

1-1 By: Shapiro S.B. No. 2339
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 24, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 24, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2339 By: Uresti

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of discount health care programs by the
1-11 Texas Department of Insurance; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle C, Title 5, Insurance Code, is amended
1-14 by adding Chapter 562 to read as follows:

1-15 CHAPTER 562. UNFAIR METHODS OF COMPETITION AND
1-16 UNFAIR OR DECEPTIVE ACTS OR PRACTICES REGARDING
1-17 DISCOUNT HEALTH CARE PROGRAMS

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 562.001. PURPOSE. The purpose of this chapter is to
1-20 regulate trade practices in the business of discount health care
1-21 programs by:

1-22 (1) defining or providing for the determination of
1-23 trade practices in this state that are unfair methods of
1-24 competition or unfair or deceptive acts or practices; and

1-25 (2) prohibiting those unfair or deceptive trade
1-26 practices.

1-27 Sec. 562.002. DEFINITIONS. In this chapter:

1-28 (1) "Discount health care program" means a business
1-29 arrangement or contract in which an entity, in exchange for fees,
1-30 dues, charges, or other consideration, offers its members access to
1-31 discounts on health care services provided by health care
1-32 providers. The term does not include an insurance policy, a
1-33 certificate of coverage, or a self-funded or self-insured employee
1-34 benefit plan.

1-35 (2) "Discount health care program operator" means a
1-36 person who, in exchange for fees, dues, charges, or other
1-37 consideration, operates a discount health care program and
1-38 contracts with providers, provider networks, or other discount
1-39 health care program operators to offer access to health care
1-40 services at a discount and determines the charge to members.

1-41 (3) "Health care services" includes physician care,
1-42 inpatient care, hospital surgical services, emergency services,
1-43 ambulance services, laboratory services, audiology services,
1-44 dental services, vision services, mental health services,
1-45 substance abuse services, chiropractic services, and podiatry
1-46 services and the provision of medical equipment and supplies,
1-47 including prescription drugs.

1-48 (4) "Knowingly" means with actual awareness of the
1-49 falsity, unfairness, or deceptiveness of the act or practice on
1-50 which a claim for damages under this chapter is based. Actual
1-51 awareness may be inferred if any objective manifestations indicate
1-52 that a person acted with actual awareness.

1-53 (5) "Marketer" means a person who sells or
1-54 distributes, or offers to sell or distribute, a discount health
1-55 care program, including a private label entity that places its name
1-56 on and markets or distributes a discount health care program, but
1-57 does not operate a discount health care program.

1-58 (6) "Member" means a person who pays fees, dues,
1-59 charges, or other consideration for the right to participate in a
1-60 discount health care program.

1-61 (7) "Person" means an individual, corporation,
1-62 association, partnership, or other legal entity.

1-63 (8) "Program operator" means a discount health care

2-1 program operator.

2-2 (9) "Provider" means a person who is licensed or

2-3 otherwise authorized to provide health care services in this state.

2-4 Sec. 562.003. VENUE FOR ACTIONS INVOLVING DEPARTMENT OR
2-5 COMMISSIONER. An action under this chapter in which the department
2-6 or commissioner is a party must be brought in a district court in
2-7 Travis County.

2-8 Sec. 562.004. APPLICABILITY. Except as otherwise provided
2-9 by this chapter, a program operator, including the operator of a
2-10 freestanding discount health care program or a discount health care
2-11 program marketed by an insurer or a health maintenance
2-12 organization, shall comply with this chapter.

2-13 Sec. 562.005. LIBERAL CONSTRUCTION. This chapter shall be
2-14 liberally construed and applied to promote the underlying purposes
2-15 as provided by Section 562.001.

2-16 [Sections 562.006-562.050 reserved for expansion]

2-17 SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND

2-18 UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

2-19 Sec. 562.051. MISREPRESENTATION REGARDING DISCOUNT HEALTH
2-20 CARE PROGRAM. It is an unfair method of competition or an unfair or
2-21 deceptive act or practice in the business of discount health care
2-22 programs to:

2-23 (1) knowingly misrepresent the price range of
2-24 discounts offered by the discount health care program;

2-25 (2) knowingly misrepresent the size or location of the
2-26 program's network of providers;

2-27 (3) knowingly misrepresent the participation of a
2-28 provider in the program's network;

