

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 886

Introduced by Arch, 14.

Read first time January 09, 2020

Committee:

- 1 A BILL FOR AN ACT relating to insurance; to amend section 87-302, Revised
- 2 Statutes Cumulative Supplement, 2018; to state intent; to define
- 3 terms; to prohibit certain activities by facilities as prescribed;
- 4 to list a deceptive trade practice; to provide a duty for the
- 5 Revisor of Statutes; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds and declares that:

2 (a) Nebraskans who have a plan of health insurance, health benefits,
3 or health care services provided through a health insurer and who receive
4 health care services from a network provider receive such health care
5 services at rates negotiated by the health insurer;

6 (b) As part of such negotiations, network providers agree to accept
7 set reimbursement from the health insurer for the health care services
8 provided by the network provider;

9 (c) The person covered by the health insurer is protected by the
10 contract between the health insurer and the network provider from
11 receiving a bill for the balance between the negotiated rate and a billed
12 charge;

13 (d) Nebraskans need to know the network status of the provider in
14 order to understand the plan of health insurance, health benefits, or
15 health care services applicable to the health care services being
16 provided by the provider; and

17 (e) It is necessary to regulate communication by providers to avoid
18 communication that may mislead or cause confusion for Nebraskans
19 receiving care from providers about their network status.

20 (2) For purposes of this section:

21 (a) Facility means an institution providing health care services or
22 a health care setting, including, but not limited to, a hospital or other
23 licensed inpatient center, an ambulatory surgical or treatment center, a
24 skilled nursing center, a residential treatment center, a diagnostic,
25 laboratory, or imaging center, or any rehabilitation or other therapeutic
26 health setting. Facility does not include a physician's office;

27 (b) Health insurer means an entity that contracts, offers to
28 contract, or enters into an agreement to provide, deliver, arrange for,
29 pay for, or reimburse any of the costs of health care services, including
30 a sickness and accident insurance company, a health maintenance
31 organization, a prepaid limited health service organization, a prepaid

1 dental service corporation, or any other entity providing a plan of
2 health insurance, health benefits, or health care services. Health
3 insurer does not include a self-funded employee benefit plan to the
4 extent preempted by federal law or a workers' compensation insurer, risk
5 management pool, or self-insured employer who contracts for services to
6 be provided through a managed care plan certified pursuant to section
7 48-120.02; and

8 (c) Network provider means a facility providing services under a
9 plan of health insurance, health benefits, or health care services if the
10 plan either requires a person covered by the health insurer to use, or
11 creates a financial incentive by providing a more favorable deductible,
12 coinsurance, or copayment level for a person covered by the health
13 insurer to use, a health care provider managed, owned, under contract
14 with, or employed by the health insurer which administers the plan.

15 (3) A facility shall not advertise or hold itself out as a network
16 provider, including any statement that the facility takes or accepts any
17 health insurer, unless the facility is a network provider of the health
18 insurer.

19 (4) A facility shall not place the name or logo of a health insurer
20 in any signage or marketing materials if the facility is not a network
21 provider for the plan of health insurance, health benefits, or health
22 care services administered by the health insurer.

23 (5) Any contract entered into between a facility and a person
24 covered by a health insurer is voidable at the option of the covered
25 person if the facility violates this section.

26 Sec. 2. Section 87-302, Revised Statutes Cumulative Supplement,
27 2018, is amended to read:

28 87-302 (a) A person engages in a deceptive trade practice when, in
29 the course of his or her business, vocation, or occupation, he or she:

30 (1) Passes off goods or services as those of another;

31 (2) Causes likelihood of confusion or of misunderstanding as to the

1 source, sponsorship, approval, or certification of goods or services;

2 (3) Causes likelihood of confusion or of misunderstanding as to
3 affiliation, connection, or association with, or certification by,
4 another;

5 (4) Uses deceptive representations or designations of geographic
6 origin in connection with goods or services;

7 (5) Represents that goods or services have sponsorship, approval,
8 characteristics, ingredients, uses, benefits, or quantities that they do
9 not have or that a person has a sponsorship, approval, status,
10 affiliation, or connection that he or she does not have;

11 (6) Represents that goods or services do not have sponsorship,
12 approval, characteristics, ingredients, uses, benefits, or quantities
13 that they have or that a person does not have a sponsorship, approval,
14 status, affiliation, or connection that he or she has;

15 (7) Represents that goods are original or new if they are
16 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,
17 except that sellers may repair damage to and make adjustments on or
18 replace parts of otherwise new goods in an effort to place such goods in
19 compliance with factory specifications;

20 (8) Represents that goods or services are of a particular standard,
21 quality, or grade, or that goods are of a particular style or model, if
22 they are of another;

