

1-1 By: Nelson S.B. No. 346  
1-2 (In the Senate - Filed December 8, 2008; February 11, 2009,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; March 17, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 March 17, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 346 By: Uresti

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

1-10 relating to information submitted to and maintained in the  
1-11 immunization registry after an individual becomes an adult.

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

1-13 SECTION 1. Section 161.0001, Health and Safety Code, is  
1-14 amended by adding Subdivisions (1-c) and (3) and amending  
1-15 Subdivision (2) to read as follows:

1-16 (1-c) "Individual's legally authorized  
1-17 representative" means:

1-18 (A) a parent, managing conservator, or guardian  
1-19 of an individual, if the individual is a minor;

1-20 (B) a guardian of the individual, if the  
1-21 individual has been adjudicated incompetent to manage the  
1-22 individual's personal affairs; or

1-23 (C) an agent of the individual authorized under a  
1-24 durable power of attorney for health care.

1-25 (2) "Payor" means an insurance company, a health  
1-26 maintenance organization, or another organization that pays a  
1-27 health care provider to provide health care benefits, including  
1-28 providing immunizations [~~to a person younger than 18 years of age~~].

1-29 (3) "Electronically," as related to a communication  
1-30 authorized under this chapter, means by e-mail, text message,  
1-31 online communication, or another electronic method of  
1-32 communication approved by the department.

1-33 SECTION 2. Section 161.007, Health and Safety Code, is  
1-34 amended by amending Subsections (a), (a-1), (b), (b-1), (c), (d),  
1-35 (e), (f), (j), and (k) and adding Subsections (a-2) and (a-3) to  
1-36 read as follows:

1-37 (a) The department, for the primary purpose of establishing  
1-38 and maintaining a single repository of accurate, complete, and  
1-39 current immunization records to be used in aiding, coordinating,  
1-40 and promoting efficient and cost-effective [~~childhood~~]  
1-41 communicable disease prevention and control efforts, shall  
1-42 establish and maintain an immunization registry. The executive  
1-43 commissioner of the Health and Human Services Commission  
1-44 [~~department~~] by rule shall develop guidelines to:

1-45 (1) protect the confidentiality of patients in  
1-46 accordance with Section 159.002, Occupations Code;

1-47 (2) inform the individual or the individual's legally  
1-48 authorized representative [~~a parent, managing conservator, or~~  
1-49 guardian of each patient younger than 18 years of age] about the  
1-50 registry;

1-51 (3) require the written or electronic consent of the  
1-52 individual or the individual's legally authorized representative  
1-53 [~~a parent, managing conservator, or guardian of a patient younger~~  
1-54 than 18 years of age] before any information relating to the  
1-55 individual [patient] is included in the registry;

1-56 (4) permit the individual or the individual's legally  
1-57 authorized representative [~~a parent, managing conservator, or~~  
1-58 guardian of a patient younger than 18 years of age] to withdraw  
1-59 consent for the individual [patient] to be included in the  
1-60 registry; and

1-61 (5) determine the process by which consent is  
1-62 verified, including affirmation by a health care provider, birth  
1-63 registrar, regional health information exchange, or local

2-1 immunization registry that consent has been obtained.

2-2 (a-1) The written or electronic consent required by  
 2-3 Subsection (a)(3) for an individual younger than 18 years of age is  
 2-4 required to be obtained only one time. The ~~written~~ consent is  
 2-5 valid until the individual ~~[child]~~ becomes 18 years of age unless  
 2-6 the consent is withdrawn in writing or electronically. A parent,  
 2-7 managing conservator, or guardian of a minor ~~[child]~~ may provide  
 2-8 the ~~written~~ consent by using an electronic signature on the  
 2-9 minor's ~~[child's]~~ birth certificate.