2-29 (4) suggest that a discount card offered through the
2-30 program is a federally approved Medicare prescription discount
2-31 card;

2-32 (5) use the term "insurance," except as:

2-33 (A) a disclaimer of any relationship between the
2-34 discount health care program and insurance; or

2-35 (B) a description of an insurance product
2-36 connected with a discount health care program; or

2-37 (6) use the term "health plan," "coverage," "copay,"
2-38 "copayments," "deductible," "preexisting conditions," "guaranteed
2-39 issue," "premium," "PPO," or "preferred provider organization," or
2-40 another similar term, in a manner that could reasonably mislead an
2-41 individual into believing that the discount health care program is
2-42 health insurance or provides coverage similar to health insurance.

2-43 Sec. 562.052. FALSE INFORMATION AND ADVERTISING. (a) It
2-44 is an unfair method of competition or an unfair or deceptive act or
2-45 practice in the business of discount health care programs to make,
2-46 publish, disseminate, circulate, or place before the public or
2-47 directly or indirectly cause to be made, published, disseminated,
2-48 circulated, or placed before the public advertisements,
2-49 solicitations, or marketing materials containing an untrue,
2-50 deceptive, or misleading assertion, representation, or statement
2-51 regarding the discount health care program.

2-52 (b) This section applies to an advertisement, solicitation,
2-53 or marketing material made, published, disseminated, circulated,
2-54 or placed before the public:

2-55 (1) in a newspaper, magazine, or other publication;

2-56 (2) in a notice, circular, pamphlet, letter, or
2-57 poster;

2-58 (3) over a radio or television station;

2-59 (4) through the Internet; or

2-60 (5) in any other manner.

2-61 Sec. 562.053. FAILURE TO REGISTER OR RENEW REGISTRATION;
2-62 FALSE REGISTRATION OR RENEWAL STATEMENT. It is an unfair method of
2-63 competition or an unfair or deceptive act or practice in the
2-64 business of discount health care programs to:

2-65 (1) fail to register or renew registration as required
2-66 under Chapter 7001; or

2-67 (2) with intent to deceive:

2-68 (A) file with the department a false statement in
2-69 connection with an application for registration as a program

3-1 operator under Chapter 7001; or
3-2 (B) file with the department of false statement
3-3 in connection with an application for renewal of a registration as a
3-4 program operator under Chapter 7001.
3-5 Sec. 562.054. MISREPRESENTATION OF DISCOUNT HEALTH CARE
3-6 PROGRAMS. It is an unfair method of competition or an unfair or
3-7 deceptive act or practice in the business of discount health care
3-8 programs to misrepresent a discount health care program by:
3-9 (1) making an untrue statement of material fact;
3-10 (2) failing to state a material fact necessary to make
3-11 other statements made not misleading, considering the
3-12 circumstances under which the statements were made;
3-13 (3) making a statement in a manner that would mislead a
3-14 reasonably prudent person to a false conclusion of a material fact;
3-15 (4) making a material misstatement of law; or
3-16 (5) failing to disclose a matter required by law to be
3-17 disclosed, including failing to make an applicable disclosure
3-18 required by this code.
3-19 [Sections 562.055-562.100 reserved for expansion]
3-20 SUBCHAPTER C. REGULATION OF PRACTICES
3-21 Sec. 562.101. UNFAIR METHODS OF COMPETITION AND UNFAIR OR
3-22 DECEPTIVE ACTS OR PRACTICES PROHIBITED. A person may not engage in
3-23 this state in a trade practice that is defined in this chapter as or
3-24 determined under this chapter to be an unfair method of competition
3-25 or an unfair or deceptive act or practice in the business of
3-26 discount health care programs.
3-27 Sec. 562.102. PROHIBITED CONTENT OF CERTAIN DISCOUNT HEALTH
3-28 CARE PROGRAM ADVERTISING, SOLICITATION, OR MARKETING.
3-29 Notwithstanding any other provision of this code, it is unlawful
3-30 for a program operator or marketer to advertise, solicit, or market
3-31 a discount health care program containing the words "approved by
3-32 the Texas Department of Insurance" or words with a similar meaning.
3-33 Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) A program
3-34 operator shall:
3-35 (1) provide a toll-free telephone number and Internet
3-36 website for members to obtain information about the discount health
3-37 care program and confirm or find providers currently participating
3-38 in the program; and
3-39 (2) remove a provider from the discount health care
3-40 program not later than the 30th day after the date the program
3-41 operator learns that the provider is no longer participating in the
3-42 program or has lost the authority to provide services or products.
3-43 (b) A program operator shall issue at least one membership
3-44 card to serve as proof of membership in the discount health care
3-45 program that must:
3-46 (1) contain a clear and conspicuous statement that the
3-47 discount health care program is not insurance; and
3-48 (2) if the discount health care program includes
3-49 discount prescription drug benefits, include:
3-50 (A) the name or logo of the entity administering
3-51 the prescription drug benefits;
3-52 (B) the international identification number
3-53 assigned by the American National Standards Institute for the
3-54 entity administering the prescription drug benefits;
3-55 (C) the group number applicable to the member;
3-56 and
3-57 (D) a telephone number to be used to contact an
3-58 appropriate person to obtain information relating to the
3-59 prescription drug benefits provided under the program.
3-60 (c) Not later than the 15th day after the date of
3-61 enrollment, a program operator shall issue at least one set of
3-62 disclosure materials describing the terms and conditions of the
3-63 discount health care program to each household in which a person is
3-64 a member, including a statement that:
3-65 (1) the discount health care program is not insurance,
3-66 with the word "not" capitalized;
3-67 (2) the member is required to pay the entire amount of
3-68 the discounted rate;
3-69 (3) the discount health care program does not

