

SENATE BILL No. 459

AN ACT concerning health related discount cards; amending K.S.A. 2001 Supp. 50-1,100, 50-1,101, 50-1,103, 50-1,105 and 75-438 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 50-1,102.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 50-1,100 is hereby amended to read as follows: 50-1,100. As used in this act:

(a) "Discount card" means a card or any other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts in health-related purchases from health care providers.

(b) "Health care provider" means any person licensed to practice any branch of the healing arts by the state board of healing arts, any person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a medical care facility licensed by the department of health and environment, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a pharmacy registered with the state board of pharmacy, a dentist licensed by the Kansas dental board, a respiratory therapist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection.

~~(c) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, government subdivision or agency or any other legal, governmental or commercial entity.~~

(c) "Network of health care providers" means two or more separate health care providers who have specifically authorized the network to enter into a discount card program and who are contractually obligated to honor the discount card contract entered into by the network of health care providers.

(d) "Date of transaction" means the date payment is processed by the supplier or the date the consumer is able to use the discount card, whichever occurs earlier.

(e) "Service area" means the area defined by the consumer's zip code. Service area shall also include all of the area located outside the area defined by the consumer's zip code but within 60 miles thereof.

Sec. 2. K.S.A. 2001 Supp. 50-1,101 is hereby amended to read as follows: 50-1,101. ~~It shall be unlawful for any person to sell, market, promote, advertise or otherwise distribute any discount card where:~~

~~(a) The discount card does not expressly state in bold and prominent type that such discount is not insurance;~~

~~(b) any discount offered by such discount card is not specifically authorized by a separate contract with each health care provider listed in conjunction with the discount card; or~~

~~(c) the discount or range of discounts offered by such discount card or the access to any range of discounts offered by such discount card are misleading, deceptive or fraudulent, regardless of the literal wording used on such discount card.~~

(a) Any supplier who markets, promotes, advertises or otherwise distributes any discount card in Kansas shall not make misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by such discount card or the access to any range of discounts offered by such discount card.

(b) Any supplier who sells any discount card in Kansas shall:

(1) State in bold and prominent type that such discount is not insurance on all advertisements and on all discount cards;

(2) have a separate contract with each health care provider or network of health care providers listed in conjunction with the discount card;

(3) not make misleading, deceptive or fraudulent representations re-

garding the discount or range of discounts offered by such discount card or the access to any range of discounts offered by such discount card; and

(4) (A) Except as provided in subparagraph (B), provide each prospective customer before purchase or at the time of the confirmation required by K.S.A. 50-672, and amendments thereto, a written list for each type of service offered in conjunction with the discount card containing the name, address, and phone number of the closest 25 health care providers in the prospective customer's service area that are contractually bound to honor the discount card. The written list of providers may be provided electronically if requested in that format by the prospective customer.

(B) Unless the supplier has complied with subparagraph (A), the supplier of the discount card must provide the customer a 30-day right to cancel and shall mail the written list required by subparagraph (A) of paragraph 4 within seven calendar days of the date of the transaction.

(5) Make available to each customer on an ongoing basis thereafter through a toll-free telephone number, the internet, or in writing upon request, the name, address and phone number of all health care providers in such customer's service area who are contractually bound to honor the discount card.

(6) Maintain a surety bond in the amount of \$50,000 issued by a surety company authorized to do business in this state, or establish and maintain a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association or federal savings bank located in this state. Each surety bond and surety account shall be subject to the following:

(A) A copy of the bond or a statement identifying the depository, trustee and account number of the surety account, and thereafter proof of annual renewal of the bond or maintenance of the surety account, shall be filed with the secretary of state. Each such filing shall be accompanied by a filing fee of no more than \$250 to cover the cost of filing and administration. Fees received under this act by the secretary of state shall be deposited in the state treasury to the credit of the information and copy service fee fund.

(B) A surety account shall be maintained until two years after the date that the discount card company ceases operations in the state. Funds from any surety account shall not be released to the discount card company without the specific consent of the attorney general.

(C) No surety on a discount card company bond shall cancel such bond without giving written notice thereof to the secretary of state. Whenever the secretary of state receives notice of a surety's intention to cancel a discount card company's bond, the secretary of state shall notify the affected discount card company that, unless such discount card company files another \$50,000 surety bond with the secretary of state or establishes a \$50,000 surety account on or before the cancellation date of such discount card company's surety bond, then such discount card company will no longer be authorized to do business in this state.

(D) The bond or surety account shall be in favor of any person and the attorney general for the benefit of any person who is damaged by any violation of this act, including any violation by the supplier or by any other person which markets, promotes, advertises or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect.

(E) Any person claiming against the bond or surety account for a violation of this act may maintain an action at law against the discount card company and against the surety or trustee of the surety account. The aggregate liability of the surety or trustee of the surety account to all persons damaged by violations of this act may not exceed the amount of the surety bond or account.

Sec. 3. K.S.A. 2001 Supp. 50-1,103 is hereby amended to read as follows: 50-1,103. Any ~~person~~ supplier who sells, markets, promotes, advertises or otherwise distributes any discount card in Kansas shall designate a resident agent, who is a resident of Kansas, for service of process and such resident agent shall register with the secretary of state pursuant to K.S.A. 60-306 and amendments thereto.

Sec. 4. K.S.A. 2001 Supp. 50-1,105 is hereby amended to read as follows: 50-1,105. (a) K.S.A. 2001 Supp. 50-1,100 through 50-1,105 shall be known as the Kansas discount card ~~deceptive practice~~ act.

(b) *This act shall be part of and supplemental to the Kansas consumer protection act.*

(c) *Any violation of this act shall constitute an unconscionable act and practice under the Kansas consumer protection act and amendments thereto and shall be subject to any and all of the remedies and enforcement provisions of the Kansas consumer protection act.*

(d) *Any person alleging a violation of this act may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this act, and amendments thereto, and such person shall be considered a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.*

(e) *The requirements and remedies of this act are in addition to and not in substitution for any other requirements and remedies provided by law.*

Sec. 5. K.S.A. 2001 Supp. 75-438 is hereby amended to read as follows: 75-438. (a) There is hereby created the information and copy service fee fund in the state treasury. The secretary of state shall remit all moneys received from fees and charges under K.S.A. 75-409 or 75-437 or K.S.A. 2001 Supp. 50-1,101, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and copy service fee fund.

(b) All expenditures from the information and copy service fee fund shall be in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary.

(c) On the effective date of this act, the secretary of state shall certify to the director of accounts and reports the amount of money in the conversion of materials and equipment fund of the secretary of state which moneys are from fees charged for copies of public documents under K.S.A. 75-409, and amendments thereto. Upon receipt of such certification, the director of accounts and reports shall transfer the amount of money certified from the conversion of materials and equipment fund to the information and copy service fee fund. All liabilities of the conversion of materials and equipment fund of the secretary of state which are attributable to the service of providing copies of public documents under K.S.A. 75-409, and amendments thereto, are hereby transferred to and imposed on the information and copy service fee fund.

Sec. 6. K.S.A. 2001 Supp. 50-1,100, 50-1,101, 50-1,102, 50-1,103, 50-1,105 and 75-438 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.