

By: Zaffirini

S.B. No. 892

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Immunization and Screening Registry.

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 179 to read as follows:

CHAPTER 179. IMMUNIZATION AND SCREENING REGISTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 179.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Patient's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of a patient, if the patient is a minor;

(B) a guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(C) an agent of the patient authorized under a durable power of attorney for health care.

(4) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including

1 providing immunizations or screening tests.

2 (5) "Screening test" means a rapid analytical  
3 procedure to determine the need for further diagnostic evaluation.

4 SECTION 2. Sections 161.007, 161.0071, 161.0072, 161.0073,  
5 161.0074, 161.0075, 161.0076, 161.008, 161.009, and 161.0105,  
6 Health and Safety Code, are transferred to Chapter 179, Health and  
7 Safety Code, as added by this Act, renumbered as Sections 179.051,  
8 179.054, 179.055, 179.056, 179.057, 179.058, 179.059, 179.060,  
9 179.061, and 179.062, designated as Subchapter B, and amended, and  
10 Subchapter B is amended by adding Sections 179.052, 179.053,  
11 179.0601, and 179.063, to read as follows:

12 SUBCHAPTER B. IMMUNIZATION AND SCREENING REGISTRY

13 Sec. 179.051 [~~161.007~~]. IMMUNIZATION AND SCREENING  
14 REGISTRY; REPORTS TO DEPARTMENT. (a) The department, for purposes  
15 of establishing and maintaining a single repository of accurate,  
16 complete, and current immunization and early childhood disease  
17 screening records to be used in aiding, coordinating, and promoting  
18 efficient and cost-effective [~~childhood~~] communicable disease  
19 prevention and control efforts, shall establish and maintain an [~~a~~  
20 ~~childhood~~] immunization and screening registry. The department by  
21 rule shall develop guidelines to:

22 (1) protect the confidentiality of patients in  
23 accordance with Section 159.002, Occupations Code;

24 (2) inform the patient or the patient's legally  
25 authorized representative [~~a parent, managing conservator, or~~  
26 ~~guardian of each patient~~] about the registry; and

27 (3) permit the patient or the patient's legally

1 authorized representative to choose to have the patient excluded  
2 from [~~require the written consent of a parent, managing~~  
3 ~~conservator, or guardian of a patient before any information~~  
4 ~~relating to the patient is included in]~~ the registry [~~and~~

5 ~~(4) permit a parent, managing conservator, or~~  
6 ~~guardian to withdraw consent for the patient to be included in the~~  
7 ~~registry].~~

8 [~~(a-1) The written consent required by Subsection (a)(3) is~~  
9 ~~required to be obtained only one time. The written consent is valid~~  
10 ~~until the child becomes 18 years of age unless the consent is~~  
11 ~~withdrawn in writing. A parent, managing conservator, or guardian~~  
12 ~~of a child may provide the written consent by using an electronic~~  
13 ~~signature on the child's birth certificate.]~~

14 (b) Except as provided by Section 179.054, the [~~The~~  
15 ~~childhood]~~ immunization and screening registry must contain  
16 information on the immunization and screening history that is  
17 obtained by the department under this section of each person in this  
18 state until the person's death [~~who is younger than 18 years of age~~  
19 ~~and for whom consent has been obtained in accordance with~~  
20 ~~guidelines adopted under Subsection (a). The department shall~~  
21 ~~remove from the registry information for any person for whom~~  
22 ~~consent has been withdrawn]. The department may not retain~~  
23 individually identifiable information about any person for whom a  
24 request to be excluded from the registry has been received [~~consent~~  
25 ~~has been withdrawn].~~

26 (c) A payor that receives immunization or screening  
27 information under Section 179.052 [~~data elements]~~ from a health

1 care provider who administers an immunization to a person or  
2 performs a screening test on a person younger than 18 years of age  
3 shall provide the information [~~data elements~~] to the department. A  
4 payor is required to provide the department with only the  
5 information [~~data elements~~] the payor receives from a health care  
6 provider. The information [~~data elements~~] shall be submitted in a  
7 format prescribed by the department. [~~The department shall verify~~  
8 ~~consent before including the reported information in the~~  
9 ~~immunization registry.~~] The department may not retain individually  
10 identifiable information about a person for whom a request to be  
11 excluded from the registry has been received [~~consent cannot be~~  
12 ~~verified~~].

