

By: Capriglione, Hull, et al.

H.B. No. 3468

Substitute the following for H.B. No. 3468:

By: Klick

C.S.H.B. No. 3468

A BILL TO BE ENTITLED

AN ACT

relating to a patient's access to health records; authorizing a civil penalty; authorizing fees.

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

SECTION 1. Section 15.05, Business & Commerce Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) It is unlawful for a person to place a restraint on trade or commerce by intentionally violating federal laws regulating information blocking, as that term is defined by 45 C.F.R. Section 171.103.

SECTION 2. Section 181.001(b), Health and Safety Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Information blocking" has the meaning assigned by 45 C.F.R. Section 171.103.

SECTION 3. Section 181.004(a), Health and Safety Code, is amended to read as follows:

(a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with:

(1) the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) federal laws regulating information blocking.

SECTION 4. Section 181.102, Health and Safety Code, is amended to read as follows:

Sec. 181.102. CONSUMER ACCESS TO ~~[ELECTRONIC]~~ HEALTH

1 RECORDS. (a) The health information of a patient contained in the
2 patient's physical or electronic health records is considered the
3 patient's property and, subject to the payment of fees required
4 under this section, a patient or the patient's legally authorized
5 representative on request is entitled to copies of those health
6 records.

7 (b) Except as provided by Subsection (d) [~~(b)~~], if a health
8 care provider is using an electronic health records system that is
9 capable of fulfilling the request, the health care provider, as
10 soon as practicable but not later than the 15th business day after
11 the date the health care provider receives a written request from a
12 person for the person's electronic health record, shall provide the
13 requested record to the person in electronic form unless the person
14 agrees to accept the record in another form.

15 (c) Except as provided by Subsection (d), a health care
16 provider's violation of federal laws regulating information
17 blocking constitutes a violation of this section.

18 (d) [~~(b)~~] A health care provider is not required to provide
19 access to a person's protected health information that is excepted
20 from access, or to which access may be denied, under 45 C.F.R.
21 Section 164.524.

22 (e) [~~(c)~~] For purposes of this section [~~Subsection (a)~~],
23 the executive commissioner, in consultation with the department,
24 the Texas Medical Board, and the Texas Department of Insurance, by
25 rule may recommend a standard electronic format for the release of
26 requested health records. The standard electronic format
27 recommended under this section must be consistent, if feasible,

1 with federal law regarding the release of electronic health
2 records.

3 (f) A covered entity that receives a request from a patient
4 or the patient's legally authorized representative for a copy of
5 the patient's health records may charge a fee to produce those
6 records in an amount consistent with the requirements under 45
7 C.F.R. Section 164.524, except that a covered entity may not charge
8 an aggregate amount that exceeds \$100 to produce the records if:

9 (1) the patient is a Medicaid recipient; or

10 (2) the patient's household income is at or below 200
11 percent of the federal poverty level.

12 (g) A covered entity shall post in a conspicuous location
13 for patients requesting health records notice of the option to
14 obtain a copy of the patient's health records under Subsection (f).

15 (h) A covered entity may require a patient or the patient's
16 legally authorized representative to submit a written or electronic
17 request for copies of the patient's health records but may not
18 require a patient or the patient's legally authorized
19 representative to submit a request by facsimile.

20 (i) Unless explicitly authorized by state or federal law, a
21 covered entity may not enter into a contract with a person that
22 includes terms restricting a patient or the patient's legally
23 authorized representative from accessing the patient's health
24 records. Any contract clause or provision that restricts a patient
25 or the patient's legally authorized representative from accessing
26 the patient's health records is unenforceable.

27 SECTION 5. Section [181.201](#), Health and Safety Code, is

1 amended by amending Subsections (b) and (d) and adding Subsections
2 (g) and (h) to read as follows:

3 (b) In addition to the injunctive relief provided by
4 Subsection (a), the attorney general may institute an action for
5 civil penalties against a covered entity for a violation of this
6 chapter, other than a violation of Section 181.102. A civil
7 penalty assessed under this section may not exceed:

8 (1) \$5,000 for each violation that occurs in one year,
9 regardless of how long the violation continues during that year,
10 committed negligently;

11 (2) \$25,000 for each violation that occurs in one
12 year, regardless of how long the violation continues during that
13 year, committed knowingly or intentionally; or

14 (3) \$250,000 for each violation in which the covered
15 entity knowingly or intentionally used protected health
16 information for financial gain.