4-1 guarantee the quality of the services or products offered by
4-2 individual providers; and

4-3 (4) if the member remains dissatisfied after
4-4 completing the discount health care program's complaint system, the
4-5 member may contact the member's state insurance department.

4-6 (d) A program operator shall ensure that an application form
4-7 or other membership agreement:

4-8 (1) clearly and conspicuously discloses the duration
4-9 of membership and the amount of payments the member is obligated to
4-10 make for the membership; and

4-11 (2) contains a clear and conspicuous statement that
4-12 the discount health care program is not insurance.

4-13 (e) A program operator shall allow any member who cancels a
4-14 membership in the discount health care program not later than the
4-15 30th day after the date the person becomes a member to receive a
4-16 refund, not later than the 30th day after the date the program
4-17 operator receives a valid cancellation notice and returned
4-18 membership card, of all periodic membership charges paid by that
4-19 member to the program operator and the amount of any one-time
4-20 enrollment fee that exceeds \$50.

4-21 (f) A program operator shall:

4-22 (1) maintain a surety bond, payable to the department
4-23 for the use and benefit of members in a manner prescribed by the
4-24 department, in the principal amount of \$50,000, except that a
4-25 program operator that is an insurer that holds a certificate of
4-26 authority under Title 6 is not required to maintain the surety bond;

4-27 (2) maintain an agent for service of process in this
4-28 state; and

4-29 (3) establish and operate a fair and efficient
4-30 procedure for resolution of complaints regarding the availability
4-31 of contracted discounts or services or other matters relating to
4-32 the contractual obligations of the discount health care program to
4-33 its members.

4-34 Sec. 562.104. MARKETING OF PROGRAM. (a) A program operator
4-35 may market directly or contract with marketers for the distribution
4-36 of the program operator's discount health care programs.

4-37 (b) A program operator shall enter into a written contract
4-38 with a marketer before the marketer begins marketing, promoting,
4-39 selling, or distributing the program operator's discount health
4-40 care program. The contract must prohibit the marketer from using
4-41 advertising, solicitations, other marketing materials, or discount
4-42 cards that have not been approved in advance and in writing by the
4-43 program operator.

4-44 (c) A program operator must approve in writing before their
4-45 use all advertisements, solicitations, or other marketing
4-46 materials and all discount cards used by marketers to market,
4-47 promote, sell, or distribute the discount health care program.

4-48 (d) Each advertisement, solicitation, or marketing material
4-49 of a discount health care program must clearly and conspicuously
4-50 state that the discount health care program is not insurance.

4-51 Sec. 562.105. CONTRACT REQUIREMENTS. (a) A program
4-52 operator shall contract, directly or indirectly, with a provider
4-53 offering discounted health care services or products under the
4-54 discount health care program. The written contract must contain
4-55 all of the following provisions:

4-56 (1) a description of the discounts to be provided to a
4-57 member;

4-58 (2) a provision prohibiting the provider from charging
4-59 a member more than the discounted rate agreed to in the written
4-60 agreement with the provider; and

4-61 (3) a provision requiring the provider to promptly
4-62 notify the program operator if the provider no longer participates
4-63 in the program or loses the authority to provide services or
4-64 products.