13 (d) A health care provider who administers an immunization  
14 to or performs a screening test on a person younger than 18 years of  
15 age shall provide the information required by Section 179.052 [~~data~~  
16 ~~elements regarding an immunization~~] to the department. A health  
17 care provider who administers an immunization to a person older  
18 than 18 years of age may provide the information required by Section  
19 179.052 to the department. The information [~~data elements~~] shall  
20 be submitted in a format prescribed by the department. [~~The~~  
21 ~~department shall verify consent before including the information in~~  
22 ~~the immunization registry.~~] The department may not retain  
23 individually identifiable information about a person for whom a  
24 request to be excluded from the registry has been received [~~consent~~  
25 ~~cannot be verified~~].

26 (e) [~~The department shall provide notice to a health care~~  
27 ~~provider that submits an immunization history for a person for whom~~

1 ~~consent cannot be verified. The notice shall contain instructions~~  
2 ~~for obtaining consent in accordance with guidelines adopted under~~  
3 ~~Subsection (a) and resubmitting the immunization history to the~~  
4 ~~department.]~~

5       ~~(f)~~ The department and health care providers may use the  
6 registry to provide notices by mail, telephone, personal contact,  
7 or other means to a patient or the patient's legally authorized  
8 representative [~~parent, managing conservator, or guardian~~]  
9 regarding a patient [~~his or her child or ward~~] who is due or overdue  
10 for a particular type of immunization according to the department's  
11 immunization schedule or who is due or overdue for a particular  
12 screening test according to the department's screening schedule or  
13 in the opinion of the patient's health care provider. The notice  
14 must contain instructions for the patient or the patient's legally  
15 authorized representative to request that future notices not be  
16 sent and to remove the patient's immunization record from the  
17 registry and any other registry-related records. The notice must  
18 describe the procedure to report a violation if a patient is  
19 included in the registry after requesting exclusion. The  
20 department shall consult with health care providers to determine  
21 the most efficient and cost-effective manner of using the registry  
22 to provide those notices.

23       (f) [~~(g)~~] The department shall provide instruction and  
24 education to providers about the immunization and screening  
25 registry provider application and enrollment process. The  
26 department shall:

27           (1) initially target providers in the geographic

1 regions of the state with immunization or screening rates below the  
2 state average for preschool children; and

3 (2) expedite the processing of provider applications.

4 (g) [~~(h)~~] Nothing in this section diminishes a parent's,  
5 managing conservator's, or guardian's responsibility for having a  
6 child immunized or screened properly, subject to Section  
7 161.004(d).

8 (h) [~~(i)~~] A person, including a health care provider, a  
9 payor, or an employee of the department who submits or obtains in  
10 good faith immunization and screening information [~~data elements~~]  
11 to or from the department in compliance with the provisions of this  
12 section and any rules adopted under this section is not liable for  
13 any civil damages.

14 (i) [~~(j)~~] Except as provided by Section 179.0601 [~~161.008~~],  
15 information obtained by the department for the immunization and  
16 screening registry is confidential and may be disclosed only with  
17 the written consent of the patient or the patient's legally  
18 authorized representative [~~child's parent, managing conservator,~~  
19 ~~or guardian~~].

20 (j) [~~(k)~~] The executive commissioner [~~board~~] shall adopt  
21 rules to implement this section.

22 Sec. 179.052. REQUIRED INFORMATION. For the purposes of  
23 the registry, the department shall collect:

24 (1) for a vaccine:

25 (A) the information a health care provider is  
26 required to record in a medical record under 42 U.S.C. Section  
27 300aa-25, including:

1                   (i) the date the vaccine was administered;  
2                   (ii) the vaccine manufacturer and lot  
3 number of the vaccine; and

4                   (iii) the name, the address, and if  
5 appropriate, the title of the health care provider administering  
6 the vaccine; and

7                   (B) information relating to any allergic  
8 reaction or other contraindication to a vaccine; and

9                   (2) for a screening test, only:

10                   (A) the date the test was performed;

11                   (B) the results of the test;

12                   (C) the name, the address, and if appropriate,  
13 the title of the health care provider administering the test; and

14                   (D) the name and address of the laboratory  
15 performing the test.

16                   Sec. 179.053. TYPES OF SCREENINGS INCLUDED. (a) The  
17 department shall include the results from the following screening  
18 tests in the immunization and screening registry:

19                   (1) a screening test required under Chapter 33;

20                   (2) a hearing screening test required by Chapter 47;

21                   (3) a tuberculosis screening test; and

22                   (4) a blood lead test under Section 88.0025.

