

SENATE BILL NO. 380
INTRODUCED BY J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS APPLICABLE TO CARDS AND PERSONS WHO SUPPLY CARDS; SPECIFYING UNLAWFUL ACTS; PROVIDING A RIGHT TO RETURN AND REQUIRING NOTICE OF THE RIGHT TO RETURN MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; REQUIRING REGISTRATION OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING FINANCIAL RESPONSIBILITY OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING A CARD EDUCATION PROGRAM; PROHIBITING FRAUD CONCERNING CARDS; AMENDING SECTIONS 33-1-318, 33-1-1301, AND 33-1-1302, MCA; REPEALING SECTION 33-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-1-318, MCA, is amended to read:

"33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-107, 33-1-501, 33-1-1302, 33-14-201, chapters 2, 16 through 18, and 30 of this title, [sections 4 through 10], part 13 of chapter 20 of this title, or part 4 of chapter 25 of this title, or any rule or order issued under this code, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this code or any rule or order issued under this

code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearings examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must be issued within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 for each violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under this code."

Section 2. Section 33-1-1301, MCA, is amended to read:

"33-1-1301. Insurance, medical care discount card, pharmacy discount card, and securities fraud education and prevention program. (1) The commissioner may:

(+)(a) establish an insurance, medical care discount card, pharmacy discount card, and securities fraud education and prevention program; and

(-)(b) conduct investigations of insurance, medical care discount card, pharmacy discount card, and securities fraud.

(2) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5]."

Section 3. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, medical care discount card, and pharmacy discount card fraud -- insurer.

(1) A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud when,

in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, ~~or~~ refund, or other benefit received by the victim from the insurance, medical care discount card, or pharmacy discount card.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds or a medical care discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

(8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5]."

NEW SECTION. Section 4. Short title -- purpose. (1) [Sections 4 through 10] may be cited as the "Montana Medical Care Discount Card and Pharmacy Discount Card Act".

(2) The purposes of [sections 4 through 10] are to regulate the promotion, offer, sale, and use of medical care discount cards and pharmacy discount cards and to facilitate the detection of and reduce the occurrence

of medical care discount card and pharmacy discount card fraud.

NEW SECTION. Section 5. Definitions. As used in [sections 4 through 10], unless the context indicates otherwise, the following definitions apply:

(1) "Enroller" means a person who:

- (a) solicits the purchase or renewal of a medical care discount card through that person;
- (b) transmits, for consideration, from a supplier to another person or from another person to a supplier a contract or application for a medical care discount card or the renewal of a medical care discount card; or
- (c) acts or aids in another manner in the delivery or negotiation of a medical care discount card or the renewal or continuance of a medical care discount card.

(2) "Health care provider" means:

- (a) an individual licensed by the department of labor and industry to practice or who holds a temporary permit to practice a branch of the healing arts;
- (b) a professional corporation organized pursuant to Title 35, chapter 4, by one or more individuals described in subsection (2)(a);
- (c) a Montana limited liability company organized pursuant to Title 35, chapter 8, for the purpose of rendering professional services by individuals described in subsection (2)(a);
- (d) a partnership of individuals described in subsection (2)(a);
- (e) a Montana nonprofit corporation organized pursuant to Title 35, chapter 2, for the purpose of rendering professional health care services by one or more individuals described in subsection (2)(a); or
- (f) a health care facility as defined in 50-5-101.

(3) "Health insurance issuer" means a health insurance issuer, as defined in 33-22-140, that is authorized to do business in this state.

(4) (a) "Medical care discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider.

(b) The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount.

(5) "Medical care discount card supplier" means a person engaged in selling or furnishing, either as principal or agent, for consideration, one or more medical care discount cards to another person or persons.

(6) "Network of health care providers" means two or more health care providers who are contractually

obligated to provide services in accordance with the terms and conditions applicable to a medical care discount card.

(7) "Pharmacy discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for a consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount.

(8) "Pharmacy discount card supplier" means a person engaged in selling or furnishing, either as a principal or agent, for a consideration, one or more pharmacy discount cards to another person or persons.

(9) "Prescription drug provider" means a pharmacy or other business that is contractually bound to provide a discount on one or more prescription drugs in conjunction with the use of a pharmacy discount card.

(10) "Service area" means the area within a 60-mile radius of the home or place of business of a medical care discount card user or pharmacy discount card user."

NEW SECTION. Section 6. Unlawful acts by medical care discount card suppliers or enrollers.