4-65 (b) The program operator may not charge or receive from a
4-66 provider any fee or other compensation for entering into the
4-67 agreement.

4-68 (c) If the program operator contracts with a network of
4-69 providers, the program operator shall obtain written assurance from

5-1 the network that:

5-2 (1) the network has a written agreement with each
5-3 network provider that includes a discounted rate that is applicable
5-4 to a program operator's discount health care program and contains
5-5 all of the terms described in Subsection (a); and

5-6 (2) the network is authorized to obligate the network
5-7 providers to provide services to members of the discount health
5-8 care program.

5-9 (d) The program operator shall require the network to:

5-10 (1) maintain and provide the program operator on a
5-11 monthly basis an up-to-date list of providers in the network; and

5-12 (2) promptly remove a provider from its network if the
5-13 provider no longer participates or loses the authority to provide
5-14 services or products.

5-15 (e) The program operator shall maintain a copy of each
5-16 written agreement the program operator has with a provider or a
5-17 network for at least two years following termination of the
5-18 agreement.

5-19 [Sections 562.106-562.150 reserved for expansion]

5-20 SUBCHAPTER D. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND
5-21 UNFAIR OR DECEPTIVE ACTS OR PRACTICES; ENFORCEMENT; SANCTIONS AND
5-22 PENALTIES

5-23 Sec. 562.151. EXAMINATION AND INVESTIGATION. The
5-24 department may examine and investigate the affairs of a person
5-25 engaged in the business of discount health care programs in this
5-26 state to determine whether the person:

5-27 (1) has or is engaged in an unfair method of
5-28 competition or unfair or deceptive act or practice prohibited by
5-29 this chapter; or

5-30 (2) has violated Subchapter B or C.

5-31 Sec. 562.152. STATEMENT OF CHARGES; NOTICE OF HEARING.

5-32 (a) When the department has reason to believe that a person
5-33 engaged in the business of discount health care programs in this
5-34 state has engaged or is engaging in this state in an unfair method
5-35 of competition or unfair or deceptive act or practice defined by
5-36 Subchapter B or has violated Subchapter B or C and that a proceeding
5-37 by the department regarding the charges is in the interest of the
5-38 public, the department shall issue and serve on the person:

5-39 (1) a statement of the charges; and

5-40 (2) a notice of the hearing on the charges, including
5-41 the time and place for the hearing.

5-42 (b) The department may not hold the hearing before the sixth
5-43 day after the date the notice required by Subsection (a)(2) is
5-44 served.

5-45 Sec. 562.153. HEARING. A person against whom charges are
5-46 made under Section 562.152 is entitled at the hearing on the charges
5-47 to have an opportunity to be heard and show cause why the department
5-48 should not issue an order requiring the person to cease and desist
5-49 from:

5-50 (1) performing the unfair method of competition or
5-51 unfair or deceptive act or practice described in the charges; or

5-52 (2) violating Subchapter B or C.

5-53 Sec. 562.154. HEARING PROCEDURES. (a) Nothing in this
5-54 chapter requires the observance of formal rules of pleading or
5-55 evidence at a hearing under this subchapter.

5-56 (b) At a hearing under this subchapter, the department, on a
5-57 showing of good cause, shall permit any person to intervene,
5-58 appear, and be heard by counsel or in person.

5-59 Sec. 562.155. RECORD OF HEARING. (a) At a hearing under
5-60 this subchapter, the department may, and at the request of a party
5-61 to the hearing shall, make a record of the proceedings and the
5-62 evidence presented at the hearing.

5-63 (b) If the department does not make a record and a person
5-64 seeks judicial review of the decision made at the hearing, the
5-65 department shall prepare a statement of the evidence and proceeding
5-66 for use on review.

5-67 Sec. 562.156. COMPLIANCE WITH SUBPOENA. (a) If a person
5-68 refuses to comply with a subpoena issued in connection with a
5-69 hearing under this subchapter or refuses to testify with respect to

6-1 a matter about which the person may be lawfully interrogated, on
 6-2 application of the department, a district court in Travis County or
 6-3 in the county in which the person resides may order the person to
 6-4 comply with the subpoena or testify.

