

By: Hall

S.B. No. 298

A BILL TO BE ENTITLED

1 AN ACT
2 relating to informed consent to immunizations for children and
3 civil liability for failure to obtain the consent.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Section 32.102, Family Code, is
6 amended to read as follows:

7 Sec. 32.102. INFORMED CONSENT TO IMMUNIZATION; LIABILITY.

8 SECTION 2. Section 32.102, Family Code, is amended by
9 amending Subsections (a) and (c) and adding Subsections (d) and (e)
10 to read as follows:

11 (a) Before administering an immunization to a child, a
12 health care provider must obtain the informed consent of a [A]
13 person authorized to consent to [the] immunization of the [a] child
14 [has the responsibility to ensure that the consent, if given, is an
15 informed consent]. The person authorized to consent is not
16 required to be present when [the] immunization of the child is
17 requested if a consent form that meets the requirements of Section
18 32.002 has been given to the health care provider.

19 (c) As part of the information given in the counseling for
20 informed consent, the health care provider shall provide
21 [information to inform] the person authorized to consent to
22 immunization with information regarding:

23 (1) the benefits and risks of immunization, including
24 any vaccine information statement required by the National

1 Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et
2 seq.);

3 (2) [~~of~~] the procedures available under the National
4 Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et
5 seq.) to seek possible recovery for unreimbursed expenses for
6 certain injuries arising out of the administration of certain
7 vaccines; and

8 (3) the Vaccine Excipient Summary published by the
9 Centers for Disease Control and Prevention for each immunization to
10 be administered.

11 (d) If a health care provider fails to obtain the informed
12 consent required by Subsection (a) and the child has an adverse
13 reaction to the immunization, the provider is liable to the person
14 authorized to consent to the immunization for damages in an amount
15 of not less than \$5,000. In an action brought under this
16 subsection, a claimant may also recover reasonable expenses
17 incurred in bringing the action, including court costs, reasonable
18 attorney's fees, investigation costs, witness fees, and deposition
19 expenses.

20 (e) Sections 41.003 and 41.004, Civil Practice and Remedies
21 Code, do not apply to an action brought under this section.

22 SECTION 3. Section 32.103(b), Family Code, is amended to
23 read as follows:

24 (b) A person consenting to immunization of a child, a
25 physician, nurse, or other health care provider, or a public health
26 clinic, hospital, or other medical facility is not liable for
27 damages arising from an immunization administered to a child

1 authorized under this subchapter except for injuries resulting from
2 the person's or facility's own acts of negligence. For purposes of
3 this subsection, an immunization administered to a child is not
4 authorized under this subchapter if the physician, nurse, or other
5 health care provider failed to obtain informed consent as required
6 by Section 32.102.

7 SECTION 4. The changes in law made by this Act apply only to
8 a cause of action that accrues on or after the effective date of
9 this Act.

10 SECTION 5. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2023.