2-10 (a-2) An individual's legally authorized representative or  
 2-11 the individual, after the individual has attained 18 years of age,  
 2-12 may consent in writing or electronically for the individual's  
 2-13 information to remain in the registry after the individual's 18th  
 2-14 birthday and for the individual's subsequent immunizations to be  
 2-15 included in the registry. The written or electronic consent of the  
 2-16 minor's legally authorized representative as described by Section  
 2-17 161.0001(1-c)(A) must be submitted to the department before the  
 2-18 individual's 18th birthday. The written or electronic consent of  
 2-19 the individual or the individual's legally authorized  
 2-20 representative as described by Section 161.0001(1-c)(B) or (C) must  
 2-21 be submitted to the department not later than the individual's 19th  
 2-22 birthday. The consent of the representative or individual is valid  
 2-23 until the individual or the individual's legally authorized  
 2-24 representative withdraws consent in writing or electronically.  
 2-25 The department may not include in the registry the immunization  
 2-26 information of an individual who is 18 years of age or older until  
 2-27 written or electronic consent has been obtained as provided by this  
 2-28 subsection. The department shall coordinate with the Texas  
 2-29 Education Agency to distribute materials described in Section  
 2-30 161.0095(a)(2) to students and parents through local school  
 2-31 districts.

2-32 (a-3) The executive commissioner of the Health and Human  
 2-33 Services Commission by rule shall develop guidelines and procedures  
 2-34 for obtaining consent from an individual after the individual's  
 2-35 18th birthday, including procedures for retaining immunization  
 2-36 information in a separate database that is inaccessible by any  
 2-37 person other than the department during the one-year period during  
 2-38 which an 18-year-old may consent to inclusion in the registry under  
 2-39 Subsection (a-2).

2-40 (b) Except as provided by Section 161.0071, the ~~[The]~~  
 2-41 immunization registry must contain information on the immunization  
 2-42 history that is obtained by the department under:

2-43 (1) this section of each individual ~~[person who is~~  
 2-44 ~~younger than 18 years of age and]~~ for whom consent has been obtained  
 2-45 in accordance with guidelines adopted under Subsection (a) or  
 2-46 (a-3), as applicable;

2-47 (2) Section 161.00705 of persons immunized to prepare  
 2-48 for or in response to a declared disaster, public health emergency,  
 2-49 terrorist attack, hostile military or paramilitary action, or  
 2-50 extraordinary law enforcement emergency; and

2-51 (3) Section 161.00706 of first responders or their  
 2-52 immediate family members.

2-53 (b-1) The department shall remove from the registry  
 2-54 information for any individual ~~[person]~~ for whom consent has been  
 2-55 withdrawn. The department may not retain individually identifiable  
 2-56 information about any individual ~~[person]:~~

2-57 (1) for whom consent has been withdrawn;

2-58 (2) for whom a consent for continued inclusion in the  
 2-59 registry following the end of the declared disaster, public health  
 2-60 emergency, terrorist attack, hostile military or paramilitary  
 2-61 action, or extraordinary law enforcement emergency has not been  
 2-62 received under Section 161.00705(f); or

2-63 (3) for whom a request to be removed from the registry  
 2-64 has been received under Section 161.00706(e).

2-65 (c) A payor that receives data elements from a health care  
 2-66 provider who administers an immunization to an individual ~~[a~~  
 2-67 ~~person]~~ younger than 18 years of age shall provide the data elements  
 2-68 to the department. A payor is required to provide the department  
 2-69 with only the data elements the payor receives from a health care

3-1 provider. A payor that receives data elements from a health care  
 3-2 provider who administers an immunization to an individual 18 years  
 3-3 of age or older may provide the data elements to the department.  
 3-4 The data elements shall be submitted in a format prescribed by the  
 3-5 department. The department shall verify consent before including  
 3-6 the reported information in the immunization registry. The  
 3-7 department may not retain individually identifiable information  
 3-8 about an individual [a person] for whom consent cannot be verified.

3-9 (d) A health care provider who administers an immunization  
 3-10 to an individual [a person] younger than 18 years of age shall  
 3-11 provide data elements regarding an immunization to the department.  
 3-12 A health care provider who administers an immunization to an  
 3-13 individual 18 years of age or older may submit data elements  
 3-14 regarding an immunization to the department. The data elements  
 3-15 shall be submitted in a format prescribed by the department. The  
 3-16 department shall verify consent before including the information in  
 3-17 the immunization registry. The department may not retain  
 3-18 individually identifiable information about an individual [a  
 3-19 person] for whom consent cannot be verified.