6-5 (b) A court may punish as contempt a person's failure to
 6-6 obey an order under this section.

6-7 Sec. 562.157. DETERMINATION OF VIOLATION. After a hearing
 6-8 under this subchapter to determine whether a person has engaged in
 6-9 an unfair method of competition or unfair or deceptive act or
 6-10 practice prohibited by this chapter, the department shall determine
 6-11 whether:

6-12 (1) the method of competition or the act or practice
 6-13 considered in the hearing is defined as:

6-14 (A) an unfair method of competition or deceptive
 6-15 act or practice under Subchapter B; or

6-16 (B) a false, misleading, or deceptive act or
 6-17 practice under Section 17.46, Business & Commerce Code; and

6-18 (2) the person against whom the charges were made
 6-19 engaged in the method of competition or act or practice in violation
 6-20 of:

6-21 (A) this chapter; or

6-22 (B) Subchapter E, Chapter 17, Business & Commerce
 6-23 Code, as specified in Section 17.46, Business & Commerce Code.

6-24 Sec. 562.158. CEASE AND DESIST ORDER. On determining that a
 6-25 person committed a violation described by Section 562.157 or
 6-26 committed a violation of Subchapter B or C, the department shall:

6-27 (1) make written findings; and

6-28 (2) issue and serve on the person an order requiring
 6-29 the person to cease and desist from engaging in the method of
 6-30 competition or act or practice determined to be a violation or the
 6-31 violation of Subchapter B or C, as applicable.

6-32 Sec. 562.159. MODIFICATION OR SETTING ASIDE OF ORDER. On
 6-33 the notice and in the manner the department determines proper, the
 6-34 department may modify or set aside wholly or partly a cease and
 6-35 desist order issued under Section 562.158 at any time before a
 6-36 petition appealing the order is filed in accordance with Subchapter
 6-37 D, Chapter 36.

6-38 Sec. 562.160. IMMUNITY FROM PROSECUTION. (a) This section
 6-39 applies to a person who requests to be excused from attending and
 6-40 testifying at a hearing under this chapter or from producing books,
 6-41 papers, records, correspondence, or other documents at the hearing
 6-42 on the ground that the testimony or evidence may:

6-43 (1) tend to incriminate the person; or

6-44 (2) subject the person to a penalty or forfeiture.

6-45 (b) A person who, notwithstanding a request described by
 6-46 Subsection (a), is directed to provide the testimony or produce the
 6-47 documents shall comply with that direction. Except as provided by
 6-48 Subsection (c), the person may not be prosecuted or subjected to a
 6-49 penalty or forfeiture for or on account of a transaction, matter, or
 6-50 thing about which the person testifies or produces documents, and
 6-51 the testimony or documents produced may not be received against the
 6-52 person in a criminal action, investigation, or proceeding.

6-53 (c) A person who complies with a direction to testify or
 6-54 produce documents is not exempt from:

6-55 (1) prosecution or punishment for perjury committed
 6-56 while testifying, and the testimony or evidence given or produced
 6-57 is admissible against the person in a criminal action,
 6-58 investigation, or proceeding concerning the perjury; or

6-59 (2) the denial, revocation, or suspension of any
 6-60 license, permission, or authority conferred or to be conferred
 6-61 under this code.

6-62 (d) A person may waive the immunity or privilege granted by
 6-63 this section by executing, acknowledging, and filing with the
 6-64 department a statement expressly waiving the immunity or privilege
 6-65 for a specified transaction, matter, or thing. On filing the
 6-66 statement:

6-67 (1) the testimony or documents produced by the person
 6-68 in relation to the transaction, matter, or thing may be received by
 6-69 or produced before a judge or justice or a court, grand jury, or

7-1 other tribunal; and
7-2 (2) the person is not entitled to immunity or
7-3 privilege for the testimony or documents received or produced under
7-4 Subdivision (1).

7-5 Sec. 562.161. ADMINISTRATIVE PENALTY FOR VIOLATION OF CEASE
7-6 AND DESIST ORDER. (a) A person who violates a cease and desist
7-7 order issued under Section 562.158 is subject to an administrative
7-8 penalty under Chapter 84.

7-9 (b) In determining whether a person has violated a cease and
7-10 desist order, the department shall consider the maintenance of
7-11 procedures reasonably adapted to ensure compliance with the order.