23                   (b) The department may add to or delete from the list under  
24 Subsection (a) as it considers necessary.

25                   Sec. 179.054 [~~161.0071~~]. NOTICE OF RECEIPT OF REGISTRY  
26 INFORMATION [~~DATA~~]; EXCLUSION FROM REGISTRY. (a) The first time  
27 the department receives registry information [~~data~~] for a patient

1 ~~[child for whom the department has received consent to be included~~  
2 ~~in the registry, from a person other than the child's parent,~~  
3 ~~managing conservator, or guardian,]~~ the department shall send a  
4 written notice to the patient or the patient's legally authorized  
5 representative ~~[child's parent, managing conservator, or guardian]~~  
6 disclosing:

7 (1) that providers and payors may be sending the  
8 patient's ~~[child's]~~ immunization and screening information to the  
9 department, but the department may not keep the information if the  
10 patient or the patient's legally authorized representative chooses  
11 to exclude the patient from the registry;

12 (2) the information that is included in the registry;

13 (3) the persons to whom the information may be  
14 released under Section 179.0601(a) ~~[161.008(d)]~~;

15 (4) the purpose and use of the registry;

16 (5) the procedure to exclude a patient ~~[child]~~ from  
17 the registry; and

18 (6) the procedure to report a violation if a patient  
19 ~~[parent, managing conservator, or guardian discovers a child]~~ is  
20 included in the registry after exclusion has been requested.

21 (b) On receipt of a written request to exclude a patient's  
22 immunization and screening records from ~~[discovering that consent~~  
23 ~~to be included in]~~ the registry ~~[has not been granted]~~, the  
24 department shall exclude the patient's ~~[child's]~~ immunization and  
25 screening records from the registry and any other registry-related  
26 department record that individually identifies the patient  
27 ~~[child]~~.



1 (c) On receipt of a written request to exclude a patient's  
2 ~~[child's]~~ immunization and screening records from the registry, the  
3 department shall send to the patient or the patient's legally  
4 authorized representative [~~a parent, managing conservator, or~~  
5 ~~guardian~~] who makes the request a written confirmation of receipt  
6 of the request for exclusion and shall exclude the patient's  
7 ~~[child's]~~ records from the registry.

8 (d) The department commits a violation if the department  
9 fails to exclude a patient's ~~[child's]~~ immunization and screening  
10 information from the registry as required by Subsection (b) or (c).

11 (e) The department shall accept a written statement from a  
12 patient or the patient's legally authorized representative  
13 [~~parent, managing conservator, or guardian~~] communicating to the  
14 department that a patient ~~[child]~~ should be excluded from the  
15 registry, including a statement on the patient's ~~[child's]~~ birth  
16 certificate, as a request for exclusion under Subsection (c). The  
17 written statement may include the electronic signature on the  
18 patient's ~~[child's]~~ birth certificate.

19 Sec. 179.055 [~~161.0072~~]. PROVIDING IMMUNIZATION AND  
20 SCREENING INFORMATION TO DEPARTMENT. (a) If the patient or the  
21 patient's legally authorized representative [~~parent, managing~~  
22 ~~conservator, or guardian of a child~~] has reasonable concern that  
23 the patient's ~~[child's]~~ health care provider is not submitting the  
24 immunization and screening history to the department [~~and the~~  
25 ~~parent, managing conservator, or guardian wants the child included~~  
26 ~~in the registry~~], the patient or the patient's legally authorized  
27 representative [~~parent, managing conservator, or guardian~~] may

1 provide the patient's [~~child's~~] immunization and screening history  
2 directly to the department to be included in the immunization and  
3 screening registry.

4 (b) The patient or the patient's legally authorized  
5 representative [~~parent, managing conservator, or guardian of a~~  
6 ~~child~~] may send evidence of the patient's [~~child's~~] immunization  
7 and screening history to the department by facsimile transmission  
8 or by mail. The evidence may include a copy of:

9 (1) the patient's [~~child's~~] medical record indicating  
10 the immunization history and screening reports;

11 (2) an invoice from a health care provider for the  
12 immunization or screening; or

13 (3) documentation showing that a claim for the  
14 immunization or screening was paid by a payor.

15 (c) The executive commissioner [~~board~~] shall develop rules  
16 to ensure that the immunization and screening history submitted by  
17 a patient or the patient's legally authorized representative  
18 [~~parent, managing conservator, or guardian~~] is medically verified  
19 immunization and screening information.

