

By: Hall

S.B. No. 39

A BILL TO BE ENTITLED

AN ACT

relating to the administration of immunizations to children, including required written informed consent to those immunizations and civil liability for failure to obtain the consent; providing an administrative penalty.

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

SECTION 1. The legislature finds that when a health care provider accepts a bonus, kickback, or any other form of remuneration from a vaccine manufacturer for administering an immunization to a person, the health care provider has a conflict of interest and is less likely to counsel a person on the benefits and risks of immunization before obtaining the person's written informed consent as required by law.

SECTION 2. The heading to Section 32.102, Family Code, is amended to read as follows:

Sec. 32.102. WRITTEN INFORMED CONSENT TO IMMUNIZATION; CERTAIN REMUNERATION PROHIBITED; ADMINISTRATIVE PENALTY; CIVIL LIABILITY.

SECTION 3. Section 32.102, Family Code, is amended by amending Subsections (a) and (c) and adding Subsections (d), (e), (f), (g), and (h) to read as follows:

(a) Before administering an immunization to a child, a health care provider must obtain the written informed consent of a [A] person authorized to consent to [the] immunization of the [a]

1 child ~~[has the responsibility to ensure that the consent, if given,~~  
2 ~~is an informed consent]~~. The person authorized to consent is not  
3 required to be present when ~~[the]~~ immunization of the child is  
4 requested if a consent form that meets the requirements of Section  
5 32.002 has been given to the health care provider.

6 (c) As part of the information given in the counseling for  
7 informed consent, the health care provider shall provide  
8 ~~[information to inform]~~ the person authorized to consent to  
9 immunization with information regarding:

10 (1) the benefits and risks of immunization, including  
11 any vaccine information statement required by the National  
12 Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et  
13 seq.); and

14 (2) ~~of~~ the procedures available under the National  
15 Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et  
16 seq.) to seek possible recovery for unreimbursed expenses for  
17 certain injuries arising out of the administration of certain  
18 vaccines.

19 (d) If a health care provider fails to obtain the written  
20 informed consent required by Subsection (a) and the child has an  
21 adverse reaction to the immunization that is required by federal  
22 law to be reported to the federal Vaccine Adverse Event Reporting  
23 System, the provider is liable to the person authorized to consent  
24 to the immunization for damages in an amount not to exceed \$10,000.  
25 In an action brought under this subsection, a claimant may also  
26 recover reasonable expenses incurred in bringing the action,  
27 including court costs, reasonable attorney's fees, investigation

1 costs, witness fees, and deposition expenses.

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

4 (f) A health care provider may not accept a bonus, kickback,  
5 or any other form of remuneration from a vaccine manufacturer for  
6 administering an immunization to a child, except for the necessary  
7 costs of administering the immunization.

8 (g) If a health care provider violates Subsection (f),  
9 written informed consent obtained by the provider under Subsection  
10 (a) is not valid.

11 (h) A health care provider who violates Subsection (f) is  
12 subject to disciplinary action by the state licensing agency that  
13 regulates the provider. On determining the provider committed a  
14 violation, the agency shall impose an administrative penalty  
15 against the provider in an amount that equals the greater of:

16 (1) \$5,000; or

17 (2) 10 times the monetary value of the remuneration  
18 the provider received from the vaccine manufacturer in relation to  
19 the immunization that is the subject of the violation.

20 SECTION 4. Section 32.103(b), Family Code, is amended to  
21 read as follows:

22 (b) A person consenting to immunization of a child, a  
23 physician, nurse, or other health care provider, or a public health  
24 clinic, hospital, or other medical facility is not liable for  
25 damages arising from an immunization administered to a child  
26 authorized under this subchapter except for injuries resulting from  
27 the person's or facility's own acts of negligence. For purposes of

1 this subsection, an immunization administered to a child is not  
2 authorized under this subchapter if the physician, nurse, or other  
3 health care provider failed to obtain written informed consent as  
4 required by Section 32.102.

5         SECTION 5. The changes in law made by this Act apply only to  
6 a cause of action that accrues on or after the effective date of  
7 this Act.

8         SECTION 6. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2025.