By: Hall S.B. No. 460

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

SECTION 2. Section 32.102, Family Code, is amended by amending Subsections (a) and (c) and adding Subsections (d), (e), and (f) 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~~] child [~~has the responsibility to ensure that the consent, if given, is an informed consent~~]. The person authorized to consent is not required to be present when [~~the~~] immunization of the child is requested if a consent form that meets the requirements of Section 32.002 has been given to the health care provider.

(c) As part of the information given in the counseling for informed consent, the health care provider shall provide [~~information to inform~~] the person authorized to consent to

immunization with information regarding:

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

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

(d) If a health care provider fails to obtain the written informed consent required by Subsection (a), the provider is liable to the person authorized to consent to the immunization for damages in an amount not to exceed $10,000. In an action brought under this subsection, a claimant may also recover reasonable expenses incurred in bringing the action, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

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

(f) A health care provider who fails to obtain the written informed consent required by Subsection (a) is subject to disciplinary action by the state agency that regulates the provider. On determining the provider committed a violation, the agency shall impose an administrative penalty against the provider in an amount not to exceed $5,000.

SECTION 3. Section 32.103(b), Family Code, is amended to

read as follows:

(b) A person consenting to immunization of a child, a physician, nurse, or other health care provider, or a public health clinic, hospital, or other medical facility is not liable for damages arising from an immunization administered to a child authorized under this subchapter except for injuries resulting from the person's or facility's own acts of negligence. For purposes of this subsection, an immunization administered to a child is not authorized under this subchapter if the physician, nurse, or other health care provider failed to obtain written informed consent as required by Section 32.102.

SECTION 4. Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Section 161.0025 to read as follows:

Sec. 161.0025. WRITTEN INFORMED CONSENT TO IMMUNIZATION; ADMINISTRATIVE PENALTY; CIVIL LIABILITY. (a) Before administering an immunization to an individual, a health care provider must obtain the written informed consent of the individual.

(b) As part of the information given in the counseling for informed consent, the health care provider shall provide the individual receiving the immunization with information regarding the benefits and risks of immunization.

(c) If a health care provider fails to obtain the written informed consent required by Subsection (a), the provider is liable to the individual for damages in an amount not to exceed $10,000. In an action brought under this subsection, a claimant may also recover reasonable expenses incurred in bringing the action, including court costs, reasonable attorney's fees, investigation

costs, witness fees, and deposition expenses.

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

(e) A health care provider who fails to obtain the written informed consent required by Subsection (a) is subject to disciplinary action by the state agency that regulates the provider. On determining the provider committed a violation, the agency shall impose an administrative penalty against the provider in an amount not to exceed $5,000.

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

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.