

1-1 By: Van de Putte, Deuell S.B. No. 646
1-2 (In the Senate - Filed February 3, 2009; February 23, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; May 1, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 1, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 646 By: Zaffirini

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a study regarding the confidentiality of prescription
1-11 information; providing a civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter B, Chapter 562, Occupations Code, is
1-14 amended by adding Section 562.057 to read as follows:

1-15 Sec. 562.057. COMMERCIAL USE STUDY; CIVIL PENALTY.

1-16 (a) The board shall conduct a study on the license, transfer, use,
1-17 and sale of prescription information records containing
1-18 patient-identifiable and practitioner-identifiable information by
1-19 pharmacy benefit managers, insurers, electronic transmission
1-20 intermediaries, pharmacies, and other similar entities for the
1-21 purpose of advertising, marketing, or promoting pharmaceutical
1-22 products.

1-23 (b) Not later than August 1, 2010, the board shall submit to
1-24 the governor, the lieutenant governor, the speaker of the house of
1-25 representatives, and the appropriate standing committees of the
1-26 legislature a report regarding the results of the study conducted
1-27 under Subsection (a), together with any recommendation for
1-28 legislation.

1-29 (c) The report under this section must consist of aggregate
1-30 information and may not identify by name any entity that provided
1-31 information to the board. Information provided by an entity that is
1-32 a trade secret is subject to Section 552.110, Government Code.

1-33 (d) An entity described by Subsection (a), other than a
1-34 pharmacy, that fails to provide to the board the information
1-35 requested by the board for the study conducted under this section
1-36 before the 90th day after the date the board requests the
1-37 information is liable to this state for a civil penalty not to
1-38 exceed \$5,000 for each violation. Each day a violation continues
1-39 constitutes a separate violation.

1-40 (e) The amount of the penalty shall be based on:

1-41 (1) the seriousness of the violation;
1-42 (2) the history of previous violations;
1-43 (3) the amount necessary to deter a future violation;

1-44 and

1-45 (4) any other matter that justice may require.

1-46 (f) The board or the attorney general may sue to collect a
1-47 civil penalty under this section. In the suit the state may recover
1-48 the reasonable expenses incurred in obtaining the penalty,
1-49 including investigation and court costs, reasonable attorney's
1-50 fees, witness fees, and other expenses.

1-51 (g) A pharmacy that fails to provide to the board the
1-52 information requested by the board for the study conducted under
1-53 this section before the 90th day after the date the board requests
1-54 the information is subject to appropriate administrative sanctions
1-55 imposed by the board.

1-56 (h) This section expires October 1, 2010.

1-57 SECTION 2. This Act takes effect immediately if it receives
1-58 a vote of two-thirds of all the members elected to each house, as
1-59 provided by Section 39, Article III, Texas Constitution. If this
1-60 Act does not receive the vote necessary for immediate effect, this
1-61 Act takes effect September 1, 2009.

1-62 * * * * *