

AN ACT

relating to a study regarding the confidentiality of prescription information; providing a civil penalty.

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

SECTION 1. Subchapter B, Chapter 562, Occupations Code, is amended by adding Section 562.057 to read as follows:

Sec. 562.057. COMMERCIAL USE STUDY; CIVIL PENALTY.

(a) The board shall 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.

(b) Not later than August 1, 2010, the board shall 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 the study conducted under Subsection (a), together with any recommendation for legislation.

(c) The report under this section must consist of aggregate information and may not identify by name any entity that provided information to the board. Information provided by an entity that is a trade secret is subject to Section 552.110, Government Code.

1 (d) An entity described by Subsection (a), other than a
2 pharmacy, that fails to provide to the board the information
3 requested by the board for the study conducted under this section
4 before the 90th day after the date the board requests the
5 information is liable to this state for a civil penalty not to
6 exceed \$5,000 for each violation. Each day a violation continues
7 constitutes a separate violation.

8 (e) The amount of the penalty shall be based on:

9 (1) the seriousness of the violation;

10 (2) the history of previous violations;

11 (3) the amount necessary to deter a future violation;

12 and

13 (4) any other matter that justice may require.

14 (f) The board or the attorney general may sue to collect a
15 civil penalty under this section. In the suit the state may recover
16 the reasonable expenses incurred in obtaining the penalty,
17 including investigation and court costs, reasonable attorney's
18 fees, witness fees, and other expenses.

19 (g) A pharmacy that fails to provide to the board the
20 information requested by the board for the study conducted under
21 this section before the 90th day after the date the board requests
22 the information is subject to appropriate administrative sanctions
23 imposed by the board.

24 (h) This section expires October 1, 2010.

25 SECTION 2. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

S.B. No. 646

1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 646 passed the Senate on
May 6, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 646 passed the House on
May 27, 2009, by the following vote: Yeas 148, Nays 0, one
present not voting.

Chief Clerk of the House

Approved:

Date

Governor