

By: West

S.B. No. 296

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of certain payments or other transfers of value by manufacturers of prescription drugs, medical devices, and medical supplies; providing a penalty.

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

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 174 to read as follows:

CHAPTER 174. REPORTING REQUIREMENTS FOR MANUFACTURERS OF PRESCRIPTION DRUGS, MEDICAL DEVICES, AND MEDICAL SUPPLIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 174.001. APPLICABILITY. This chapter applies to a manufacturer that exceeds \$1 million in annual gross revenue and produces, prepares, compounds, converts, or processes a prescription drug, medical device, or medical supply for which payment is available through the medical assistance program under Chapter 32, Human Resources Code, or under Title XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. Sections 1395 et seq., 1396 et seq., and 1397aa et seq.).

Sec. 174.002. RULES. The attorney general shall adopt rules necessary to implement this chapter.

[Sections 174.003-174.050 reserved for expansion]

SUBCHAPTER B. REPORTING REQUIREMENTS

Sec. 174.051. QUARTERLY REPORT. (a) A manufacturer doing business in this state shall submit a report for each fiscal quarter

1 to the attorney general that discloses any payment or other
2 transfer of value provided directly, indirectly, or through an
3 agent, subsidiary, or other third party to:

4 (1) a physician;

5 (2) an entity that a physician is employed by, has
6 tenure with, or has a significant ownership interest in; or

7 (3) an organization involved in health care financing,
8 organization, or delivery and in which a physician is a voluntary
9 paying member or through which a physician receives professional
10 certification.

11 (b) For each payment or other transfer of value reported,
12 the quarterly report shall list:

13 (1) the name of the physician and, if applicable:

14 (A) the entity required to be listed by
15 Subsection (a)(2); or

16 (B) the organization required to be listed by
17 Subsection (a)(3);

18 (2) the address of the physician's office or primary
19 address of the entity required to be listed by Subsection (a)(2) or
20 the organization required to be listed by Subsection (a)(3);

21 (3) the facility with which the physician is
22 affiliated, if any;

23 (4) the value of the payment or other transfer of
24 value;

25 (5) the date on which the payment or other transfer of
26 value was provided;

27 (6) a description of the nature of the payment or other

1 transfer of value; and

2 (7) the purpose of the payment or other transfer of
3 value.

4 (c) The following payments or other transfers of value are
5 exempt from the quarterly reporting requirement:

6 (1) free samples of prescription drugs intended for
7 distribution to patients;

8 (2) a transfer of anything of value to a physician who
9 is a patient and not acting in the physician's professional
10 capacity;

11 (3) a gift, payment, fee, subsidy, or other economic
12 benefit valued at less than \$25; and

13 (4) compensation paid by a manufacturer to a physician
14 who is directly employed by and works solely for the manufacturer.

15 (d) A manufacturer shall submit each quarterly report
16 electronically in the manner prescribed by the attorney general not
17 later than the 30th day after the date the state fiscal year quarter
18 ends.

19 Sec. 174.052. ANNUAL SUMMARY REPORT. (a) Not later than
20 October 15 of each year, each manufacturer that is required to
21 submit quarterly reports under Section 174.051 shall submit an
22 annual summary report to the attorney general that:

23 (1) summarizes each submission of information under
24 Section 174.051 made by the manufacturer during the previous fiscal
25 year; and

26 (2) includes the aggregate amount of all transfers of
27 anything of value less than \$25 for the previous fiscal year.

1 (b) The manufacturer shall submit the annual summary report
2 electronically in the manner prescribed by the attorney general.

3 (c) The attorney general may assess a fee for filing the
4 annual summary report in an amount sufficient to recover the cost of
5 administering this chapter.

6 Sec. 174.053. PUBLICATION OF REPORTS. (a) The attorney
7 general shall review and make available to the public information
8 reported under Sections 174.051 and 174.052.

9 (b) The attorney general shall publish the quarterly and
10 annual summary reports on the attorney general's website and shall
11 make printed copies of the reports available on request.

12 Sec. 174.054. REPORT TO THE LEGISLATURE. Not later than
13 December 1 of each year, the attorney general shall submit a report
14 to the legislature that includes:

15 (1) information collected under Sections 174.051 and
16 174.052 for the preceding fiscal year; and

17 (2) a description of any action taken to enforce this
18 chapter during the preceding fiscal year.

19 Sec. 174.055. CIVIL PENALTY. (a) A manufacturer that fails
20 to report a payment or other transfer of value is liable to the
21 state for a civil penalty of not less than \$500 but not more than
22 \$2,500 for each violation, not to exceed \$50,000 in one fiscal year.

23 (b) A manufacturer that fails to file a quarterly or annual
24 summary report required under this subchapter is liable to the
25 state for a civil penalty of not less than \$5,000 but not more than
26 \$25,000, not to exceed \$250,000 in one fiscal year.

27 (c) Each failure to report a payment or other transfer of

1 value or failure to file a quarterly or annual summary report
2 constitutes a separate violation.

3 (d) The attorney general may sue to collect a penalty under
4 this section.

5 SECTION 2. (a) The attorney general shall require the first
6 quarterly report under Section 174.051, Health and Safety Code, as
7 added by this Act, to be submitted not later than December 30, 2009.

8 (b) The attorney general shall require the first annual
9 summary report under Section 174.052, Health and Safety Code, as
10 added by this Act, to be submitted not later than October 15, 2010.

11 (c) The attorney general shall submit the first report to
12 the legislature required by Section 174.054, Health and Safety
13 Code, as added by this Act, not later than December 1, 2010.

14 (d) As soon as practicable after the effective date of this
15 Act, the attorney general shall adopt rules required by Section
16 174.002, as added by this Act.

17 SECTION 3. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2009.