7-12 (c) An administrative penalty imposed under this section
7-13 may not exceed:

7-14 (1) \$1,000 for each violation; or

7-15 (2) \$5,000 for all violations.

7-16 (d) An order of the department imposing an administrative
7-17 penalty under this section applies only to a violation of the cease
7-18 and desist order committed before the date the order imposing the
7-19 penalty is issued.

7-20 Sec. 562.162. CIVIL PENALTY FOR VIOLATION OF CEASE AND
7-21 DESIST ORDER. (a) A person who is found by a court to have
7-22 violated a cease and desist order issued under Section 562.158 is
7-23 liable to the state for a penalty. The state may recover the
7-24 penalty in a civil action.

7-25 (b) The penalty may not exceed \$50 unless the court finds
7-26 the violation to be wilful, in which case the penalty may not exceed
7-27 \$500.

7-28 [Sections 562.163-562.200 reserved for expansion]

7-29 SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

7-30 Sec. 562.201. INJUNCTIVE RELIEF. (a) The attorney general
7-31 may bring an action under this section if the attorney general has
7-32 reason to believe that:

7-33 (1) a person engaged in the business of discount
7-34 health care programs in this state is engaging in, has engaged in,
7-35 or is about to engage in an act or practice defined as unlawful
7-36 under:

7-37 (A) this chapter; or

7-38 (B) Section 17.46, Business & Commerce Code; and

7-39 (2) the action is in the public interest.

7-40 (b) The attorney general may bring the action in the name of
7-41 the state to restrain by temporary or permanent injunction the
7-42 person's use of the method, act, or practice.

7-43 Sec. 562.202. VENUE FOR INJUNCTIVE ACTION. An action for an
7-44 injunction under this subchapter may be commenced in a district
7-45 court in:

7-46 (1) the county in which the person against whom the
7-47 action is brought:

7-48 (A) resides;

7-49 (B) has the person's principal place of business;

7-50 or

7-51 (C) is engaging in business;

7-52 (2) the county in which the transaction or a
7-53 substantial portion of the transaction occurred; or

7-54 (3) Travis County.

7-55 Sec. 562.203. ISSUANCE OF INJUNCTION. (a) The court may
7-56 issue an appropriate temporary or permanent injunction.

7-57 (b) The court shall issue the injunction without bond.

7-58 Sec. 562.204. CIVIL PENALTY. In addition to requesting a
7-59 temporary or permanent injunction under Section 562.201, the
7-60 attorney general may request a civil penalty of not more than
7-61 \$10,000 for each violation on a finding by the court that the
7-62 defendant has engaged in or is engaging in an act or practice
7-63 defined as unlawful under this chapter or Section 17.46, Business &
7-64 Commerce Code.

7-65 Sec. 562.205. COMPENSATION OR RESTORATION. The court may
7-66 make an additional order or judgment as necessary to compensate an
7-67 identifiable person for actual damages or for restoration of money
7-68 or property that may have been acquired by means of an enjoined act
7-69 or practice.

8-1 Sec. 562.206. CIVIL PENALTY FOR VIOLATION OF INJUNCTION.
8-2 (a) A person who violates an injunction issued under this
8-3 subchapter is liable for and shall pay to the state a civil penalty
8-4 of not more than \$10,000 for each violation.

8-5 (b) The attorney general may, in the name of the state,
8-6 petition the court for recovery of the civil penalty against the
8-7 person who violates the injunction.

8-8 (c) The court shall consider the maintenance of procedures
8-9 reasonably adapted to ensure compliance with the injunction in
8-10 determining whether a person has violated an injunction.

8-11 (d) The court issuing the injunction retains jurisdiction
8-12 and the cause is continued for the purpose of assessing a civil
8-13 penalty under this section.

8-14 Sec. 562.207. REMEDIES NOT EXCLUSIVE. The remedies
8-15 provided by this subchapter:

8-16 (1) are not exclusive; and

8-17 (2) are in addition to any other remedy or procedure
8-18 provided by another law or at common law.

8-19 [Sections 562.208-562.250 reserved for expansion]

8-20 SUBCHAPTER F. ASSURANCE OF VOLUNTARY COMPLIANCE

8-21 Sec. 562.251. ACCEPTANCE OF ASSURANCE. (a) In
8-22 administering this chapter, the department may accept assurance of
8-23 voluntary compliance from a person who is engaging in, has engaged
8-24 in, or is about to engage in an act or practice in violation of this
8-25 chapter or Section 17.46, Business & Commerce Code.

