by a health care provider or agent of a health care provider or the patient's health plan or an agent of the patient's health plan, quality assurance, utilization review or peer review and health care research. "Marketing prescription drugs" does not mean the collection, use and transfer of personal information for the purposes of treatment, payment or health care operations or any other purpose permitted under the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended.

2. Prohibition; marketing prescription drugs to minors. A person may not knowingly collect and use personal information collected on the Internet from a minor for the purposes of pharmaceutical marketing prescription drugs to that minor, except that a person may collect personal information from a minor for the purposes of responding

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directly to a specific request from that minor ~~in violation of rules adopted by the Attorney General under subsection 3.~~

2-A. Prohibition; prizes and contests. A person involved in marketing prescription drugs is prohibited from conditioning the participation of a person known to be a minor in any game, the offering of a prize, contest, giveaway, or any other activity on the minor disclosing more personal information than is reasonably necessary to participate in such activity and is required to promptly delete any personal information once the minor's participation in the activity is completed.

3. Rules. ~~In order to ensure the health and safety of minors, no later than one year after the effective date of this section, after issuing notice and receiving public comment, the Attorney General shall adopt rules governing the collection and use of personal information collected on the Internet from a minor for the purposes of pharmaceutical marketing prescription drugs. The rules must be consistent with and to the extent possible the same as those established under the federal Children's Online Privacy Protection Act of 1998, 15 United States Code, Sections 6501 to 6506 (2007) and 16 Code of Federal Regulations, Part 312 (1999). The rules must define "pharmaceutical marketing" "prescription drug marketing" in a manner that includes the business of advertising or otherwise promoting the sale of prescription and over the counter drugs as regulated by the United States Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21 United States Code, Chapter 9, and that ensures the adequate protection of the health and safety of minors.~~

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

SUMMARY

This amendment maintains the repeal in the bill of Title 10, chapter 1055 on marketing and data collection practices. It changes the scope of the new chapter from pharmaceutical marketing to marketing prescription drugs to minors. It prohibits the knowing collection or use of personal information from a minor who is under 17 years of age and a resident of the State of Maine for the purposes of marketing prescription drugs to that minor, except that a person may collect personal information from a minor for the purposes of responding directly to a specific request from that minor. It also prohibits a person involved in marketing prescription drugs from conditioning the participation of a person known to be a minor in any game, the offering of a prize, contest, giveaway, or any other activity on the minor disclosing more personal information than is reasonably necessary to participate in such activity and requires that the information collected be promptly deleted once the minor's participation in the activity is completed.

It adds a new definition for personal information and marketing prescription drugs, as well amends the definition of minor. It removes any reference in the bill to rulemaking requirements for the Office of the Attorney General. It maintains the current

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language in the bill that establishes that a violation of this chapter is an unfair trade practice as prohibited by the Maine Unfair Trade Practices Act.