23 (9) Disparages the goods, services, or business of another by false
24 or misleading representation of fact;

25 (10) Advertises goods or services with intent not to sell them as
26 advertised or advertises the price in any manner calculated or tending to
27 mislead or in any way deceive a person;

28 (11) Advertises goods or services with intent not to supply
29 reasonably expectable public demand, unless the advertisement discloses a
30 limitation of quantity;

31 (12) Makes false or misleading statements of fact concerning the

1 reasons for, existence of, or amounts of price reductions;

2 (13) Uses or promotes the use of or establishes, operates, or
3 participates in a pyramid promotional scheme in connection with the
4 solicitation of such scheme to members of the public. This subdivision
5 shall not be construed to prohibit a plan or operation, or to define a
6 plan or operation as a pyramid promotional scheme, based on the fact that
7 participants in the plan or operation give consideration in return for
8 the right to receive compensation based upon purchases of goods,
9 services, or intangible property by participants for personal use,
10 consumption, or resale so long as the plan or operation does not promote
11 or induce inventory loading and the plan or operation implements an
12 appropriate inventory repurchase program;

13 (14) With respect to a sale or lease to a natural person of goods or
14 services purchased or leased primarily for personal, family, household,
15 or agricultural purposes, uses or employs any referral or chain referral
16 sales technique, plan, arrangement, or agreement;

17 (15) Knowingly makes a false or misleading statement in a privacy
18 policy, published on the Internet or otherwise distributed or published,
19 regarding the use of personal information submitted by members of the
20 public;

21 (16) Uses any scheme or device to defraud by means of:

22 (i) Obtaining money or property by knowingly false or fraudulent
23 pretenses, representations, or promises; or

24 (ii) Selling, distributing, supplying, furnishing, or procuring any
25 property for the purpose of furthering such scheme;

26 (17) Offers an unsolicited check, through the mail or by other
27 means, to promote goods or services if the cashing or depositing of the
28 check obligates the endorser or payee identified on the check to pay for
29 goods or services. This subdivision does not apply to an extension of
30 credit or an offer to lend money;

31 (18) Mails or causes to be sent an unsolicited billing statement,

1 invoice, or other document that appears to obligate the consumer to make
2 a payment for services or merchandise he or she did not order;

3 (19)(i) Installs, offers to install, or makes available for
4 installation or download a covered file-sharing program on a computer not
5 owned by such person without providing clear and conspicuous notice to
6 the owner or authorized user of the computer that files on that computer
7 will be made available to the public and without requiring intentional
8 and affirmative activation of the file-sharing function of such covered
9 file-sharing program by the owner or authorized user of the computer; or

10 (ii) Prevents reasonable efforts to block the installation,
11 execution, or disabling of a covered file-sharing program;

12 (20) Violates any provision of the Nebraska Foreclosure Protection
13 Act;

14 (21) Violates section 1 of this act;

15 (22) ~~(21)~~ In connection with the solicitation of funds or other
16 assets for any charitable purpose, or in connection with any solicitation
17 which represents that funds or assets will be used for any charitable
18 purpose, uses or employs any deception, fraud, false pretense, false
19 promise, misrepresentation, unfair practice, or concealment, suppression,
20 or omission of any material fact; or

21 (23) ~~(22)~~ In the manufacture, production, importation, distribution,
22 promotion, display for sale, offer for sale, attempt to sell, or sale of
23 a substance:

24 (i) Makes a deceptive or misleading representation or designation,
25 or omits material information, about a substance or fails to identify the
26 contents of the package or the nature of the substance contained inside
27 the package; or

28 (ii) Causes confusion or misunderstanding as to the effects a
29 substance causes when ingested, injected, inhaled, or otherwise
30 introduced into the human body.

31 A person shall be deemed to have committed a violation of the

1 Uniform Deceptive Trade Practices Act for each individually packaged
2 product that is either manufactured, produced, imported, distributed,
3 promoted, displayed for sale, offered for sale, attempted to sell, or
4 sold in violation of this section. A violation under this subdivision
5 shall be treated as a separate and distinct violation from any other
6 offense arising out of acts alleged to have been committed while the
7 person was in violation of this section.

8 (b) In order to prevail in an action under the Uniform Deceptive
9 Trade Practices Act, a complainant need not prove competition between the
10 parties.

11 (c) This section does not affect unfair trade practices otherwise
12 actionable at common law or under other statutes of this state.

13 Sec. 3. The Revisor of Statutes shall assign section 1 of this act
14 to Chapter 44, article 7.

15 Sec. 4. Original section 87-302, Revised Statutes Cumulative
16 Supplement, 2018, is repealed.