8-26 (b) The assurance must be in writing and be filed with the
8-27 department.

8-28 (c) The department may condition acceptance of an assurance
8-29 of voluntary compliance on the stipulation that the person offering
8-30 the assurance restore to a person in interest money that may have
8-31 been acquired by the act or practice described in Subsection (a).

8-32 Sec. 562.252. EFFECT OF ASSURANCE. (a) An assurance of
8-33 voluntary compliance is not an admission of a prior violation of
8-34 this chapter or Section 17.46, Business & Commerce Code.

8-35 (b) Unless an assurance of voluntary compliance is
8-36 rescinded by agreement, a subsequent failure to comply with the
8-37 assurance is prima facie evidence of a violation of this chapter or
8-38 Section 17.46, Business & Commerce Code.

8-39 Sec. 562.253. REOPENING. A matter closed by the filing of
8-40 an assurance of voluntary compliance may be reopened at any time.

8-41 [Sections 562.254-562.300 reserved for expansion]

8-42 SUBCHAPTER G. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

8-43 Sec. 562.301. LIABILITY UNDER OTHER LAW. An order of the
8-44 department under this chapter, or an order by a court to enforce
8-45 that order, does not relieve or absolve a person affected by either
8-46 order from liability under another law of this state.

8-47 Sec. 562.302. POWERS IN ADDITION TO OTHER POWERS AUTHORIZED
8-48 BY LAW. The powers vested in the department and the commissioner by
8-49 this chapter are in addition to any other powers to enforce a
8-50 penalty, fine, or forfeiture authorized by law with respect to a
8-51 method of competition or act or practice defined as unfair or
8-52 deceptive.

8-53 Sec. 562.303. DOUBLE RECOVERY PROHIBITED. A person may not
8-54 recover damages and penalties for the same act or practice under
8-55 both this chapter and another law.

8-56 SECTION 2. The Insurance Code is amended by adding Title 21
8-57 to read as follows:

8-58 TITLE 21. DISCOUNT HEALTH CARE PROGRAMS

8-59 CHAPTER 7001. REGISTRATION OF DISCOUNT HEALTH CARE

8-60 PROGRAM OPERATORS

8-61 Sec. 7001.001. DEFINITIONS. In this chapter:

8-62 (1) "Discount health care program" means a business
8-63 arrangement or contract in which an entity, in exchange for fees,
8-64 dues, charges, or other consideration, offers its members access to
8-65 discounts on health care services provided by health care
8-66 providers. The term does not include an insurance policy, a
8-67 certificate of coverage, or a self-funded or self-insured employee
8-68 benefit plan.

8-69 (2) "Discount health care program operator" means a

9-1 person who, in exchange for fees, dues, charges, or other
 9-2 consideration, operates a discount health care program and
 9-3 contracts with providers, provider networks, or other discount
 9-4 health care program operators to offer access to health care
 9-5 services at a discount and determines the charge to members.

9-6 (3) "Health care services" includes physician care,
 9-7 inpatient care, hospital surgical services, emergency services,
 9-8 ambulance services, laboratory services, audiology services,
 9-9 dental services, vision services, mental health services,
 9-10 substance abuse services, chiropractic services, and podiatry
 9-11 services, and the provision of medical equipment and supplies,
 9-12 including prescription drugs.

9-13 (4) "Marketer" means a person who sells or
 9-14 distributes, or offers to sell or distribute, a discount health
 9-15 care program, including a private label entity that places its name
 9-16 on and markets or distributes a discount health care program, but
 9-17 does not operate a discount health care program.

9-18 (5) "Member" means a person who pays fees, dues,
 9-19 charges, or other consideration for the right to participate in a
 9-20 discount health care program.

9-21 (6) "Program operator" means a discount health care
 9-22 program operator.

9-23 (7) "Provider" means a person who is licensed or
 9-24 otherwise authorized to provide health care services in this state.

9-25 Sec. 7001.002. EXEMPTION. This chapter does not apply to a
 9-26 program operator who is an insurer and who holds a certificate of
 9-27 authority under Title 6.

