

## **BILL ANALYSIS**

Senate Research Center

S.B. 646  
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Health & Human Services  
9/30/2009  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Prescription costs in Texas and nationwide continue to rise; however, the reason 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 a possible cause for the rise in prescription costs. Texas has much to learn about this practice and the larger implications it may have on our healthcare system.

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

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 562, Occupations Code, by adding Section 562.057, as follows:

Sec. 562.057. **COMMERCIAL USE STUDY; CIVIL PENALTY.** (a) Requires the Texas State Board of Pharmacy (TSBP) 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.

(b) Requires TSBP 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 the study conducted under Subsection (a), together with any recommendation for legislation, not later than August 1, 2010.

(c) Requires that the report under this section consist of aggregate information and prohibits it from identifying by name any entity that provided information to TSBP. Provides that information provided by an entity that is a trade secret is subject to Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code.

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

(e) Requires that the amount of the penalty 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 requires.

(f) Authorizes TSBP or the attorney general to sue to collect a civil penalty under this section. Authorizes the state in the suit to recover the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(g) Provides that a pharmacy that fails to provide to TSBP the information requested by TSBP for the study conducted under this section before the 90th day after the date TSBP requests the information is subject to appropriate administrative sanctions imposed by TSBP.

(h) Provides that this section expires October 1, 2010.

SECTION 2. Effective date: upon passage or September 1, 2009.