(1) A medical care discount card supplier or an enroller that markets, promotes, advertises, or distributes a medical care discount card in Montana:

(a) may not make misleading, deceptive, or fraudulent representations regarding:

(i) the discount or range of discounts offered by a medical care discount card;

(ii) the access to any range of discounts offered by a medical care discount card; or

(iii) another medical care service provided in connection with a medical care discount card;

(b) may not use terms or phrases commonly associated with insurance products that could lead a prospective purchaser or user of a medical care discount card to believe that the card being offered is comprised of one or more insurance products or is a substitute for insurance, despite disclaimers to the contrary by the medical care discount card supplier or enroller;

(c) shall provide to each prospective purchaser or user of a medical care discount card, before purchase or use, a written list for each type of service offered in conjunction with the card containing the name, address, telephone number, and provider type of the nearest 15 health care providers in the prospective purchaser's or user's service area that are contractually bound to provide services in accordance with the terms and conditions applicable to the card; and

(d) shall make continuously available to each medical care discount card user, through a toll-free telephone number, the internet, and in writing upon request, the name, address, telephone number, and provider

type of all health care providers in the user's service area who are bound by contract to provide services in accordance with the terms and conditions applicable to the card.

(2) A medical care discount card supplier that markets, promotes, advertises, or distributes a medical care discount card in Montana shall:

(a) state, on all advertisements for medical care discount cards and on all cards themselves, in bold and prominent type of at least 14 points in size, that the card is not insurance;

(b) designate and provide the commissioner with the name, address, and telephone number of a medical care discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 10] applicable to medical care discount cards and medical care discount card suppliers and enrollers; and

(c) maintain a separate contract with each health care provider or network of health care providers to be used in conjunction with a medical care discount card.

NEW SECTION. Section 7. Right to return or cancel medical care discount card or pharmacy discount card -- notice -- prohibited acts. (1) A medical care discount card or pharmacy discount card issued for delivery in this state is returnable or cancelable, within 30 days of the date of delivery of the card or a longer period if provided in the purchase agreement, by the purchaser or user for any reason, and the user must receive a full refund of all fees, including enrollment fees, paid for the card.

(2) A medical care discount card supplier or pharmacy discount card supplier may not charge or collect a fee, including a cancellation fee, after a purchaser or user has returned a card to the supplier or given the supplier notice of the person's intention to return or cancel the card.

(3) A medical care discount card supplier or pharmacy discount card supplier shall ensure that each card issued by it contains a notice stating the terms under which the medical care discount card or pharmacy discount card may be returned or cancelled as provided in subsections (1) and (2). A medical care discount card or pharmacy discount card returned or cancelled in accordance with this section is void from the date of purchase.

NEW SECTION. Section 8. Sale of medical care discount card by unregistered supplier prohibited -- requirements for registration -- list of authorized enrollers required. (1) A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

(2) An application to the commissioner for a certificate of registration must be accompanied by a

nonrefundable application fee of \$100. The commissioner shall issue the certificate unless the commissioner determines that the medical care discount card supplier or an officer or manager is not financially responsible, does not have adequate expertise or experience to operate a medical care discount card business, or is not of good character or that the supplier or its affiliates or a business formerly owned or managed by the supplier or an officer or manager of the supplier has had a previous application for a certificate of registration denied, revoked, suspended, or terminated for cause or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous 5 years.

(3) A medical care discount card supplier shall renew its certificate of registration annually. The certificate is renewed upon payment by the supplier of a nonrefundable renewal fee of \$100 and expires on the anniversary of its issuance if the renewal fee is not paid before that date. Once issued or renewed, the certificate continues in effect for 1 year unless suspended, revoked, or terminated. The commissioner shall deposit the fees required by this section with the state treasurer, to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the medical care discount card supplier has violated a provision of [sections 4 through 10], that the supplier is not financially responsible or competent or that the supplier or an affiliate or business formerly owned or managed by the supplier has had a certificate of registration denied or suspended for cause or has been found in violation of a statute or regulation in another jurisdiction.

(5) A medical care discount card supplier that violates the provisions of subsection (1) is subject to a civil penalty of not less than \$5,000 or more than \$25,000 for each violation. Each day of violation is considered to be a separate violation.

(6) A medical care discount card supplier that is a health insurance issuer is not required to obtain a certificate of registration in accordance with this section.

(7) A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner on that date. A person commencing business as a supplier after October 1, 2005, shall file a certificate of registration and its list of authorized enrollers with the commissioner at least 30 days before commencing business as a supplier. After the initial filing of a list of its enrollers with the commissioner, a supplier shall file an updated list quarterly.

(8) This section does not excuse a medical care discount card supplier that is also an insurer from full compliance with the Montana Insurance Code.

NEW SECTION. Section 9. Medical care discount card supplier financial responsibility

requirements -- claims against bonds or accounts. (1) A person intending to act as a medical care discount card supplier may not market, promote, advertise, or distribute a medical care discount card in this state until the person has purchased a bond or established a surety account and filed with the commissioner a copy of a bond or a statement identifying a surety account depository as provided in this section.

(2) A person intending to act as a medical care discount card supplier shall:

(a) purchase and maintain a surety bond in the amount of \$500,000 issued by a surety company authorized to do business in this state; or

(b) establish and maintain a surety account in the amount of \$500,000 at a federally insured bank, savings and loan association, or federal savings bank located in this state.

