

By: Murr

H.B. No. 3331

A BILL TO BE ENTITLED

AN ACT

relating to solicitation of patients and other prohibited marketing practices and the establishment of the task force on patient solicitation; increasing criminal penalties.

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

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. TASK FORCE ON PATIENT SOLICITATION

Sec. 110.001. DEFINITION. In this chapter, "task force" means the task force on patient solicitation created under this chapter.

Sec. 110.002. PURPOSE. The task force is established to study and make recommendations on preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and to improve enforcement of those chapters.

Sec. 110.003. MEMBERSHIP. (a) The task force is composed of eight members as follows:

(1) four members appointed by the executive commissioner; and

(2) four members appointed by the attorney general.

(b) Each task force member must have expertise in the field of health care or advertising.

(c) Task force members serve without compensation.

Sec. 110.004. ADMINISTRATIVE ATTACHMENT. The task force is

1 administratively attached to the commission.

2 Sec. 110.005. ACCESS TO INFORMATION; CONFIDENTIALITY OF
3 PROVIDED INFORMATION. The attorney general and the commission shall
4 provide the task force with information requested by the task force
5 to allow the task force to fulfil its duties. Information provided
6 under this section is confidential and is not subject to disclosure
7 under Chapter 552, Government Code.

8 Sec. 110.006. REPORT. Not later than December 1, of each
9 even-numbered year, the task force shall submit to the legislature
10 a report that includes:

11 (1) a summary of civil or criminal actions brought on
12 behalf of the state and administrative actions by state regulatory
13 agencies in the preceding biennium for violations of Chapter 164 of
14 this code or Chapter 102, Occupations Code; and

15 (2) legislative recommendations for preventing
16 conduct that violates Chapter 164 of this code or Chapter 102,
17 Occupations Code, and improving enforcement of those chapters.

18 SECTION 2. Section 164.002, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this
21 chapter is to safeguard the public against fraud, deceit, and
22 misleading marketing practices and to foster and encourage
23 competition and fair dealing by mental health facilities and
24 chemical dependency treatment facilities by prohibiting or
25 restricting practices by which the public has been injured in
26 connection with the marketing and advertising of mental health
27 services and the admission of patients. Nothing in this chapter

1 should be construed to prohibit a mental health facility from
2 advertising its services in a general way or promoting its
3 specialized services. However, the public should be able to clearly
4 distinguish between the marketing activities of the facility and
5 its clinical functions.

6 SECTION 3. Section 164.003(1), Health and Safety Code, is
7 amended to read as follows:

8 (1) "Advertising" or "advertise" means a solicitation
9 or inducement, through print or electronic media, including radio,
10 television, the Internet, or direct mail, to purchase the services
11 provided by a treatment facility.

12 SECTION 4. Section 164.006, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN
15 REFERRAL SOURCES. A treatment facility or a person employed or
16 under contract with a treatment facility, if acting on behalf of the
17 treatment facility, may not:

18 (1) contact a referral source or potential client for
19 the purpose of soliciting, directly or indirectly, a referral of a
20 patient to the treatment facility without disclosing its soliciting
21 agent's, employee's, or contractor's affiliation with the treatment
22 facility;

23 (2) offer to provide or provide mental health or
24 chemical dependency services to a public or private school in this
25 state, on a part-time or full-time basis, the services of any of its
26 employees or agents who make, or are in a position to make, a
27 referral, if the services are provided on an individual basis to

1 individual students or their families. Nothing herein prohibits a
2 treatment facility from:

3 (A) offering or providing educational programs
4 in group settings to public schools in this state if the affiliation
5 between the educational program and the treatment facility is
6 disclosed;

7 (B) providing counseling services to a public
8 school in this state in an emergency or crisis situation if the
9 services are provided in response to a specific request by a school;
10 provided that, under no circumstances may a student be referred to
11 the treatment facility offering the services; or

12 (C) entering into a contract under Section
13 464.020 with the board of trustees of a school district with a
14 disciplinary alternative education program, or with the board's
15 designee, for the provision of chemical dependency treatment
16 services;

17 (3) provide to an entity of state or local government,
18 on a part-time or full-time basis, the mental health or chemical
19 dependency services of any of its employees, agents, or contractors
20 who make or are in a position to make referrals unless:

21 (A) the treatment facility discloses to the
22 governing authority of the entity:

23 (i) the employee's, agent's, or
24 contractor's relationship to the facility; and

25 (ii) the fact that the employee, agent, or
26 contractor might make a referral, if permitted, to the facility;

27 and

1 (B) the employee, agent, or contractor makes a
2 referral only if:

3 (i) the treatment facility obtains the
4 governing authority's authorization in writing for the employee,
5 agent, or contractor to make the referrals; and

6 (ii) the employee, agent, or contractor
7 discloses to the prospective patient the employee's, agent's, or
8 contractor's relationship to the facility at initial contact; ~~or~~

9 (4) in relation to intervention and assessment
10 services, contract with, offer to remunerate, or remunerate a
11 person who operates an intervention and assessment service that
12 makes referrals to a treatment facility for inpatient treatment of
13 mental illness or chemical dependency unless the intervention and
14 assessment service is:

15 (A) operated by a community mental health and
16 intellectual disability center funded by the department and the
17 Department of Aging and Disability Services;

18 (B) operated by a county or regional medical
19 society;

20 (C) a qualified mental health referral service as
21 defined by Section 164.007; or

22 (D) owned and operated by a nonprofit or
23 not-for-profit organization offering counseling concerning family
24 violence, help for runaway children, or rape; or

25 (5) contract with a marketing provider who agrees to
26 provide general referrals or leads for the placement of patients
27 with a service provider or in a recovery residence through a call

1 center or Internet website presence, unless the terms of that
2 contract are disclosed to the prospective patient.