20 Sec. 179.056 [~~161.0073~~]. REGISTRY CONFIDENTIALITY. (a) The  
21 information that individually identifies a patient [~~child~~]  
22 received by the department for the immunization and screening  
23 registry is confidential and may be used by the department for  
24 registry purposes only.

25 (b) Unless specifically authorized under this subchapter,  
26 the department may not release registry information to any  
27 individual or entity without the consent of the patient or the

1 patient's legally authorized representative [~~person or, if a minor,~~  
2 ~~the parent, managing conservator, or guardian of the child~~].

3 (c) A person required to report information to the  
4 department for registry purposes or authorized to receive  
5 information from the registry may not disclose the individually  
6 identifiable information to any other person without written  
7 consent of the patient or the patient's legally authorized  
8 representative [~~parent, managing conservator, or guardian of the~~  
9 ~~child~~], except as provided by Chapter 159, Occupations Code, or  
10 Section 602.053, Insurance Code.

11 (d) Registry information is not:

12 (1) subject to discovery, subpoena, or other means of  
13 legal compulsion for release to any person or entity except as  
14 provided by this subchapter; or

15 (2) admissible in any civil, administrative, or  
16 criminal proceeding.

17 Sec. 179.057 [~~161.0074~~]. REPORT TO LEGISLATURE. (a) The  
18 department shall report to the Legislative Budget Board, the  
19 governor, the lieutenant governor, the speaker of the house of  
20 representatives, and appropriate committees of the legislature not  
21 later than September 30 of each even-numbered year.

22 (b) The department shall use the report required under  
23 Subsection (a) to develop ways to increase immunization and  
24 screening rates using state and federal resources.

25 (c) The report must:

26 (1) include the current immunization and screening  
27 rates by geographic region of the state, where available;

1           (2) focus on the geographic regions of the state with  
2 immunization and screening rates below the state average for  
3 preschool children;

4           (3) describe the approaches identified to increase  
5 immunization and screening rates in underserved areas and the  
6 estimated cost for each;

7           (4) identify changes to department procedures needed  
8 to increase immunization and screening rates;

9           (5) identify the services provided under and  
10 provisions of contracts entered into by the department to increase  
11 immunization and screening rates in underserved areas;

12           (6) identify performance measures used in contracts  
13 described by Subdivision (5);

14           (7) include the number and type of exemptions used in  
15 the past year;

16           (8) include the number of complaints received by the  
17 department related to the department's failure to comply with  
18 requests for exclusion of individuals from the registry;

19           (9) identify all reported incidents of discrimination  
20 for requesting exclusion from the registry or for using an  
21 exemption for a required immunization;

22           (10) include department recommendations about the  
23 best way to use, and communicate with, local registries in the  
24 state; and

25           (11) include ways to increase provider participation  
26 in the registry.

27           Sec. 179.058 [~~161.0075~~]. IMMUNITY FROM LIABILITY. Except as

1 provided by Section 179.061 [~~161.009~~], the following persons  
2 subject to this subchapter that act in compliance with Sections  
3 179.051, 179.054, 179.056, 179.057, 179.060 [~~161.007, 161.0071,~~  
4 ~~161.0073, 161.0074~~], and 179.0601 [~~161.008~~] are not civilly or  
5 criminally liable for furnishing the information required under  
6 this subchapter:

- 7 (1) a payor;
- 8 (2) a health care provider who administers  
9 immunizations or screening tests; and
- 10 (3) an employee of the department.

11 Sec. 179.059 [~~161.0076~~]. COMPLIANCE WITH FEDERAL LAW. If  
12 the provisions of this subchapter [~~chapter~~] relating to the use or  
13 disclosure of information in the registry are more stringent than  
14 the Health Insurance Portability and Accountability Act and Privacy  
15 Standards, as defined by Section 181.001, then the use or  
16 disclosure of information in the registry is governed by this  
17 subchapter [~~chapter~~].

18 Sec. 179.060 [~~161.008~~]. IMMUNIZATION RECORD. (a) An  
19 immunization record is part of the immunization registry.

- 20 (b) An immunization record contains the:
- 21 (1) name and date of birth of the person immunized;
  - 22 (2) dates of immunization;
  - 23 (3) types of immunization administered; and
  - 24 (4) name and address of the health care provider  
25 administering the immunization.