3-20 (e) The department shall provide notice to a health care  
 3-21 provider that submits an immunization history for an individual [a  
 3-22 person] for whom consent cannot be verified. The notice shall  
 3-23 contain instructions for obtaining consent in accordance with  
 3-24 guidelines adopted under Subsections [Subsection] (a) and (a-3) and  
 3-25 resubmitting the immunization history to the department.

3-26 (f) The department and health care providers may use the  
 3-27 registry to provide notices by mail, telephone, personal contact,  
 3-28 or other means to an individual or the individual's legally  
 3-29 authorized representative [a parent, managing conservator, or  
 3-30 guardian] regarding an individual [his or her child or ward] who is  
 3-31 due or overdue for a particular type of immunization according to  
 3-32 the department's immunization schedule for children or another  
 3-33 analogous schedule recognized by the department for individuals 18  
 3-34 years of age or older. The department shall consult with health  
 3-35 care providers to determine the most efficient and cost-effective  
 3-36 manner of using the registry to provide those notices.

3-37 (j) Except as provided by Sections 161.00705, 161.00706,  
 3-38 and 161.008, information obtained by the department for the  
 3-39 immunization registry is confidential and may be disclosed only  
 3-40 with the written or electronic consent of the individual or the  
 3-41 individual's legally authorized representative [, if a child, the  
 3-42 child's parent, managing conservator, or guardian].

3-43 (k) The executive commissioner of the Health and Human  
 3-44 Services Commission [board] shall adopt rules to implement this  
 3-45 section.

3-46 SECTION 3. Subsection (f), Section 161.00705, Health and  
 3-47 Safety Code, is amended to read as follows:

3-48 (f) Unless an individual or the individual's legally  
 3-49 authorized representative[, if a child, the child's parent,  
 3-50 managing conservator, or guardian] consents in writing or  
 3-51 electronically to continued inclusion of the [child's or other]  
 3-52 individual's information in the registry, the department shall  
 3-53 remove the immunization records collected under this section from  
 3-54 the registry on expiration of the period prescribed under  
 3-55 Subsection (e).

3-56 SECTION 4. Subsection (e), Section 161.00706, Health and  
 3-57 Safety Code, is amended to read as follows:

3-58 (e) A person whose immunization records are included in the  
 3-59 immunization registry as authorized by this section may request in  
 3-60 writing or electronically that the department remove that  
 3-61 information from the registry. Not later than the 10th day after  
 3-62 receiving a request under this subsection, the department shall  
 3-63 remove the person's immunization records from the registry.

3-64 SECTION 5. Section 161.0071, Health and Safety Code, is  
 3-65 amended to read as follows:

3-66 Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA;  
 3-67 EXCLUSION FROM REGISTRY. (a) The first time the department  
 3-68 receives registry data for an individual [a child] for whom the  
 3-69 department has received consent to be included in the registry,

4-1 ~~[from a person other than the child's parent, managing conservator,~~  
4-2 ~~or guardian,]~~ the department shall send ~~[a written]~~ notice to the  
4-3 individual or the individual's legally authorized representative  
4-4 ~~[child's parent, managing conservator, or guardian]~~ disclosing:

4-5 (1) that providers and payors may be sending the  
4-6 individual's ~~[child's]~~ immunization information to the department;

4-7 (2) the information that is included in the registry;

4-8 (3) the persons to whom the information may be  
4-9 released under Section 161.008(d);

4-10 (4) the purpose and use of the registry;

4-11 (5) the procedure to exclude an individual ~~[a child]~~  
4-12 from the registry; and

4-13 (6) the procedure to report a violation if an  
4-14 individual's information ~~[a parent, managing conservator, or~~  
4-15 ~~guardian discovers a child]~~ is included in the registry after  
4-16 exclusion has been requested or consent has been withdrawn.

4-17 (b) On discovering that consent to be included in the  
4-18 registry has not been granted or has been withdrawn, the department  
4-19 shall exclude the individual's ~~[child's]~~ immunization records from  
4-20 the registry and any other registry-related department record that  
4-21 individually identifies the individual ~~[child]~~.

