

By: Kuempel

H.B. No. 2919

Substitute the following for H.B. No. 2919:

By: Dawson

C.S.H.B. No. 2919

A BILL TO BE ENTITLED

AN ACT

relating to creating administrative and civil penalties for the failure to furnish data required for the Texas Cancer Registry.

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

SECTION 1. Section 82.008(f), Health and Safety Code, is amended to read as follows:

(f) A health care facility, clinical laboratory, or health care practitioner that knowingly or in bad faith fails to furnish data as required by this chapter shall reimburse the department or its authorized representative for the costs of accessing and reporting the data. The costs reimbursed under this subsection must be reasonable, based on the actual costs incurred by the department or by its authorized representative in the collection of data under Subsection (d), and may include salary and travel expenses. The department may assess a late fee on an account that is 60 days or more overdue. The late fee may not exceed one and one-half percent of the total amount due on the late account for each month or portion of a month the account is not paid in full. A health care facility, clinical laboratory, or health care practitioner may request that the department conduct a hearing to determine whether reimbursement to the department under this subsection is appropriate. In addition to the fees authorized by this section, the department may impose penalties authorized by Sections 82.021-82.029.

SECTION 2. Chapter 82, Health and Safety Code, is amended by adding Section 82.012 to read as follows:

Sec. 82.012. FEES FOR DATA PRODUCTS. (a) The department may impose reasonable fees for the provision of data or access to data in the cancer registry other than the provision of standard publications prepared for general distribution.

(b) The executive commissioner of the Health and Human Services Commission shall adopt rules regarding the amount of the fees charged under this section.

(c) A fee collected under this section shall be deposited in the state treasury in the name of the Department of State Health Services and may be appropriated only to the department for the purposes of the cancer registry. An appropriation from these amounts is free from any limitation on full-time equivalents (FTEs), capital expenditures, and travel expenses imposed by the General Appropriations Act.

SECTION 3. Chapter 82, Health and Safety Code, is amended by adding Sections 82.021-82.029 to read as follows:

Sec. 82.021. NOTICE OF VIOLATION. (a) If the department determines that a person, other than a health care practitioner, has failed to furnish data as required by this chapter or rules adopted under this chapter, the department shall send a notice to the person after the 30th day after the date the person was required to furnish the data. The notice must state that the person has not complied with this chapter and that the person may take corrective action by furnishing the required data not later than the 60th day after the date of the notice.

1 (b) If a person notified under Subsection (a) has not taken
2 corrective action before the 31st day after the date of the
3 department's initial notice, the department shall send a second
4 notice stating that the person has only 30 days remaining to take
5 corrective action.

6 Sec. 82.022. ADMINISTRATIVE PENALTY. (a) After complying
7 with Section 82.021, the department may assess an administrative
8 penalty if a person, other than a health care practitioner, fails to
9 furnish data required by this chapter or a rule adopted under this
10 chapter before the 91st day after the date the person is originally
11 required to furnish the data.

12 (b) In determining the amount of the penalty, the department
13 shall consider:

- 14 (1) the seriousness of the violation;
15 (2) the person's previous violations; and
16 (3) any other matter that justice may require.

17 (c) The penalty may not exceed \$1,000 a day for each
18 violation.

19 (d) Each day a violation continues is a separate violation
20 for purposes of imposing a penalty.

21 Sec. 82.023. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

22 (a) The department may assess an administrative penalty only after
23 the person charged with a violation is given the opportunity for a
24 hearing.

25 (b) If a hearing is held, the department shall make findings
26 of fact and shall issue a written decision regarding the occurrence
27 of the violation and the amount of the penalty that may be

1 warranted.

2 (c) If the person charged with the violation does not
3 request a hearing, the department may assess a penalty after
4 determining that a violation occurred and the amount of the penalty
5 that is warranted.

6 (d) After making a determination under this section that a
7 penalty is to be assessed against a person, the department shall
8 issue an order requiring the person to pay the penalty.