3 SECTION 5. Section 164.010, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 164.010. PROHIBITED ACTS. It is a violation of this
6 chapter, in connection with the marketing of mental health
7 services, for a person to:

8 (1) advertise, expressly or impliedly, the services of
9 a treatment facility through the use of:

10 (A) promises of cure or guarantees of treatment
11 results that cannot be substantiated; or

12 (B) any unsubstantiated claims;

13 (2) advertise, expressly or impliedly, the
14 availability of intervention and assessment services unless and
15 until the services are available and are provided by mental health
16 professionals licensed or certified to provide the particular
17 service;

18 (3) fail to disclose before soliciting a referral
19 source or prospective patient to induce a person to use the services
20 of the treatment facility an affiliation between a treatment
21 facility and its soliciting agents, employees, or contractors;

22 (4) obtain information considered confidential by
23 state or federal law regarding a person for the purpose of
24 soliciting that person to use the services of a treatment facility
25 unless and until consent is obtained from the person or, in the case
26 of a minor, the person's parent, managing conservator, or legal
27 guardian or another person with authority to give that

1 authorization; [~~or~~]

2 (5) represent that a referral service is a qualified
3 mental health referral service unless and until the referral
4 service complies with Section 164.007;

5 (6) make a false or misleading statement or provide
6 false or misleading information about the facility's services or
7 location in the facility's advertising media or on its Internet
8 website; or

9 (7) provide a link on the facility's Internet website
10 that redirects the user to another Internet website containing
11 false or misleading statements or information described by
12 Subdivision (6).

13 SECTION 6. Section 164.011(a), Health and Safety Code, is
14 amended to read as follows:

15 (a) If it appears that a person is in violation of this
16 chapter, the attorney general, a district attorney, or a county
17 attorney may institute an action for injunctive relief to restrain
18 the person from continuing the violation and for civil penalties of
19 not less than \$2,000 [~~\$1,000~~] and not more than \$25,000 per
20 violation.

21 SECTION 7. Section 102.001, Occupations Code, is amended to
22 read as follows:

23 Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person
24 commits an offense if the person knowingly offers to pay or agrees
25 to accept, directly or indirectly, overtly or covertly any
26 remuneration in cash or in kind or any benefit or commission to or
27 from another for securing or soliciting a patient or patronage for

1 or from a person licensed, certified, or registered by a state
2 health care regulatory agency.

3 (b) Except as provided by Subsection (c), an offense under
4 this section is a state jail felony [~~Class A misdemeanor~~].

5 (c) An offense under this section is a felony of the second
6 [~~third~~] degree if it is shown on the trial of the offense that the
7 person:

8 (1) has previously been convicted of an offense under
9 this section; or

10 (2) was employed by a federal, state, or local
11 government at the time of the offense.

12 SECTION 8. Section 102.004, Occupations Code, is amended to
13 read as follows:

14 Sec. 102.004. APPLICABILITY TO ADVERTISING. Section
15 102.001 does not prohibit advertising, unless the advertising is:

16 (1) false, misleading, or deceptive; [~~or~~]

17 (2) not readily subject to verification, if the
18 advertising claims professional superiority or the performance of a
19 professional service in a superior manner; or

20 (3) prohibited under Chapter 164, Health and Safety
21 Code, as applicable.

22 SECTION 9. Section 102.006, Occupations Code, is amended to
23 read as follows:

24 Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person
25 commits an offense if:

26 (1) the person, in a manner otherwise permitted under
27 Section 102.001, accepts remuneration, a benefit, or a commission

1 to secure or solicit a patient or patronage for a person licensed,
2 certified, or registered by a state health care regulatory agency;
3 and

4 (2) does not, at the time of initial contact and at the
5 time of referral, disclose to the patient:

6 (A) the person's affiliation, if any, with the
7 person for whom the patient is secured or solicited; and

8 (B) that the person will receive, directly or
9 indirectly, remuneration, a benefit, or a commission for securing
10 or soliciting the patient.

11 (b) Except as provided by Subsection (c), an offense under
12 this section is a state jail felony [~~Class A misdemeanor~~].

13 (c) An offense under this section is a felony of the second
14 [~~third~~] degree if it is shown on the trial of the offense that the
15 person:

16 (1) has previously been convicted of an offense under
17 this section; or

18 (2) was employed by a federal, state, or local
19 government at the time of the offense.

20 SECTION 10. Sections 102.051(a), (b), and (c), Occupations
21 Code, are amended to read as follows:

22 (a) A person commits an offense if the person:

23 (1) practices the art of healing with or without the
24 use of medicine; and

25 (2) employs or agrees to employ, pays or promises to
26 pay, or rewards or promises to reward or provide any benefit or
27 commission to another for soliciting or securing a patient or

1 patronage.

2 (b) A person commits an offense if the person accepts or
3 agrees to accept anything of value or any benefit or commission for
4 soliciting or securing a patient or patronage for a person who
5 practices the art of healing with or without the use of medicine.

6 (c) An offense under this section is a Class B misdemeanor
7 [~~punishable by a fine of not less than \$100 or more than \$200~~]. Each
8 violation of this section is a separate offense.

9 SECTION 11. The changes in law made by this Act apply only
10 to an offense committed on or after the effective date of this Act.
11 An offense committed before the effective date of this Act is
12 governed by the law in effect on the date the offense was committed,
13 and the former law is continued in effect for that purpose. For
14 purposes of this section, an offense was committed before the
15 effective date of this Act if any element of the offense occurred
16 before that date.

17 SECTION 12. This Act takes effect September 1, 2021.