4-22 (c) On receipt of a written or electronic request to exclude  
4-23 an individual's ~~[a child's]~~ immunization records from the registry,  
4-24 the department shall send to the individual or the individual's  
4-25 legally authorized representative ~~[a parent, managing conservator,~~  
4-26 ~~or guardian]~~ who makes the request a written confirmation of  
4-27 receipt of the request for exclusion and shall exclude the  
4-28 individual's ~~[child's]~~ records from the registry.

4-29 (d) The department commits a violation if the department  
4-30 fails to exclude an individual's ~~[a child's]~~ immunization  
4-31 information from the registry as required by Subsection (b) or (c).

4-32 (e) The department shall accept a written or electronic  
4-33 statement from an individual or the individual's legally authorized  
4-34 representative ~~[a parent, managing conservator, or guardian]~~  
4-35 communicating to the department that an individual's information ~~[a~~  
4-36 ~~child]~~ should be excluded from the registry, including a statement  
4-37 on a minor's ~~[the child's]~~ birth certificate, as a request for  
4-38 exclusion under Subsection (c). ~~[The written statement may include~~  
4-39 ~~the electronic signature on the child's birth certificate.]~~

4-40 SECTION 6. Section 161.0072, Health and Safety Code, is  
4-41 amended to read as follows:

4-42 Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO  
4-43 DEPARTMENT. (a) If the individual or the individual's legally  
4-44 authorized representative ~~[parent, managing conservator, or~~  
4-45 ~~guardian of a child]~~ has reasonable concern that the individual's  
4-46 ~~[child's]~~ health care provider is not submitting the immunization  
4-47 history to the department ~~[and the parent, managing conservator, or~~  
4-48 ~~guardian wants the child included in the registry]~~, the individual  
4-49 or the individual's legally authorized representative ~~[parent,~~  
4-50 ~~managing conservator, or guardian]~~ may provide the individual's  
4-51 ~~[child's]~~ immunization history directly to the department to be  
4-52 included in the immunization registry.

4-53 (b) The individual or the individual's legally authorized  
4-54 representative ~~[parent, managing conservator, or guardian of a~~  
4-55 ~~child]~~ may send evidence of the individual's ~~[child's]~~ immunization  
4-56 history to the department electronically, by facsimile  
4-57 transmission, or by mail. The evidence may include a copy of:

4-58 (1) the individual's ~~[child's]~~ medical record  
4-59 indicating the immunization history;

4-60 (2) an invoice from a health care provider for the  
4-61 immunization; or

4-62 (3) documentation showing that a claim for the  
4-63 immunization was paid by a payor.

4-64 (c) The board shall develop rules to ensure that the  
4-65 immunization history submitted by an individual or the individual's  
4-66 legally authorized representative ~~[a parent, managing conservator,~~  
4-67 ~~or guardian]~~ is medically verified immunization information.

4-68 SECTION 7. Subsections (a), (b), and (c), Section 161.0073,  
4-69 Health and Safety Code, are amended to read as follows:

5-1 (a) Except as provided by Section 161.00705, information  
 5-2 that individually identifies an ~~[a child or other]~~ individual that  
 5-3 is received by the department for the immunization registry is  
 5-4 confidential and may be used by the department for registry  
 5-5 purposes only.

5-6 (b) Unless specifically authorized under this subchapter,  
 5-7 the department may not release registry information to any  
 5-8 individual or entity without the consent of the individual or the  
 5-9 individual's legally authorized representative ~~[person or, if a~~  
 5-10 ~~minor, the parent, managing conservator, or guardian of the child].~~

5-11 (c) A person required to report information to the  
 5-12 department for registry purposes or authorized to receive  
 5-13 information from the registry may not disclose the individually  
 5-14 identifiable information of an ~~[a child or other]~~ individual to any  
 5-15 other person without the written or electronic consent of the  
 5-16 individual or the individual's legally authorized representative  
 5-17 ~~[, if a child, the parent, managing conservator, or guardian of the~~  
 5-18 ~~child],~~ except as provided by Chapter 159, Occupations Code, or  
 5-19 Section 602.053, Insurance Code.

