



October 8, 2009

Hon. Lawrence Bliss, Senate Chair
Hon. Charles Priest, House Chair
Members of the Joint Standing Committee on Judiciary
Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Re: Public Law 2009, chapter 230 (LD 1183), *An Act to Prevent Predatory Marketing Practices against Minors*

Dear Chairman Bliss, Chairman Priest and Members of the Judiciary Committee:

The Marketing Research Association (“MRA”)¹, an association representing the entire survey and opinion research profession, is writing to express gratitude for the efforts of the Maine legislature to protect minors from harmful marketing practices. Unfortunately, Public Law 2009, chapter 230, An Act to Prevent Predatory Marketing Practices against Minors (“Act”), severely impairs or eliminates most survey and opinion research work with minors in Maine.

I. Survey and Opinion Research Obligation to Protect Privacy

Members of MRA are stringently bound by their ethical obligations to protect the privacy and confidentiality of research participants and their data. The survey and opinion research profession is unlike most businesses that collect data in support of their businesses or in order to make their businesses work. The collection and analysis of data is the business of the survey and opinion research profession. Therefore, privacy is the cornerstone of the survey and opinion research profession.

II. Data Transfer Restriction Impairs or Eliminates Survey and Opinion Research

Representative (and LD 1183 cosponsor) Sharon Treat mustered a significant amount of survey and opinion research data² to support passage of the Act. Were she to seek current

¹ The Marketing Research Association (“MRA”) is the leading and largest association of the survey and opinion research profession. MRA promotes, advocates, and protects the integrity of the survey and opinion research profession and strives to improve respondent cooperation in research.

² See Testimony of Representative Sharon Treat Co-Sponsor, LD 1183, “An Act to Prevent Predatory Marketing Practices Against Minors Regarding Data Concerning Health Care Issues”, April 9, 2009, and Attachments #2 & #3.

data, she would discover that it would no longer include the attitudes, opinions and ideas of minors in Maine.

The Act prohibits the transfer of health-related or personal information if that information individually identifies the minor *even* if parental consent is obtained. This provision significantly impairs the ability to conduct survey and opinion research with minors in the state of Maine. The only way to conduct research with minors while complying with the prohibition on data transfer is to conduct all research within one big all-inclusive company. Unfortunately, very little research, whether conducted in person, over the phone, by email, or online, is or can be conducted entirely within a single organization.

Although no personally identifiable information is normally shared with clients, it must be transferred between various companies involved in conducting the study in order to complete the work. The average research study requires multiple organizations that divide the labor: one company is hired by a client to conduct a study and it contracts with others to get the study completed. For instance, one company might do the recruitment of research participants or provide the “sample”, another would collect the data, yet another might translate any responses from foreign languages, one more would process and analyze the data – all before the original hired company puts together the study results (with de-identified, aggregate data) into a report for the client.

Survey and opinion researchers take care to protect the confidentiality of data, especially when it is personally identifiable. MRA suggests the Act’s prohibition on the transfer of health-related or personal information be amended to apply to marketing purposes only. Maine minors should be included in the scope of all appropriate research—locally, regionally, and nationwide.

III. Survey and Opinion Research is Not Marketing

The majority of restrictions in the Act do not apply to survey and opinion research because survey and opinion research is not marketing. Sales are not involved in its processes and procedures. It is a social science involving many methodologies and frameworks, with data collection conducted in many modes, including telephone, in person and online.

Researchers measure public opinions of services, products, issues and ideas. By contrast, sales-related activities attempt to sell goods or services to the public. Researchers *never* ask for money or attempt to sell products or services. Moreover, sales or solicitation is not acceptable or permitted in legitimate and professionally-conducted survey and opinion research and is a violation of the MRA Code of Ethics³.

³ For example, see subsections 8 and 34 of the Marketing Research Association (MRA) Code of Marketing Research Standards. “8. Will not represent a non-research activity to be opinion and marketing research, such as, but not limited to ... sales or promotional approaches to the respondent”. “34. Will ensure that information collected during any study will not be used for any sales, solicitations or Push Polling. Information provided by respondents in an opinion and marketing research study cannot be used for unrelated, non-research purposes such as direct marketing, non-consent list generation, credit rating, push polling, fundraising or other intrusive marketing or political activities.”

MRA would like to reinforce that there is a clear distinction between survey and opinion research activities and marketing. MRA suggests that the Joint Committee amend the Act to provide a clear exemption for survey and opinion research activities—activities that seek to gather opinions and ideas and do not attempt to sell, market or promote a product, service, issue or idea.

IV. Broad Language and Scope

The submitted comments and recent case⁴ show the Act is substantially overbroad and presents constitutional difficulties. MRA fully supports the arguments presented and believes that the Act should be amended for clarity and accordingly tailored more narrowly.

MRA applauds the efforts of the Maine legislature in reconsidering the harmful provisions of the Act and their harmful impact. We look forward to working with you in drafting narrowly tailored language that protects minors without inhibiting the ability to conduct survey and opinion research with minors in the state of Maine.

Respectfully,



LaToya R. Lang
State Legislative Director and Counsel
The Marketing Research Association (MRA)



Howard Fienberg
Director of Government Affairs
The Marketing Research Association (MRA)

⁴ See *Maine Independent Colleges Association, et al. v. Governor John E. Baldacci and Attorney General Janet T. Mills, et. al.*,_09-cv-00396-JAW.