

1-1 By: Murr (Senate Sponsor - Kolkhorst) H.B. No. 248
 1-2 (In the Senate - Received from the House May 10, 2023;
 1-3 May 11, 2023, read first time and referred to Committee on Health &
 1-4 Human Services; May 19, 2023, reported favorably by the following
 1-5 vote: Yeas 8, Nays 0; May 19, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to solicitation of patients and other prohibited marketing
 1-20 practices and the establishment of the task force on patient
 1-21 solicitation; increasing criminal penalties.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle E, Title 2, Health and Safety Code, is
 1-24 amended by adding Chapter 110 to read as follows:

1-25 CHAPTER 110. TASK FORCE ON PATIENT SOLICITATION

1-26 Sec. 110.001. DEFINITION. In this chapter, "task force"
 1-27 means the task force on patient solicitation created under this
 1-28 chapter.

1-29 Sec. 110.002. PURPOSE. The task force is established to
 1-30 study and make recommendations on preventing conduct that violates
 1-31 Chapter 164 of this code or Chapter 102, Occupations Code, and to
 1-32 improve enforcement of those chapters.

1-33 Sec. 110.003. MEMBERSHIP. (a) The task force is composed of
 1-34 eight members as follows:

1-35 (1) four members the executive commissioner appoints;
 1-36 and

1-37 (2) four members the attorney general appoints.

1-38 (b) Each task force member must have expertise in the field
 1-39 of health care or advertising.

1-40 (c) Task force members serve without compensation.

1-41 Sec. 110.004. ADMINISTRATIVE ATTACHMENT. The task force is
 1-42 administratively attached to the commission.

1-43 Sec. 110.005. ACCESS TO INFORMATION; CONFIDENTIALITY OF
 1-44 PROVIDED INFORMATION. The attorney general and the commission shall
 1-45 provide the task force with information the task force requests to
 1-46 allow the task force to fulfill its duties. Information provided
 1-47 under this section is confidential and is not subject to disclosure
 1-48 under Chapter 552, Government Code.

1-49 Sec. 110.006. REPORT. Not later than December 1 of each
 1-50 even-numbered year, the task force shall submit to the legislature
 1-51 a report that includes:

1-52 (1) a summary of civil or criminal actions brought on
 1-53 behalf of the state and administrative actions by state regulatory
 1-54 agencies in the preceding biennium for conduct that violates
 1-55 Chapter 164 of this code or Chapter 102, Occupations Code; and

1-56 (2) legislative recommendations for preventing
 1-57 conduct that violates Chapter 164 of this code or Chapter 102,
 1-58 Occupations Code, and improving enforcement of those chapters.

1-59 SECTION 2. Section 164.002, Health and Safety Code, is
 1-60 amended to read as follows:

1-61 Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this

2-1 chapter is to safeguard the public against fraud, deceit, and
 2-2 misleading marketing practices and to foster and encourage
 2-3 competition and fair dealing by mental health facilities and
 2-4 chemical dependency [~~treatment~~] facilities by prohibiting or
 2-5 restricting practices by which the public has been injured in
 2-6 connection with the marketing and advertising of mental health
 2-7 services and the admission of patients. Nothing in this chapter
 2-8 should be construed to prohibit a mental health facility or
 2-9 chemical dependency facility from advertising its services in a
 2-10 general way or promoting its specialized services. However, the
 2-11 public should be able to clearly distinguish between the marketing
 2-12 activities of the facility and its clinical functions.

2-13 SECTION 3. Section 164.003(1), Health and Safety Code, is
 2-14 amended to read as follows:

2-15 (1) "Advertising" or "advertise" means a solicitation
 2-16 or inducement, through print or electronic media, including radio,
 2-17 television, the Internet, or direct mail, to purchase the services
 2-18 provided by a treatment facility.

2-19 SECTION 4. Section 164.006, Health and Safety Code, is
 2-20 amended to read as follows:

2-21 Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN
 2-22 REFERRAL SOURCES. A treatment facility or a person employed or
 2-23 under contract with a treatment facility, if acting on behalf of the
 2-24 treatment facility, may not:

2-25 (1) contact a referral source or potential client for
 2-26 the purpose of soliciting, directly or indirectly, a referral of a
 2-27 patient to the treatment facility without disclosing its soliciting
 2-28 agent's, employee's, or contractor's affiliation with the treatment
 2-29 facility;

2-30 (2) offer to provide or provide mental health or
 2-31 chemical dependency services to a public or private school in this
 2-32 state, on a part-time or full-time basis, the services of any of its
 2-33 employees or agents who make, or are in a position to make, a
 2-34 referral, if the services are provided on an individual basis to
 2-35 individual students or their families. Nothing herein prohibits a
 2-36 treatment facility from:

