

BILL ANALYSIS

S.B. 646
By: Van de Putte
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Prescription costs in Texas and nationwide continue to rise; however, the reason for this increase is often difficult to discern. Many states have begun exploring data mining, or the buying and selling of patient-identifiable and practitioner-identifiable information, as possible causes for the rise in prescription costs. Texas has much to learn about such practices and the larger implications they may have on our health care system.

S.B. 646 relates to a study regarding the confidentiality of prescription information and provides a civil penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 646 amends the Occupations Code to add temporary provisions, set to expire October 1, 2010, requiring the Texas State Board of Pharmacy to conduct a study on the license, transfer, use, and sale of prescription information records containing patient-identifiable and practitioner-identifiable information by pharmacy benefit managers, insurers, electronic transmission intermediaries, pharmacies, and other similar entities for the purpose of advertising, marketing, or promoting pharmaceutical products. The bill requires the board, not later than August 1, 2010, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the legislature a report regarding the results of such a study, together with any recommendation for legislation. The bill requires the report to consist of aggregate information and prohibits the report from identifying by name any entity that provided information to the board. The bill specifies that information provided by an entity that is a trade secret is subject to provisions of open records laws relating to an exemption for trade secrets and certain commercial or financial information.

S.B. 646 specifies that a pharmacy benefit manager, insurer, electronic transmission intermediary, or other similar entity, other than a pharmacy, that fails to provide the requested information to the board for the study before the 90th day after the date of the request is liable to the state for a civil penalty not to exceed \$5,000 for each violation and specifies that each day a violation continues constitutes a separate violation. The bill requires the amount of penalty to be based on the seriousness of the violation, the history of previous violations, the amount necessary to deter a future violation, and any other matter that justice may require.

S.B. 646 authorizes the board or the attorney general to sue to collect a such a civil penalty, and authorizes the state, in the suit, to recover certain reasonable expenses incurred in obtaining the penalty. The bill specifies that a pharmacy that fails to provide requested information to the board for the study before the 90th day after the date of the request is subject to appropriate administrative sanctions imposed by the board.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.