

Exhibit E

E. Discussion of Codification of Arkansas Code § 4-106-201.

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 875 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/2/05 S3/3/05

A Bill

HOUSE BILL 1209

5 By: Representative Thomason
6 By: Senator Hill
7
8

For An Act To Be Entitled

9
10 AN ACT TO REQUIRE DISCLOSURES BY SELLERS OF
11 HEALTH-RELATED CASH DISCOUNT CARDS; TO PROVIDE A
12 CANCELLATION PERIOD FOR THE PURCHASE OF HEALTH-
13 RELATED DISCOUNT CARDS; AND FOR OTHER PURPOSES.
14
15

Subtitle

16
17 AN ACT TO REQUIRE DISCLOSURES BY SELLERS
18 OF HEALTH-RELATED CASH DISCOUNT CARDS
19 AND TO PROVIDE A CANCELLATION PERIOD FOR
20 THE PURCHASE OF HEALTH-RELATED DISCOUNT
21 CARDS.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Legislative intent.

27 (a) It is found and determined by the General Assembly that:

28 (1) Consumers in the State of Arkansas purchase health-related
29 cash discount cards with the expectation that all health-related cash
30 discount cards will provide significant savings for the cost of health care;

31 (2) Many consumers in the State of Arkansas purchase health-
32 related cash discount cards without the seller providing a full explanation
33 of the range of discounts offered and whether consumers' health-care
34 providers will accept the card; and

35 (3) Many health-related cash discount card providers do not



1 clearly indicate in advertisements or during the sales process that discount
2 cards are not insurance.

3 (b) This act is intended to provide consumers in the State of Arkansas
4 with:

5 (1) Additional protections that will ensure that they have
6 sufficient information with which to make an informed decision before
7 agreeing to purchase a health-related cash discount card; and

8 (2) A sufficient time period in which to cancel a health-related
9 cash discount card.

10

11 SECTION 2. Arkansas Code § 4-106-201 is amended to read as follows:

12 4-106-201. Prohibited practices.

13 It shall be unlawful and a violation of this subchapter for any person
14 to sell, market, promote, advertise, or otherwise distribute any card or
15 other purchasing mechanism or device which is not insurance that purports to
16 offer discounts or access to discounts from health care providers in health-
17 related purchases where:

18 (1) The card or other purchasing mechanism or device does not
19 *expressly provide in bold and prominent type that the discounts are not*
20 *insurance;*

21 (2) The card or other purchasing mechanism or device does not
22 expressly provide in bold and prominent type on the card or a statement
23 attached to the card that the consumer has the right to cancel his or her
24 registration within thirty (30) days from the effective date of the card or
25 other purchasing mechanism or device;

26 ~~(2)(3)~~ The discounts are not specifically authorized by an
27 individual and separate contract with each health care provider listed in
28 conjunction with the card or other purchasing mechanism or device; ~~or~~

29 ~~(3)(4)~~ The discounts or access to discounts offered or the range
30 of discounts or access to the range of discounts offered are, regardless of
31 the literal wording used:

- 32 (A) Misleading;
- 33 (B) Deceptive; or
- 34 (C) Fraudulent;

35 ~~(4)(5)~~ The card or any advertisements for the card in any form,
36 include words or phrases that are commonly associated with the business of

1 insurance, such as "health plan", "pre-existing condition", or "coverage" in
2 a way that could have a tendency to deceive the public into believing that
3 the cards are a form of insurance.

4 ~~(5)~~(6) The contract for the card or other purchasing mechanism
5 or device, or any other document that is provided to the consumer at the time
6 the card or other purchasing mechanism or device is received, does not
7 contain:

8 (A) Information in bold and prominent type that a consumer
9 has the right to cancel his or her registration within thirty (30) days from
10 the effective date of the card or other purchasing mechanism or device; and

11 (B) Instructions on how a consumer may cancel his or her
12 registration;

13 (7) Printed advertisements and other printed promotional
14 materials concerning the card or other purchasing mechanism or device do not
15 expressly provide in bold and prominent type that:

16 (A) The discounts are not insurance; and

17 (B) The card or other purchasing mechanism or device
18 contains a thirty-day cancellation period; or

19 (8) Electronic advertisements and other electronic promotions
20 concerning the card or other purchasing mechanism or device, including, but
21 not limited to, radio, television, the Internet, and telephone solicitations,
22 do not expressly state in a prominent manner that:

23 (A) The discounts are not insurance; and

24 (B) A consumer has the right to cancel the registration
25 within a thirty-day period under § 4-106-205.

