BILL ANALYSIS

Senate Research Center
83R7800 JSC-F

S.B. 992
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Business & Commerce
3/21/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prescription drug abuse is a major problem in Texas and the United States. Physicians must be very diligent to ensure that their patients who have been prescribed pain medications are taking appropriate doses and not "doctor shopping" to obtain multiple prescriptions for sale or use.

Many pain physicians utilize urine drug screening tests (UDT) to ensure that patients who have been prescribed controlled substances are taking their medications. A UDT that shows a patient does not have prescribed drugs in his or her system may indicate that the patient is diverting drugs for sale. Physicians also test to determine whether inappropriate levels of drugs and/or illicit drugs are in a patient's system.

A UDT administered in a physician's office is commonly called a point of care test or cup test and can be used to produce qualitative test results. This means that these tests can produce a "yes/no" response to determine the presence of certain drug classes. These tests produce a statistically significant number of false negatives and false positives.

Physicians may also utilize bench top analyzers to produce semi-quantitative results, which are much like qualitative tests, lacking drug specificity and having poor sensitivity.

In order to identify and quantify each specific drug in a specimen, physicians send specimens for confirmatory testing to laboratories that utilize mass spectrometry/gas chromatography tests to produce quantitative results.

Some manufacturers or sellers of bench top analyzers market the devices to physicians in a deceptive manner by indicating that the device will produce a quantitative result. In some cases, misrepresentation of a device may lead to inaccurate billing procedures by providers and result in erroneous reimbursement costs associated with testing.

S.B. 992 amends Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, to ensure a manufacturer or seller does not misrepresent to a consumer that the device or equipment is capable of or certified for returning quantitative drug test results.

S.B. 992 provides that a manufacturer or seller of a drug testing device or equipment commits a violation of the Deceptive Trade Practices Act if it represents to a consumer that the device or equipment is capable of or certified for returning quantitative drug test results if the device or equipment has not been approved by the United States Food and Drug Administration to perform quantitative drug tests.

As proposed, S.B. 992 amends current law relating to misrepresentations in connection with certain drug testing devices or equipment and provides penalties.

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 E, Chapter 17, Business & Commerce Code, by adding Section 17.463, as follows:

Sec. 17.463. CERTAIN DRUG TESTING DEVICES OR EQUIPMENT. (a) Prohibits a manufacturer or seller of a drug testing device or equipment from representing to a consumer that the device or equipment is capable of or certified for returning quantitative drug test results if the device or equipment has not been approved by the United States Food and Drug Administration to perform quantitative drug tests.

(b) Provides that a person who violates this section commits an offense. Provides that each violation is a separate offense.

(c) Provides that an offense under Subsection (b) is a Class C misdemeanor.

(d) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another section of this code or of any other law, including the Penal Code, to be prosecuted under either section or under both sections.

(e) Provides that a violation of this section is a false, misleading, or deceptive act or practice under this subchapter, and any public or private right or remedy prescribed by this subchapter is authorized to be used to enforce this section.

SECTION 2. Effective date: September 1, 2013.