9 (e) The department may consolidate a hearing under this
10 section with another proceeding.

11 Sec. 82.024. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
12 later than the 30th day after the date an order finding that a
13 violation has occurred is issued, the department shall inform the
14 person against whom the order is issued of the amount of the penalty
15 for the violation.

16 (b) Before the 31st day after the date on which a decision or
17 order charging a person with a penalty is final as provided by
18 Section 2001.144, Government Code, the person shall:

19 (1) pay the penalty in full; or

20 (2) file a petition for judicial review contesting the
21 occurrence of the violation, the amount of the penalty, or both the
22 occurrence of the violation and the amount of the penalty.

23 (c) Within the 30-day period, a person who acts under
24 Subsection (b)(2) may:

25 (1) stay enforcement of the penalty by:

26 (A) paying the amount of the penalty to the court
27 for placement in an escrow account; or

1 (B) giving to the court a bond that is approved by
2 the court for the amount of the penalty and that is effective until
3 all judicial review of the order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit of
7 the person stating that the person is financially unable to pay the
8 amount of the penalty and is financially unable to give the bond;
9 and

10 (B) giving a copy of the affidavit to the
11 department by certified mail.

12 Sec. 82.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY
13 GENERAL. At the request of the department, the attorney general may
14 bring a civil action to recover an administrative penalty imposed
15 under this chapter.

16 Sec. 82.026. JUDICIAL REVIEW. Judicial review of a
17 decision or order of the department imposing a penalty under this
18 subchapter is instituted by filing a petition with a district court
19 in Travis County and is under the substantial evidence rule as
20 provided by Subchapter G, Chapter 2001, Government Code.

21 Sec. 82.027. REFUND OF ADMINISTRATIVE PENALTY. Not later
22 than the 30th day after the date of a judicial determination that an
23 administrative penalty against a person should be reduced or not
24 assessed, the department shall:

25 (1) remit to the person the appropriate amount of any
26 penalty payment plus accrued interest; or

27 (2) execute a release of the bond if the person has

1 posted a bond.

2 Sec. 82.028. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) At the
3 request of the department, the attorney general or a district,
4 county, or city attorney shall institute an action in district
5 court to:

6 (1) collect a civil penalty from a person who has
7 violated or is violating this chapter or a rule or order adopted
8 under this chapter; or

9 (2) obtain injunctive relief against a person who has
10 violated, is violating, or is threatening to violate this chapter
11 or a rule or order adopted under this chapter.

12 (b) A civil penalty may not exceed \$1,000 a day for each
13 violation. Each day of violation constitutes a separate violation
14 for purposes of the penalty assessment.

15 (c) The court shall consider the following in determining
16 the amount of the penalty:

17 (1) the seriousness of the violation;
18 (2) the person's previous violations; and
19 (3) the demonstrated good faith of the person charged
20 with the violation.

21 (d) A civil penalty recovered in a suit instituted by the
22 attorney general under this chapter shall be deposited in the state
23 treasury.

24 Sec. 82.029. USE OF PENALTIES. An administrative penalty
25 or civil penalty collected under Sections 82.021-82.028 shall be
26 deposited in the state treasury in the name of the Department of
27 State Health Services and may be appropriated only to the

1 department for purposes of the cancer registry. An appropriation
2 from these amounts is free from any limitation on full-time
3 equivalents (FTEs), capital expenditures, and travel expenses
4 imposed by the General Appropriations Act.

5 SECTION 4. The change in law made by this Act applies only
6 to the furnishing of data under Chapter 82, Health and Safety Code,
7 or a rule adopted under that chapter that is originally required to
8 be furnished on or after the effective date of this Act. The
9 furnishing of data originally required to be furnished before the
10 effective date of this Act is governed by the law as it existed
11 immediately before that date, and that law is continued in effect
12 for that purpose.

13 SECTION 5. This Act takes effect September 1, 2005.