5-20 SECTION 8. Subsections (c), (d), (e), (g), and (h), Section  
 5-21 161.008, Health and Safety Code, are amended to read as follows:

5-22 (c) The department may obtain the data constituting an  
 5-23 immunization record for an individual ~~[a child]~~ from a public  
 5-24 health district, a local health department, the individual or the  
 5-25 individual's legally authorized representative ~~[child's parent,~~  
 5-26 ~~managing conservator, or guardian],~~ a physician to the individual  
 5-27 ~~[child],~~ a payor, or any health care provider licensed or otherwise  
 5-28 authorized to administer vaccines. The department shall verify  
 5-29 consent before including the reported information in the  
 5-30 immunization registry. The department may not retain individually  
 5-31 identifiable information about an individual ~~[a person]~~ for whom  
 5-32 consent cannot be verified.

5-33 (d) The department may release the data constituting an  
 5-34 immunization record for the individual ~~[child]~~ to:

5-35 (1) any entity that is described by Subsection (c);  
 5-36 (2) ~~[, to]~~ a school or child care facility in which the  
 5-37 individual ~~[child]~~ is enrolled; or  
 5-38 (3) ~~[, or to]~~ a state agency having legal custody of  
 5-39 the individual ~~[child]~~.

5-40 (e) An individual or the individual's legally authorized  
 5-41 representative ~~[A parent, managing conservator, or legal guardian]~~  
 5-42 may obtain and on request to the department shall be provided with  
 5-43 all individually identifiable immunization registry information  
 5-44 concerning the individual ~~[his or her child or ward]~~.

5-45 (g) The department may release nonidentifying summary  
 5-46 statistics related to the registry that do not individually  
 5-47 identify an individual ~~[a child]~~.

5-48 (h) The executive commissioner of the Health and Human  
 5-49 Services Commission ~~[board]~~ shall adopt rules to implement this  
 5-50 section.

5-51 SECTION 9. Subsection (a), Section 161.009, Health and  
 5-52 Safety Code, is amended to read as follows:

5-53 (a) A person commits an offense if the person:  
 5-54 (1) negligently releases or discloses immunization  
 5-55 registry information in violation of Section 161.007, 161.0071,  
 5-56 161.0073, or 161.008;

5-57 (2) fails to exclude an individual's ~~[a child's]~~  
 5-58 immunization information in violation of Section 161.0071;

5-59 (3) fails to remove a person's immunization  
 5-60 information in violation of Section 161.00705 or 161.00706; or

5-61 (4) negligently uses information in the immunization  
 5-62 registry to solicit new patients or clients or for other purposes  
 5-63 that are not associated with immunization or quality-of-care  
 5-64 purposes, unless authorized under this section.

5-65 SECTION 10. Section 161.0095, Health and Safety Code, is  
 5-66 amended to read as follows:

5-67 Sec. 161.0095. [PROVIDER] EDUCATION PROGRAMS AND  
 5-68 INFORMATION. (a) The department shall develop:

5-69 (1) continuing education programs for health care

6-1 providers relating to immunizations and the vaccines for children  
6-2 program operated by the department under authority of 42 U.S.C.  
6-3 Section 1396s; and  
6-4 (2) educational information, for health care  
6-5 providers, health care clinics, hospitals, and any other health  
6-6 care facility that provides health care to children 14 to 18 years  
6-7 of age, relating to the immunization registry and the option for an  
6-8 individual who is 18 years of age or older to consent to submission  
6-9 and retention of the individual's information in the immunization  
6-10 registry[~~, as amended~~].  
6-11 (b) The department shall establish a work group to assist  
6-12 the department in developing the continuing education programs and  
6-13 educational information [materials]. The work group shall include  
6-14 physicians, nurses, department representatives, representatives of  
6-15 managed care organizations that provide health care services under  
6-16 Chapter 533, Government Code, representatives of health plan  
6-17 providers that provide health care services under Chapter 62, and  
6-18 members of the public.  
6-19 SECTION 11. This Act takes effect September 1, 2009.

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