2-37 (A) offering or providing educational programs
 2-38 in group settings to public schools in this state if the affiliation
 2-39 between the educational program and the treatment facility is
 2-40 disclosed;

2-41 (B) providing counseling services to a public
 2-42 school in this state in an emergency or crisis situation if the
 2-43 services are provided in response to a specific request by a school;
 2-44 provided that, under no circumstances may a student be referred to
 2-45 the treatment facility offering the services; or

2-46 (C) entering into a contract under Section
 2-47 464.020 with the board of trustees of a school district with a
 2-48 disciplinary alternative education program, or with the board's
 2-49 designee, for the provision of chemical dependency treatment
 2-50 services;

2-51 (3) provide to an entity of state or local government,
 2-52 on a part-time or full-time basis, the mental health or chemical
 2-53 dependency services of any of its employees, agents, or contractors
 2-54 who make or are in a position to make referrals unless:

2-55 (A) the treatment facility discloses to the
 2-56 governing authority of the entity:

2-57 (i) the employee's, agent's, or
 2-58 contractor's relationship to the facility; and

2-59 (ii) the fact that the employee, agent, or
 2-60 contractor might make a referral, if permitted, to the facility;
 2-61 and

2-62 (B) the employee, agent, or contractor makes a
 2-63 referral only if:

2-64 (i) the treatment facility obtains the
 2-65 governing authority's authorization in writing for the employee,
 2-66 agent, or contractor to make the referrals; and

2-67 (ii) the employee, agent, or contractor
 2-68 discloses to the prospective patient the employee's, agent's, or
 2-69 contractor's relationship to the facility at initial contact; [~~or~~]

3-1 (4) in relation to intervention and assessment
3-2 services, contract with, offer to remunerate, or remunerate a
3-3 person who operates an intervention and assessment service that
3-4 makes referrals to a treatment facility for inpatient or outpatient
3-5 treatment of mental illness or chemical dependency unless the
3-6 intervention and assessment service is:

3-7 (A) operated by a community mental health and
3-8 intellectual disability center the commission funds [~~funded by the~~
3-9 ~~department and the Department of Aging and Disability Services~~];

3-10 (B) operated by a county or regional medical
3-11 society;

3-12 (C) a qualified mental health referral service as
3-13 defined by Section 164.007; or

3-14 (D) owned and operated by a nonprofit or
3-15 not-for-profit organization offering counseling concerning family
3-16 violence, help for runaway children, or rape; or

3-17 (5) contract with a marketing provider who agrees to
3-18 provide general referrals or leads for the placement of prospective
3-19 patients with a service provider or in a recovery residence through
3-20 a call center or Internet website presence, unless the terms of that
3-21 contract are disclosed to the prospective patient.

3-22 SECTION 5. Section 164.010, Health and Safety Code, is
3-23 amended to read as follows:

3-24 Sec. 164.010. PROHIBITED ACTS. It is a violation of this
3-25 chapter, in connection with the marketing of mental health
3-26 services, for a person to:

3-27 (1) advertise, expressly or impliedly, the services of
3-28 a treatment facility through the use of:

3-29 (A) promises of cure or guarantees of treatment
3-30 results that cannot be substantiated; or

3-31 (B) any unsubstantiated claims;

3-32 (2) advertise, expressly or impliedly, the
3-33 availability of intervention and assessment services unless and
3-34 until the services are available and are provided by mental health
3-35 professionals licensed or certified to provide the particular
3-36 service;

3-37 (3) fail to disclose before soliciting a referral
3-38 source or prospective patient to induce a person to use the services
3-39 of the treatment facility an affiliation between a treatment
3-40 facility and its soliciting agents, employees, or contractors;

3-41 (4) obtain or disclose information considered
3-42 confidential by state or federal law regarding a person for the
3-43 purpose of soliciting that person to use the services of a treatment
3-44 facility unless and until consent is obtained from the person or, in
3-45 the case of a minor, the person's parent, managing conservator, or
3-46 legal guardian or another person with authority to give that
3-47 authorization; ~~or~~

3-48 (5) represent that a referral service is a qualified
3-49 mental health referral service unless and until the referral
3-50 service complies with Section 164.007;

3-51 (6) make a false or misleading statement or provide
3-52 false or misleading information about the facility's services or
3-53 location in the facility's advertising media or on its Internet
3-54 website; or

3-55 (7) provide a link on the facility's Internet website
3-56 that redirects the user to another Internet website containing
3-57 false or misleading statements or information described by
3-58 Subdivision (6).