(3) A person intending to act as a medical care discount card supplier shall provide the depository, trustee, and account number of the surety account to the commissioner and shall annually provide to the commissioner proof of renewal of the bond or maintenance of the surety account. The person shall pay a nonrefundable filing fee of \$250 with the initial filing and with each subsequent filing.

(4) A medical care discount card supplier shall maintain the surety account or bond until 2 years after the date that the supplier ceases operations in the state. Money from a surety account may not be released to the supplier without the written consent of the commissioner.

(5) A surety on a medical care discount card company bond may not cancel a bond required by this section without giving at least 21 days' written notice of cancellation to the medical care discount card supplier and the commissioner. If the commissioner receives notice of a surety's intention to cancel a supplier's bond, the commissioner shall notify the affected supplier that, unless the supplier files another \$500,000 surety bond with the commissioner or establishes a \$500,000 surety account on or before the date the bond is to be cancelled, the supplier may no longer do business as a supplier in this state.

(6) A bond surety shall write a bond required by this section and a person intending to act as a medical care discount card supplier shall establish an account in favor of a person, and the commissioner for the benefit of a person, injured by a violation of [sections 4 through 10]. The bond surety shall also write the bond to cover any fines levied against the supplier, a supplier's enroller, or both, for a violation of [sections 4 through 10] occurring during the time the supplier's bond is in effect.

(7) A person with a claim against a medical care discount card supplier's bond or surety account for a violation of a provision of [sections 4 through 10] may maintain an action against the supplier and against either the bond surety or the trustee of the surety account, as appropriate. The aggregate liability of the surety or trustee to a person injured by a violation of [sections 4 through 10] may not exceed the amount of the surety bond or

account.

(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file with the commissioner a copy of a surety bond or statement identifying a surety account depository on that date. A person commencing business as a supplier after October 1, 2005, shall file a copy of a bond or statement with the commissioner at least 30 days before commencing business as a supplier.

(9) A health insurance issuer that is also a medical care discount card supplier is exempt from the requirements of this section.

NEW SECTION. Section 10. Pharmacy discount card supplier requirements. (1) A pharmacy discount card supplier that sells, markets, promotes, or distributes, for a consideration, a pharmacy discount card in Montana:

(a) shall clearly and conspicuously disclose on all advertising, marketing materials, and other purchasing mechanisms that discounts offered through the use of a pharmacy discount card are not insurance, are not designed to replace insurance, and are not intended as a substitute for insurance;

(b) shall clearly and conspicuously disclose on all pharmacy discount cards that discounts offered through the use of the pharmacy discount card are not insurance;

(c) shall disclose, when a pharmacy discount card is sold in combination with a group limited supplemental insurance policy, that discounts offered through the use of the pharmacy discount card are not insurance;

(d) may not, in the advertising or offering of the pharmacy discount card, use terms or phrases commonly associated only with insurance products that could lead a prospective purchaser or user of the card to believe that the pharmacy discount card is comprised of insurance products or is a substitute for insurance, despite disclaimers to the contrary by the pharmacy discount card supplier;

(e) shall ensure that each prescription drug provider claimed by the pharmacy discount card supplier to offer a discount in conjunction with the pharmacy discount card is contractually bound to provide that discount to the purchaser or user;

(f) may not make misleading, deceptive, or fraudulent representations regarding a discount or range of discounts available through the use of a pharmacy discount card;

(g) shall provide to each prospective purchaser or user prior to purchase reasonable access to a list of the benefits and services provided through the use of a pharmacy discount card;

(h) shall provide a prospective purchaser or user prior to purchase access to a list of any prescription

drug providers in the prospective purchaser's or user's service area.

(i) shall disclose the name, address, and telephone number of each prescription drug provider in written information given to a purchaser or user within 7 days after purchase of a pharmacy discount card;

(j) shall disclose in all advertising that a pharmacy discount card purchaser or user has 30 days to cancel a pharmacy discount card as provided in [section 7];

(k) shall make available to each pharmacy discount card user continuously after purchase of a pharmacy discount card, through a toll-free telephone number, the internet, and in writing upon request, the name, address, and telephone number of each prescription drug provider in the user's service area, including mail order prescription drug providers, that are bound by contract to offer prescription drugs in accordance with the terms and conditions of the pharmacy discount card; and

(l) shall designate and provide the commissioner with the name, address, and telephone number of a pharmacy discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 10] applicable to pharmacy discount cards and pharmacy discount card suppliers.

(2) A person violating the provisions of subsection (1) is subject to the fine provided for in 33-1-317.

NEW SECTION. Section 11. Repealer. Section 33-1-107, MCA, is repealed.

NEW SECTION. Section 12. Codification instruction. [Sections 4 through 10] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 4 through 10].

NEW SECTION. Section 13. Applicability. [Sections 4 through 10] apply to a person acting or intending to act as a medical care discount card supplier or enroller, a person acting or intending to act as a pharmacy discount card supplier, a medical care discount card issued, or a pharmacy discount card issued on and after October 1, 2005.

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