26 (c) The department may obtain the data constituting an  
27 immunization record for a patient [~~child~~] from a public health

1 district, a local health department, the patient or the patient's  
 2 legally authorized representative [~~child's parent, managing~~  
 3 ~~conservator, or guardian~~], a physician to the patient [~~child~~], a  
 4 payor, or any health care provider licensed or otherwise authorized  
 5 to administer vaccines. [~~The department shall verify consent~~  
 6 ~~before including the reported information in the immunization~~  
 7 ~~registry.~~] The department may not retain individually identifiable  
 8 information about a person for whom a request to be excluded from  
 9 the registry has been received [~~consent cannot be verified~~].

10 Sec. 179.0601. RELEASE OF CERTAIN INFORMATION BY DEPARTMENT.

11 (a) [(d)] The department may release the information [~~data~~]  
 12 constituting an immunization record for the patient [~~child~~] to any  
 13 entity that is described by Section 179.060(c) and [~~Subsection~~  
 14 ~~(c),~~] to a school or child care facility in which the patient  
 15 [~~child~~] is enrolled, and may release that information and any  
 16 information described by Section 179.052(2) concerning a screening  
 17 test [~~or~~] to a state agency having legal custody of the patient  
 18 [~~child~~].

19 (b) [(e)] A patient or the patient's legally authorized  
 20 representative [~~parent, managing conservator, or legal guardian~~]  
 21 may obtain and on request to the department shall be provided with  
 22 all individually identifiable immunization and screening registry  
 23 information concerning his or her child or ward.

24 (c) [(f)] A person, including a health care provider, a  
 25 payor, or an employee of the department, that submits in good faith  
 26 [~~an~~] immunization or screening information [~~history or data~~] to or  
 27 obtains in good faith [~~an~~] immunization and screening information

1 ~~[history or data]~~ from the department in compliance with the  
2 provisions of Section 179.060 and this section and any rules  
3 adopted under Section 179.060 and this section is not liable for any  
4 civil damages.

5 (d) ~~[(g)]~~ The department may release nonidentifying summary  
6 statistics related to the registry that do not individually  
7 identify a patient ~~[child]~~.

8 (e) ~~[(h)]~~ The executive commissioner ~~[board]~~ shall adopt  
9 rules to implement this section.

10 Sec. 179.061 ~~[161.009]~~. PENALTIES FOR DISCLOSURE OF  
11 INFORMATION. (a) A person commits an offense if the person:

12 (1) negligently releases or discloses immunization  
13 and screening registry information in violation of Section  
14 179.051, 179.054, 179.056, 179.060, or 179.0601 ~~[161.007,~~  
15 ~~161.0071, 161.0073, or 161.008]~~;

16 (2) fails to exclude a patient's ~~[child's]~~  
17 immunization or screening information in violation of Section  
18 179.054 ~~[161.0071]~~; or

19 (3) negligently uses information in the immunization  
20 and screening registry to solicit new patients or clients or for  
21 other purposes that are not associated with immunization,  
22 screening, or quality-of-care purposes, unless authorized under  
23 this section.

24 (b) An offense under this section is a Class A misdemeanor.

25 Sec. 179.062 ~~[161.0105]~~. LIMITATION ON LIABILITY. (a) A  
26 health care provider who acts in compliance with Sections 179.051  
27 ~~[161.007]~~ and 179.060 ~~[161.008]~~ and any rules adopted under those

1 sections is not civilly or criminally liable for furnishing the  
2 information required under those sections. This subsection does  
3 not apply to criminal liability established under Section 179.061  
4 [~~161.009~~].

5 (b) A person who administers a vaccination or performs a  
6 screening test under a department program may be held liable only to  
7 the extent the person would be liable if the person administered the  
8 vaccination or performed the screening test outside the program.  
9 The person is not liable for damages arising from the acts or  
10 omissions of another person acting under the program or the  
11 department.

12 (c) The immunity created by this section is in addition to  
13 any immunity created by Sections 161.001 and 179.051(i)  
14 [~~161.007(g)~~].

15 Sec. 179.063. RULES. The executive commissioner shall  
16 adopt rules necessary to carry out the registry.

17 SECTION 3. Section 531.064(c), Government Code, is amended  
18 to read as follows:

19 (c) The commission shall allow providers to report vaccines  
20 administered under the vaccines for children program to the  
21 immunization registry established under Section 179.051 [~~161.007~~],  
22 Health and Safety Code, and to use the immunization registry,  
23 including individually identifiable information in accordance with  
24 state and federal law, to determine whether a child has received an  
25 immunization.

26 SECTION 4. Section 161.0001(1), Health and Safety Code, is  
27 repealed.



1           SECTION 5. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2007.