3-59 SECTION 6. Section 164.011(a), Health and Safety Code, is
3-60 amended to read as follows:

3-61 (a) If it appears that a person is in violation of this
3-62 chapter, the attorney general, a district attorney, or a county
3-63 attorney may institute an action for injunctive relief to restrain
3-64 the person from continuing the violation and for civil penalties of
3-65 not less than \$2,000 [~~\$1,000~~] and not more than \$25,000 per
3-66 violation.

3-67 SECTION 7. Section 102.001, Occupations Code, is amended to
3-68 read as follows:

3-69 Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person

4-1 commits an offense if the person knowingly offers to pay or agrees
4-2 to accept, directly or indirectly, overtly or covertly any
4-3 remuneration in cash or in kind or any benefit or commission to or
4-4 from another for securing or soliciting a patient or patronage for
4-5 or from a person licensed, certified, or registered by a state
4-6 health care regulatory agency.

4-7 (b) Except as provided by Subsection (c), an offense under
4-8 this section is a state jail felony [~~Class A misdemeanor~~].

4-9 (c) An offense under this section is a felony of the second
4-10 [~~third~~] degree if it is shown on the trial of the offense that the
4-11 person:

4-12 (1) has previously been convicted of an offense under
4-13 this section; or

4-14 (2) was employed by a federal, state, or local
4-15 government at the time of the offense.

4-16 SECTION 8. Section 102.004, Occupations Code, is amended to
4-17 read as follows:

4-18 Sec. 102.004. APPLICABILITY TO ADVERTISING. Section
4-19 102.001 does not prohibit advertising, unless the advertising is:

4-20 (1) false, misleading, or deceptive; [~~or~~]

4-21 (2) not readily subject to verification, if the
4-22 advertising claims professional superiority or the performance of a
4-23 professional service in a superior manner; or

4-24 (3) prohibited under Chapter 164, Health and Safety
4-25 Code, as applicable.

4-26 SECTION 9. Section 102.006, Occupations Code, is amended to
4-27 read as follows:

4-28 Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person
4-29 commits an offense if:

4-30 (1) the person, in a manner otherwise permitted under
4-31 Section 102.001, accepts remuneration, a benefit, or a commission
4-32 to secure or solicit a patient or patronage for a person licensed,
4-33 certified, or registered by a state health care regulatory agency;
4-34 and

4-35 (2) does not, at the time of initial contact and at the
4-36 time of referral, disclose to the patient:

4-37 (A) the person's affiliation, if any, with the
4-38 person for whom the patient is secured or solicited; and

4-39 (B) that the person will receive, directly or
4-40 indirectly, remuneration, a benefit, or a commission for securing
4-41 or soliciting the patient.

4-42 (b) Except as provided by Subsection (c), an offense under
4-43 this section is a state jail felony [~~Class A misdemeanor~~].

4-44 (c) An offense under this section is a felony of the second
4-45 [~~third~~] degree if it is shown on the trial of the offense that the
4-46 person:

4-47 (1) has previously been convicted of an offense under
4-48 this section; or

4-49 (2) was employed by a federal, state, or local
4-50 government at the time of the offense.

4-51 SECTION 10. Sections 102.051(a), (b), and (c), Occupations
4-52 Code, are amended to read as follows:

4-53 (a) A person commits an offense if the person:

4-54 (1) practices the art of healing with or without the
4-55 use of medicine; and

4-56 (2) employs or agrees to employ, pays or promises to
4-57 pay, or rewards or promises to reward or provide any benefit or
4-58 commission to another for soliciting or securing a patient or
4-59 patronage.

4-60 (b) A person commits an offense if the person accepts or
4-61 agrees to accept anything of value or any benefit or commission for
4-62 soliciting or securing a patient or patronage for a person who
4-63 practices the art of healing with or without the use of medicine.

4-64 (c) An offense under this section is a Class B misdemeanor
4-65 [~~punishable by a fine of not less than \$100 or more than \$200~~]. Each
4-66 violation of this section is a separate offense.

4-67 SECTION 11. The changes in law made by this Act apply only
4-68 to an offense committed on or after the effective date of this Act.
4-69 An offense committed before the effective date of this Act is

5-1 governed by the law in effect on the date the offense was committed,
5-2 and the former law is continued in effect for that purpose. For
5-3 purposes of this section, an offense was committed before the
5-4 effective date of this Act if any element of the offense occurred
5-5 before that date.

5-6 SECTION 12. This Act takes effect September 1, 2023.

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