

By: Kuempel

H.B. No. 2919

A BILL TO BE ENTITLED

AN ACT

relating to Texas Cancer Registry data use fees and cost recovery procedures and penalties for failure to furnish required data to the Registry.

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

SECTION 1. Section 82.008(f), Chapter 82, 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 this cost recovery and late fee, the department may pursue penalties under Sections

1 82.21-82.29 of this Chapter.

2 SECTION 2. Amend Chapter 82, Health and Safety Code, by
3 adding new Sections 82.21-82.29 to read as follows:

4 Sec. 82.21. IMPOSITION OF ADMINISTRATIVE PENALTY. After 60
5 days of violation of this Chapter, the department may impose an
6 administrative penalty on a person, other than a health care
7 practitioner, who violates this chapter or a rule adopted or order
8 issued under this chapter.

9 Sec. 82.22. AMOUNT OF PENALTY. (a) The amount of an
10 administrative penalty may not exceed \$1,000 a day for each
11 violation. Each day a violation continues may be considered a
12 separate violation for purposes of imposing a penalty.

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

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

18 Sec. 82.23. OPPORTUNITY FOR HEARING; ORDER. (a) The
19 department may impose an administrative penalty under this
20 subchapter only after the person charged with a violation is given
21 the opportunity for a hearing.

22 (b) If a hearing is held, the department shall make findings
23 of fact and issue a written decision as to:

- 24 (1) the occurrence of the violation; and
25 (2) the amount of any penalty that is warranted.

26 (c) If the person charged with a violation fails to exercise
27 the opportunity for a hearing, the department, after determining

1 that a violation occurred and the amount of the penalty that is
2 warranted, may impose a penalty and shall issue an order requiring
3 the person to pay any penalty imposed.

4 (d) Not later than the 30th day after the date an order is
5 issued after determining that a violation occurred, the department
6 shall inform the person charged with the violation of the amount of
7 any penalty imposed.

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

10 Sec. 82.24. OPTIONS FOLLOWING DECISION; PAY OR APPEAL. (a)
11 Not later than the 30th day after the date the department's decision
12 or order becomes final as provided by Section 2001.144, Government
13 Code, the person shall:

14 (1) pay the administrative penalty; or
15 (2) file a petition for judicial review contesting the
16 fact of the violation, the amount of the penalty, or both.

17 (b) Within the 30-day period, a person who acts under
18 Subsection (a)(2) may stay enforcement of the penalty by:

19 (1) paying the penalty to the department for placement
20 in an escrow account; or

21 (2) giving the department a bond in a form approved by
22 the department that:

23 (A) is for the amount of the penalty; and
24 (B) is effective until judicial review of the
25 department's decision or order is final.

26 Sec. 82.25. COLLECTION OF PENALTY. At the request of the
27 department, the attorney general may bring a civil action to

1 recover an administrative penalty imposed under this subchapter.

2 Sec. 82.26. JUDICIAL REVIEW. Judicial review of a decision
3 or order of the department imposing a penalty under this subchapter
4 is instituted by filing a petition with a district court in Travis
5 County and is under the substantial evidence rule as provided by
6 Subchapter G, Chapter 2001, Government Code.

7 Sec. 82.27. REMITTANCE OF PENALTY AND INTEREST OR RELEASE
8 OF BOND. If after judicial review the administrative penalty is
9 reduced or is not upheld by the court, the department shall:

10 (1) remit the appropriate amount, plus accrued
11 interest, to the person not later than the 30th day after the date
12 of the determination, if the person paid the penalty; or

13 (2) execute a release of the bond, if the person gave a
14 bond.

15 Sec. 82.28. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
16 department may request the attorney general or the district,
17 county, or city attorney having jurisdiction to bring a civil suit
18 for injunctive relief, the assessment and recovery of a civil
19 penalty, or both, against a person who appears to have violated, is
20 violating, or is threatening to violate this chapter or a rule
21 adopted or order issued under this chapter; or

22 (b) A civil penalty may not exceed \$1,000 a day for each
23 violation. Each day a violation occurs or continues to occur is a
24 separate violation for purposes of imposing a penalty.

25 (c) In determining the amount of a civil penalty, the court
26 shall consider:

27 (1) the seriousness of the violation;

1 (2) the person's history of previous violations; and
2 (3) the demonstrated good faith of the person charged
3 with the violation.

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

7 Sec. 82.29. USE OF FUNDS. All cost reimbursements,
8 administrative penalties and civil penalties under Sections
9 82.21-82.28 shall be recovered in the name of the Department of
10 State Health Services and shall be dedicated to the cancer registry
11 free from all limitations on Full Time Equivalents (FTEs), capital
12 expenditures and travel expenses set forth in the General
13 Appropriations Act.

14 SECTION 3. Amend Chapter 82, Health and Safety Code by
15 adding new Section 82.012 to read as follows:

16 Sec. 82.012. FEES FOR DATA PRODUCTS. (a) The cancer
17 registry may impose reasonable fees for the provision of data
18 linkages and data requests other than standard publications
19 prepared for general distribution by the cancer registry.

20 (b) Fees under this Section shall be adopted by rule.

21 (c) All fees under this Section shall be collected in the
22 name of the Department of State Health Services and shall be
23 dedicated to the cancer registry free from all limitations on Full
24 Time Equivalents (FTEs), capital expenditures and travel expenses
25 set forth in the General Appropriations Act.

26 SECTION 4. This Act takes effect September 1, 2005.