

By: Capriglione

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 181.004(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, as that term is defined by 45 C.F.R. Section 171.103.

SECTION 3. Section 181.102, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Except as provided by Subsection (b), a health care provider's violation of federal laws regulating information blocking, as that term is defined by 45 C.F.R. Section 171.103, constitutes a violation of Subsection (a).

1 SECTION 4. Subchapter C, Chapter 181, Health and Safety
2 Code, is amended by adding Section 181.1025 to read as follows:

3 Sec. 181.1025. PATIENT OWNERSHIP OF AND ACCESS TO HEALTH
4 RECORDS. (a) The health records of a patient, including electronic
5 health records, and the medical information contained in those
6 records is considered the patient's property. Subject to payment
7 of any required fees under this section, a patient is entitled to
8 copies of the patient's health records on request.

9 (b) A covered entity that receives a request from a patient
10 for a copy of the patient's health records may charge a fee to
11 produce those records as follows:

12 (1) for a physical copy of the records, a fee in an
13 amount not to exceed the lesser of \$15 or 50 cents per page;

14 (2) for a copy of a filmed record, including a
15 radiogram, X-ray, and sonogram, a fee in a reasonable amount
16 determined by the commission; and

17 (3) for an electronic copy of the records:

18 (A) no fee to the extent the entity maintains the
19 health records in an electronic format; or

20 (B) a fee in a reasonable amount determined by
21 the commission to the extent the entity does not maintain the health
22 records in an electronic format.

23 (c) A covered entity may require a patient to submit a
24 written or electronic request for copies of the patient's health
25 records but may not require a patient to submit a request by
26 facsimile.

27 (d) A covered entity may not enter into a contract with a

1 person that includes terms restricting a patient or the patient's
2 representative from accessing the patient's health records. Any
3 contract clause or provision that restricts a patient's access to
4 the patient's health records is unenforceable.

5 SECTION 5. Section 181.201, Health and Safety Code, is
6 amended by amending Subsections (b) and (d) and adding Subsections
7 (g) and (h) to read as follows:

8 (b) In addition to the injunctive relief provided by
9 Subsection (a), the attorney general may institute an action for
10 civil penalties against a covered entity for a violation of this
11 chapter, other than a violation of Sections 181.102 and
12 181.1025. A civil penalty assessed under this section may not
13 exceed:

14 (1) \$5,000 for each violation that occurs in one year,
15 regardless of how long the violation continues during that year,
16 committed negligently;

17 (2) \$25,000 for each violation that occurs in one
18 year, regardless of how long the violation continues during that
19 year, committed knowingly or intentionally; or

20 (3) \$250,000 for each violation in which the covered
21 entity knowingly or intentionally used protected health
22 information for financial gain.

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

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the disclosure;

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

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

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

6 (5) the amount necessary to deter a future violation;
7 and

8 (6) the covered entity's efforts to correct the
9 violation.

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
13 Sections 181.102 and 181.1025. A civil penalty assessed under this
14 subsection may not 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,
18 regardless of the length of time the violation continues during any
19 year.

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

24 SECTION 6. If any provision of this Act or its application
25 to any person or circumstance is held invalid, the invalidity does
26 not affect other provisions or applications of this Act which can be
27 given effect without the invalid provision or application, and to

1 this end the provisions of this Act are severable.

2 SECTION 7. The changes in law made by this Act apply only to
3 a violation of law that occurs on or after the effective date of
4 this Act. A violation that occurs before the effective date of this
5 Act is governed by the law in effect on the date the violation
6 occurred, and the former law is continued in effect for that
7 purpose. For purposes of this section, a violation of law occurred
8 before the effective date of this Act if any element of the
9 violation occurred before that date.

10 SECTION 8. This Act takes effect September 1, 2023.