

HOUSE BILL 1183
By Shepard

AN ACT to discourage the deceptive sale or promotion of health-related cash discount cards or other similar items.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It shall be unlawful and a violation of this act for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized by an individual and separate contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used.

SECTION 2.

(a) Any person, firm, private corporation, or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this act and for the recovery of damages.

(b) Any person subject to liability under this section shall be deemed, as a matter of law, to have purposefully availed himself of the privileges of conducting activities within Tennessee, sufficient to subject the person to the personal jurisdiction of the circuit or chancery court hearing an action brought pursuant to this chapter.

(c) An action for violation of this section may be brought:

(1) In the county where the plaintiff resides;

(2) In the county where the plaintiff conducts business; or

(3) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(d)

(1) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this act, it shall enjoin the defendant from a continuance thereof.

(2) It shall not be necessary, except to recover for actual damages under subsection (d)(3)(B), that actual damages to the plaintiff be alleged or proved.

(3) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant:

(A) One hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise distributed within Tennessee, or ten thousand dollars (\$10,000), whichever is greater;

(B) Three (3) times the amount of the actual damages, if any, sustained;

(C) Reasonable attorney's fees;

(D) Costs; and

(E) Any other relief which the court deems proper.

(e) All actions under this section shall be commenced within two (2) years after the date on which the violation of this act occurred or within two (2) years after the person bringing the action discovered, or in the exercise of reasonable diligence, should have discovered, the occurrence of the violation of this act. The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the person bringing the action proves by a preponderance of the evidence that the failure to timely commence the action was caused by the defendants engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(f) Any defendant may be required to testify in an action brought under the provisions of this act. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

(g) The remedies prescribed in this section are cumulative and in addition to the remedies prescribed in Title 47, Chapter 18, Part 1, and any other applicable criminal, civil or administrative penalties.

SECTION 3. Any person who sells, markets, promotes, advertises, or otherwise distributes any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts from health care providers in health-related purchases in Tennessee shall designate an agent, who is a resident of Tennessee, for service of process and register such agent with the secretary of state.

SECTION 4. Nothing in this act shall be construed to apply to eye or vision care services, glasses or contact lenses provided by an optometrist or ophthalmologist.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect July 1, 2001, the public welfare requiring it.