17 (d) In determining the amount of a penalty imposed under
18 Subsections [Subsection] (b) and (g), the court shall consider:

19 (1) the seriousness of the violation, including the
20 nature, circumstances, extent, and gravity of the disclosure or
21 information blocking;

22 (2) the covered entity's compliance history;

23 (3) whether the violation poses a significant risk of
24 financial, reputational, or other harm to an individual whose
25 protected health information is involved in the violation;

26 (4) whether the covered entity was certified at the
27 time of the violation as described by Section 182.108;

1 (5) the amount necessary to deter a future violation;

2 [~~and~~]

3 (6) the covered entity's efforts to correct the
4 violation;

5 (7) the size and geographic location of the covered
6 entity; and

7 (8) the financial impact the penalty would have on the
8 covered entity's financial viability and ability to adequately
9 serve an underserved community or population.

10 (g) In addition to the injunctive relief provided by
11 Subsection (a), the attorney general may institute an action for
12 civil penalties against a covered entity for a violation of Section
13 181.102. A civil penalty assessed under this subsection may not
14 exceed:

15 (1) \$10,000 for each negligent violation, regardless
16 of the length of time the violation continues during any year; or

17 (2) \$250,000 for each intentional violation committed
18 for the purpose of financial gain, regardless of the length of time
19 the violation continues during any year.

20 (h) If the court in a pending action under Subsection (g)
21 finds the violations occurred with a frequency constituting a
22 pattern or practice, the court may assess additional civil
23 penalties for each violation.

24 SECTION 6. Section 241.154(b), Health and Safety Code, is
25 amended to read as follows:

26 (b) Except as provided by Subsection (d), the hospital or
27 its agent may charge a reasonable fee for providing the health care

1 information except payment information and is not required to
2 permit the examination, copying, or release of the information
3 requested until the fee is paid unless there is a medical
4 emergency. The fee may not exceed the aggregate amount specified
5 under Section 181.102(f) and [sum of:

6 ~~[(1) a basic retrieval or processing fee, which must~~
7 ~~include the fee for providing the first 10 pages of the copies and~~
8 ~~which may not exceed \$30; and~~

9 ~~[(A) a charge for each page of:~~

10 ~~[(i) \$1 for the 11th through the 60th page~~
11 ~~of the provided copies;~~

12 ~~[(ii) 50 cents for the 61st through the~~
13 ~~400th page of the provided copies; and~~

14 ~~[(iii) 25 cents for any remaining pages of~~
15 ~~the provided copies; and~~

16 ~~[(B) the actual cost of mailing, shipping, or~~
17 ~~otherwise delivering the provided copies;~~

18 ~~[(2) if the requested records are stored on microform,~~
19 ~~a retrieval or processing fee, which must include the fee for~~
20 ~~providing the first 10 pages of the copies and which may not exceed~~
21 ~~\$45; and~~

22 ~~[(A) \$1 per page thereafter; and~~

23 ~~[(B) the actual cost of mailing, shipping, or~~
24 ~~otherwise delivering the provided copies; or~~

25 ~~[(3) if the requested records are provided on a~~
26 ~~digital or other electronic medium and the requesting party~~
27 ~~requests delivery in a digital or electronic medium, including~~

1 ~~electronic mail.~~

2 [~~(A)~~ ~~a retrieval or processing fee, which may not~~
3 ~~exceed \$75; and~~

4 [~~(B)~~] the actual cost of mailing, shipping, or
5 otherwise delivering the provided copies.

6 SECTION 7. If any provision of this Act or its application
7 to any person or circumstance is held invalid, the invalidity does
8 not affect other provisions or applications of this Act which can be
9 given effect without the invalid provision or application, and to
10 this end the provisions of this Act are severable.

11 SECTION 8. The changes in law made by this Act apply only to
12 a violation of law that occurs on or after the effective date of
13 this Act. A violation that occurs before the effective date of this
14 Act is governed by the law in effect on the date the violation
15 occurred, and the former law is continued in effect for that
16 purpose. For purposes of this section, a violation of law occurred
17 before the effective date of this Act if any element of the
18 violation occurred before that date.

19 SECTION 9. This Act takes effect September 1, 2023.