

October 8, 2009

**Senator Lawrence Bliss-Chair
Representative Charles Priest-Chair
and distinguished members of the Judiciary Committee**

Testimony on Public Law 2009, chapter 230 (LD 1183), An Act to Prevent Predatory Marketing Practices against Minors

Dear Senator Bliss, Representative Priest and members of the Judiciary Committee:

The Retail Industry Leaders Association (RILA) thanks the Committee for the opportunity to submit the following written testimony regarding LD 1183, An Act to Prevent Predatory Marketing Practices against Minors.

By way of background, the Retail Industry Leaders Association (RILA) is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Our members are committed to the protection of minors and support the spirit in which this law was created. However, the many unintended consequences which will result from this legislation as written—and which we believe do not reflect the original goals of the law's creators—are a serious concern to our members. We believe these unintended consequences will significantly and negatively impact Mainers and impede legitimate and non-predatory business practices by Maine businesses. We are deeply appreciative of the Maine legislative leadership's willingness to quickly engage stakeholders and review this legislation.

Impact on Consumers

RILA and our member companies believe that children should be protected from predatory internet marketing practices and whole-heartedly support efforts to ensure this. However, the current language would prevent all contact with minors that reference personal or health-related information without prior parental consent and in doing so would create nonessential barriers to beneficial information and prevent companies from providing legitimate, desired services to minors and their families.

For example, as written, the law would prohibit pharmacies from providing all service to minors. Section 9522.2 prohibits transferring health-related information that individually identifies a minor to a third-party. The section does not provide an exception for consent by the parent. Therefore, the pharmacy would be unable to provide this information to insurance companies.

As written, Section 9553 prevents all product- and service-related contact with minors and provides no exception for parental consent or opting to receive communications. For example, eye care providers who serve minors would be prevented from sending minors reminders to refill contact lens prescriptions or schedule an annual eye exam.

Many retailers have loyalty and reward programs that offer benefits to members such as special discounts, gifts for customer's birthdays, and prize drawings for special events. The current language of Section 9553 would prohibit retailers from making these programs available to teens.

LD 1183 is intended to protect minors from predatory marketing practices, but the scope of the law's current language would also prevent retailers from offering and communicating valued services and desired programs to minors and their families.

Impact on Businesses

In addition to impacting retailers' ability to provide convenience, goods, and services to Maine consumers, LD 1183 would also have a significant impact on several areas of retailers' business operations.

For example, the law would require retailers to collect date of birth from all customers so the retailer could either (a) not complete a transaction with a minor or (b) remove minors from marketing. This would significantly change how retailers do business and would create new privacy concerns by maintaining that information. Without the ability to identify minors in households, retailers would, in many cases, be unable to send out weekly circulars with specials and coupons that families find so useful with tightened budgets in today's economy.

Retailers who employ minors would experience the same information restrictions as pharmacies and could not enroll minor employees in health care plans as they would be prevented from collecting and sending health-related and personal information to their health care insurance providers. Additionally, retailers who employ minors would be restricted from communicating to them information about employee discounts and promotions.

For retailers, the impact of LD 1183 in its current form has the potential to disrupt valid business operations, raise new privacy concerns with the collection and storage of date of birth information, and prevent retailers from providing the same benefits to minor employees that they do to adult employees.

Conclusion

RILA appreciates the opportunity to provide comments to the Committee as it considers revisions to LD 1183. RILA supports the spirit of this law and applauds the Maine Legislature for proactively working to protect its minors from predatory marketing practices, which our members neither condone nor engage in.

However, the broad scope of the current legislation will produce consequences beyond what RILA believes the law's creators intended and will negatively impact not only Maine retailers but also Maine consumers who will no longer be able to receive some of the goods, services and programs they benefit from and depend on.

RILA looks forward to supporting the Judiciary Committee in any way that we can as the Committee moves forward to clarify the intent and scope of LD 1183 to protect Maine's minors from predatory marketing practices while at the same time ensuring they and their families are fully served by a strong and vibrant Maine retail base.

RILA thanks you for the opportunity to share this testimony today on behalf of our members.



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