26
27 SECTION 3. Arkansas Code § 4-106-202(a), pertaining to persons who may
28 enjoin violations related to health-discount cards, is amended to read as
29 follows:

30 (a) Any The Attorney General, any person, firm, private corporation,
31 municipal or other public corporation, or trade association may maintain an
32 action to enjoin a continuance of any act or acts in violation of this
33 subchapter and for the recovery of damages.

34
35 SECTION 4. Arkansas Code § 4-106-202(c), pertaining to venue for
36 actions related to health-discount cards, is amended to read as follows:

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review of a valid driver's license or other credible means of identification bearing a photograph of the person.

(3) This subsection shall not apply to the solicitation of a credit card application by a bank or credit union located on the campus if the solicitation is made within its office.

(b) It is unlawful to issue a credit card to any individual whose application for credit is obtained as a result of actions prohibited by this subchapter.

History. Acts 1999, No. 1328, § 2; 2005, No. 1430, § 1. for a credit card or" in (a)(1)(A); and substituted "on the campus" for "in or on facilities" in (a)(2).

Amendments. The 2005 amendment inserted "in an academic building...apply

4-104-204. Violations — Penalties.

Any credit card issuer violating this subchapter shall be guilty of a violation and fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each violation.

History. Acts 1999, No. 1328, § 4; 2005, No. 1994, § 43. **Amendments.** The 2005 amendment substituted "violation" for "misdemeanor."

CHAPTER 106

DISCOUNT CARDS

SUBCHAPTER.

2. HEALTH-RELATED CASH DISCOUNT CARDS.

SUBCHAPTER 2 — HEALTH-RELATED CASH DISCOUNT CARDS

SECTION.

4-106-201. Prohibited practices.

4-106-202. Penalty.

SECTION.

4-106-205. Right to rescind contract —

No waiver of claims.

4-106-201. Prohibited practices.

It shall be unlawful and a violation of this subchapter for any person to sell, market, promote, advertise, or otherwise distribute any card or other purchasing mechanism or device which is not insurance that purports to offer discounts or access to discounts from health care providers in health-related purchases if:

(1) The card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) The card or other purchasing mechanism or device does not expressly provide in bold and prominent type on the card or in a statement attached to the card that the consumer has the right to cancel his or her registration within thirty (30) days from the effective date of the card or other purchasing mechanism or device;

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DISCOUNT CARDS

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(3) The discounts are not specifically authorized by an individual and separate contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device;

(4) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are, regardless of the literal wording used:

- (A) Misleading;
- (B) Deceptive; or
- (C) Fraudulent;

(5) The card or any advertisements for the card in any form include words or phrases that are commonly associated with the business of insurance, such as "health plan", "preexisting condition", or "coverage", in a way that could have a tendency to deceive the public into believing that the cards are a form of insurance;

(6) The contract for the card or other purchasing mechanism or device, or any other document that is provided to the consumer at the time the card or other purchasing mechanism or device is received, does not contain:

(A) Information in bold and prominent type that a consumer has the right to cancel his or her registration within thirty (30) days from the effective date of the card or other purchasing mechanism or device; and

(B) Instructions on how a consumer may cancel his or her registration;

(7) Printed advertisements and other printed promotional materials concerning the card or other purchasing mechanism or device do not expressly provide in bold and prominent type that:

- (A) The discounts are not insurance; and
- (B) The card or other purchasing mechanism or device contains a thirty-day cancellation period; and

(8) Electronic advertisements and other electronic promotions concerning the card or other purchasing mechanism or device, including, but not limited to, radio, television, the Internet, and telephone solicitations, do not expressly state in a prominent manner that:

- (A) The discounts are not insurance; and
- (B) A consumer has the right to cancel the registration within a thirty-day period under § 4-106-205.

History. Acts 1999, No. 1406, § 1; 2005, No. 875, § 2.

A.C.R.C. Notes. Acts 2005, No. 875, § 1, provided: Legislative intent. (a) It is found and determined by the General Assembly that:

"(1) Consumers in the State of Arkansas purchase health-related cash discount cards with the expectation that all health-related cash discount cards will provide significant savings for the cost of health care;

"(2) Many consumers in the State of Arkansas purchase health-related cash discount cards without the seller providing a full explanation of the range of discounts offered and whether consumers' health-care providers will accept the card; and

"(3) Many health-related cash discount card providers do not clearly indicate in advertisements or during the sales process that discount cards are not insurance.