9-28 Sec. 7001.003. RULES. The commissioner shall adopt rules
 9-29 in the manner prescribed by Subchapter A, Chapter 36, as necessary
 9-30 to implement this chapter.

9-31 Sec. 7001.004. REGISTRATION REQUIRED. A discount health
 9-32 care program operator may not offer a discount health care program
 9-33 in this state unless the program operator is registered with the
 9-34 department.

9-35 Sec. 7001.005. APPLICATION FOR REGISTRATION AND RENEWAL OF
 9-36 REGISTRATION. (a) An applicant for registration under this
 9-37 chapter or an applicant for renewal of registration under this
 9-38 chapter whose information has changed shall submit:

9-39 (1) a completed registration application on the form
 9-40 prescribed by the department indicating the program operator's
 9-41 name, physical address, and mailing address and its agent for
 9-42 service of process;

9-43 (2) a list of names, addresses, official positions,
 9-44 and biographical information of:

9-45 (A) the individuals responsible for conducting
 9-46 the program operator's affairs, including:

9-47 (i) each member of the board of directors,
 9-48 board of trustees, executive committee, or other governing board or
 9-49 committee;

9-50 (ii) the officers of the program operator;

9-51 and

9-52 (iii) any contracted management company
 9-53 personnel; and

9-54 (B) any person owning or having the right to
 9-55 acquire 10 percent or more of the voting securities of the program
 9-56 operator;

9-57 (3) a statement generally describing the applicant,
 9-58 its facilities and personnel, and the health care services or
 9-59 products for which a discount will be made available under its
 9-60 discount health care programs;

9-61 (4) a list of the marketers authorized to sell or
 9-62 distribute the program operator's programs under the program
 9-63 operator's name and a list of the marketing entities authorized to
 9-64 private label the program operator's programs; and

9-65 (5) a copy of the form of all contracts made or to be
 9-66 made between the program operator and any providers or provider
 9-67 networks regarding the provision of health care services or
 9-68 products to members.

9-69 (b) After the initial registration, if the form of a

10-1 contract described by Subsection (a)(5) changes, the program
10-2 operator must file the modified contract form with the department
10-3 before it may be used.

10-4 (c) As part of the registration required under Subsection
10-5 (a), and annually thereafter, the program operator shall certify in
10-6 writing to the department that its programs comply with the
10-7 requirements of this chapter and Chapter 562.

10-8 Sec. 7001.006. FEES. A discount health care program
10-9 operator shall pay the department an initial registration fee of
10-10 \$1,000 and an annual renewal fee in the amount set by the
10-11 commissioner not to exceed \$500.

10-12 Sec. 7001.007. CRIMINAL BACKGROUND CHECK. The department
10-13 may conduct a criminal background check on:

10-14 (1) the individuals responsible for conducting the
10-15 program operator's affairs;

10-16 (2) each member of the board of directors, board of
10-17 trustees, executive committee, or other governing board or
10-18 committee;

10-19 (3) the officers of the program operator;

10-20 (4) any contracted management company personnel; and

10-21 (5) any person owning or having the right to acquire 10
10-22 percent or more of the voting securities of the program operator.

10-23 SECTION 3. Chapter 76, Health and Safety Code, is repealed.

10-24 SECTION 4. Not later than January 1, 2010, the commissioner
10-25 of insurance shall adopt the rules and procedures necessary to
10-26 implement Chapter 7001, Insurance Code, as added by this Act.

10-27 SECTION 5. (a) Notwithstanding Section 7001.004,
10-28 Insurance Code, as added by this Act, a person is not required to
10-29 register under that section before April 1, 2010, except as
10-30 provided by Subsection (b) of this section.

10-31 (b) A program operator that is registered with the Texas
10-32 Department of Licensing and Regulation on January 1, 2010, as
10-33 required by Chapter 76, Health and Safety Code, shall file an
10-34 application for renewal of registration with the Texas Department
10-35 of Insurance under Chapter 7001, Insurance Code, as added by this
10-36 Act, not later than April 1, 2010.

10-37 SECTION 6. (a) Except as provided by Subsections (b) and
10-38 (c) of this section, this Act takes effect September 1, 2009.

10-39 (b) Section 3 of this Act takes effect April 1, 2010.

10-40 (c) Subchapter E, Chapter 562, Insurance Code, as added by
10-41 this Act, takes effect April 1, 2010.

10-42 * * * * *