

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 9, 2009
To: Business, Research and Economic Development Committee
From: Natalie Haynes, Esq., Legislative Analyst

LD 1183 - An Act to Prevent Predatory Marketing Practices against Minors Regarding Data Concerning Health Care Issues

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.

TESTIMONY

Table with 2 columns: Proponents and Opponents. Proponents list 5 points regarding technology use, targeting minors, data collection, and marketing to children. Opponents list 'None'.

- The bill should be strengthened to include other personal information, such as the minor's name, address, date of birth and social security number.
- Direct to consumer advertising for prescription drugs has been permitted by the FDA, and there are no specific rules for marketing to kids and teens.
- The only law that regulates online marketing to children is the Children's Online Privacy Protection Act, which requires parental permission before any commercial entity can collect personal information from a child under 13.

NFNA

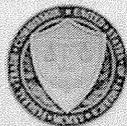
- None

Proposed Amendments:

- See attached proposed amendment from Senator Schneider.

FISCAL IMPACT:

- Not yet received.



Federal Trade Commission Protecting America's Consumers

FTC Business Alert

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The Children's Online Privacy Protection Rule:

Not Just for Kids' Sites

The Children's Online Privacy Protection Rule seeks to put parents in control of what information commercial sites collect from their children online. The Rule, in effect since April 2000, was issued by the Federal Trade Commission (FTC), the nation's consumer protection agency, as a result of the Children's Online Privacy Protection Act (COPPA), passed by Congress in 1998.

The Rule applies to operators of commercial Web sites and online services directed to children under the age of 13 that collect personal information. It also applies to general audience Web sites and online services that have actual knowledge that they are collecting information from children under the age of 13. The Rule requires that these Web site operators post privacy policies, provide parental notice, and get verifiable consent from a parent or guardian before collecting personal information from children.

Although the Rule doesn't define the term "actual knowledge," it indicates that a Web site operator is considered to have actual knowledge of a user's age if the site asks for - and receives - information from the user from which age can be determined. For example, actual knowledge of age exists when an operator learns a child's age by asking for date of birth on a Web site's registration page. But FTC staff attorneys say Web sites asking indirect questions that may elicit age information may be thought to have actual knowledge, too. For example, actual knowledge of age may be gleaned from the answers to "age identifying" questions like, "What grade are you in?" or "What type of school do you go to: (a) elementary; (b) middle; (c) high school; (d) college."

The Rule does not require operators of general audience sites to investigate the ages of their site's visitors. However, asking for - or otherwise collecting - information that establishes that a visitor is under the age of 13 triggers the requirement that operators obtain verifiable parental consent before collecting personal information from that child and otherwise comply with the requirements of the COPPA Rule.

Is your Web site covered by the Rule? If it is directed to children and collects personal information from them, agency staff attorneys say the answer is yes, compliance is required. If you operate a general audience Web site or online service, and you have actual knowledge that you are collecting personal information from children under the age of 13, compliance is required, as well.

For general information about actual knowledge and how to comply with the COPPA Rule, visit www.ftc.gov/privacy/privacyinitiatives/childrens.html. For answers to particular questions, call the COPPA Compliance Hotline at 202-326-3140.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

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Children's Privacy

The Children's Online Privacy Protection Act

The primary goal of the Children's Online Privacy Protection Act (COPPA) Rule is to give parents control over what information is collected from their children online and how such information may be used.

The Rule applies to:

- Operators of commercial Web sites and online services directed to children under 13 that collect personal information from them;
- Operators of general audience sites that knowingly collect personal information from children under 13; and
- Operators of general audience sites that have a separate children's area and that collect personal information from children under 13.

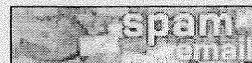
The Rule requires operators to:

- Post a privacy policy on the homepage of the Web site and link to the privacy policy on every page where personal information is collected.
- Provide notice about the site's information collection practices to parents and obtain verifiable parental consent before collecting personal information from children.
- Give parents a choice as to whether their child's personal information will be disclosed to third parties.
- Provide parents access to their child's personal information and the opportunity to delete the child's personal information and opt-out of future collection or use of the information.
- Not condition a child's participation in a game, contest or other activity on the child's disclosing more personal information than is reasonably necessary to participate in that activity.
- Maintain the confidentiality, security and integrity of personal information collected from children.

In order to encourage active industry self-regulation, COPPA also includes a **safe harbor** provision allowing industry groups and others to request Commission approval of self-regulatory guidelines to govern participating Web sites' compliance with the Rule.

Learn more about the COPPA Rule in our [Laws & Rules](#) and [Enforcement](#) sections. Educating consumers and businesses about the importance of children's privacy is also a central part of the Commission's mission -- look at our [Education & Guidance](#) section to see our publications. Additional information about the Commission's efforts on children's privacy can be found by looking through our [Reports & Testimony](#) and our [Press Room](#).

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SENATOR SCHNEIDER'S PROPOSED AMENDMENT TO LD 1183

Amend the bill in Section 1, § 9521 by inserting the following new subsection:

3. Person. "Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

4. Personal information. "Personal information" means an individual's first name, or first initial, and last name in combination with any one or more of the following data elements:

A. Social security number;

B. Driver's license number or state identification card number;

C. Account number, credit card number or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes or passwords;

D. Account passwords or personal identification numbers or other access codes; or

E. Any of the data elements contained in paragraphs A to D when not in connection with the individual's first name, or first initial, and last name, if the information if compromised would be sufficient to permit a person to fraudulently assume or attempt to assume the identity of the person whose information was compromised.

Further amend the bill by inserting anywhere "health-related information" appears the following 'health-related or personal information'.

Further amend the bill by in § 9524, sub-§ 1, line 35, by striking shall and inserting in its place 'may'.

Further amend the bill by in § 9524, sub-§ 3, by striking section 3 and inserting in its place the following:

3. Civil violation; penalty. Notwithstanding the penalty provisions of Title 5, section 209, each violation of this chapter constitutes a civil violation for which a fine may be assessed of:

A. A minimum penalty of no less than \$10,000 and no more than \$20,000 for a first violation; and

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

SUMMARY

This amendment adds a new definition for person and personal information for this new chapter and prohibits the collection of both health-related and personal information from minors. It also removes the mandatory requirement for the Attorney General to establish procedures for

complaints under this chapter, and instead provides the Attorney General with permissive authority to establish these procedures. It strikes the penalty provision and replaces the bill with a new penalty provision section that clarifies that notwithstanding the provisions of the Unfair Trade Practices Act, each violation of this chapter constitutes a civil violation for which a fine may be assessed of: (A) A minimum penalty of no less than \$10,000 and no more than \$20,000 for a first violation; and (B) No less than \$20,000 for a 2nd violation and any subsequent violation.

