

October 8, 2009

Honorable Lawrence Bliss
Senate Chair, Joint Standing Committee on
Judiciary
State House, Room 438
Augusta, ME 04333

Honorable Charles Priest
House Chair, Joint Standing Committee on
Judiciary
State House, Room 438
Augusta, ME 04333

Re: PL 2009, C. 230 – An Act to Prevent Predatory Marketing Practices against Minors

Senator Bliss, Representative Priest, and Members of the Joint Standing Committee on Judiciary:

My name is Dan Walker. I am an attorney with Preti Flaherty, and I provide comments on behalf of my client, the Maine Independent Colleges Association (“MICA”), to express our serious concerns related to PL 2009, C. 230 – An Act To Prevent Predatory Marketing Practices against Minors.

The Maine Independent Colleges Association (“MICA”) is the trade association representing all private not-for-profit colleges and universities in the State of Maine, which are accredited by the New England Association of Schools and Colleges. MICA represents 11 private colleges throughout Maine with about 16,000 students. These 11 colleges are the Bangor Theological Seminary, Bates College, Bowdoin College, Colby College, College of the Atlantic, Husson College, Maine College of Art, Saint Joseph’s College of Maine, Thomas College, Unity College, and the University of New England.

MICA has reviewed LD 1183, An Act to Prevent Predatory Marketing Practices Against Minors, 10 M.R.S.A. §§ 9551 *et seq.*, and concludes that the Act is substantially overbroad. The Act prohibits the “transfer” of personal information about a minor in any instance where the information “[i]ndividually identifies the minor.” The term personal information is defined to include the minor’s name. MICA fears that this would be construed to prohibit a college from sending marketing materials about the college, including the college application, to minor students identified as a result of the college receiving their standardized test scores and identifying information. In fact read plainly, the law would prevent a minor from even applying to a college: “A person may not . . . transfer to another person . . . personal information about a minor if that information . . . individually identifies the minor.” § 9552(2).

Under § 9552(1), a college would be prohibited from receiving any information from a minor interested in attending a college without first obtaining parental consent if the personal information would then be used to market the college to the minor. For example, an admissions officer could not make note of a student’s academic or extracurricular interests at a college fair.

Additionally, students would no longer be able to make use of web resources that connect them with colleges based on specific information they provide.

Under § 9552(2), a standardized testing company could not transfer any information to the colleges that would individually identify any minor. Also, a guidance counselor would be prohibited from replying to a college's request for academic information about a student who has filed an application.

MICA believes its members have a right to contact or be contacted by minor students regarding their interest in college. If this law were to go into effect, it would unduly infringe on the rights of minor students who are seeking a post-secondary education and the rights of the colleges who seek to educate them.

Thank you for the opportunity to submit these comments, and MICA looks forward to working with the Committee on this issue during the work session process.

Sincerely,


Daniel W. Walker
Counsel to the Maine Independent Colleges
Association