



## Client Alert

Contact Attorney Regarding  
This Matter:

Matthew V. Wilson  
404.873.8551 - direct  
404.873.8552 - fax  
[matthew.wilson@agg.com](mailto:matthew.wilson@agg.com)

Arnall Golden Gregory LLP  
Attorneys at Law  
171 17th Street NW  
Suite 2100  
Atlanta, GA 30363-1031  
404.873.8500  
[www.agg.com](http://www.agg.com)

### **NEW MAINE LAW RESTRICTS THE COLLECTION, USE AND DISCLOSURE OF PERSONAL AND HEALTH-RELATED INFORMATION FROM MINORS**

In June, the Governor of Maine signed into law, the "Act To Prevent Predatory Marketing Practices Against Minors," which statute will go into effect on September 12, 2009. Despite the seeming narrow focus implied by the title, this far-reaching statute will effectively make it unlawful to (1) collect or receive individually identifiable or health-related information from any "minor" (under the age of 18) without "verifiable parental consent" if that information will be used for marketing purposes, (2) disclose any such information to third parties for any reason (except in very limited circumstances), or (3) use a minor's personal or health-related information for the purpose of marketing a product or service to that minor.

Essentially, the new statute extends the Children's Online Privacy Protection Act (COPPA) to teens between the ages of 13 and 18 living in the State of Maine. The law goes much further than COPPA, however, in that (1) the restrictions apply to both online and offline activities, (2) the statute prohibits any disclosure of a minor's information to any third party and prohibits any use of such information in connection with marketing activities regardless of parental consent, and (3) it regulates the collection and use of health-related information in addition to traditional personally identifiable information. With respect to the latter, "health-related information" is defined as "information about an individual or a member of the individual's family relating to health, nutrition, drug or medication use, physical or bodily condition, mental, health, medical history, medical insurance coverage or claims or similar data."

Any violation of the statute will be treated as an "unfair trade practice" for which the state attorney general may seek civil penalties of no less than \$10,000, up to a maximum of \$20,000 for a first violation. All subsequent violations will result in fines of no less than \$20,000 per violation. In addition, the statute also provides for a private right of action that allows for damages of up to \$250 per violation (together with an award to attorneys' fees and costs), which amounts can be trebled if the applicable violation is deemed willful.

If you, in connection with the operation of your business or website, collect, receive or use information from persons under the age of 18 acquired via the internet, collect, receive or use any information from persons in the State of Maine, or engage in direct marketing with anyone under the age of 18, then you should be aware of the sweeping scope of this new statute and should adopt policies and compliance programs that address its requirements and restrictions. Although this statute is certain to face legal challenges, any business that is currently engaged in any of the activities listed above is now faced with an option of either screening out Maine residents (or at least those under the age of 18) from any of the applicable activities, or adopting practices and



## Client Alert

policies that ensure the acquisition of verifiable parental consent from a minor's parent or guardian before engaging in any such activities.

Feel free to forward this Client Alert to others in your business network.

Arnall Golden Gregory LLP has significant experience in the area of privacy law, with a practice focusing on matters ranging from drafting privacy policies; to counseling clients about regulatory compliance and technology-based privacy matters; to resolving related issues and disputes. Do not hesitate to contact us if we can assist you.

*Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, [www.agg.com](http://www.agg.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.*