

BILL ANALYSIS

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DIGEST AND PURPOSE

In 1994, the Texas Department of Health established an immunization tracking system for the purpose of monitoring immunization rates for children across Texas. This system also serves as an information depository for providers who are then able to determine if a child's immunization record is up-to-date. For children who do not regularly see the same care provider, the system serves to protect them from "overimmunization." However, the current system lacks data from the private sector, and thus does not provide a complete picture of the immunization rates in Texas. Sections 38.001(c) and 51.933(d) of the Education Code currently exempt students from immunizations under certain conditions. Many feel that the current statute provides a loophole for parents and constricts those parents who object to only one or two of the current required immunizations. As proposed, S.B. 1237 seeks to increase the reporting to the system by changing the registry from an opt-in system to an opt-out system while continuing to protect individual privacy. The bill also provides additional protection from liability for entities reporting immunization information to the Texas Department of Health.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health and the Texas Department of Health in SECTION 15 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2E, Health and Safety Code, by adding Chapter 110, as follows:

CHAPTER 110. TEXAS IMMUNIZATION ADVISORY COMMITTEE

Sec. 110.001. DEFINITION. Provides that in this chapter, "committee" means the Texas immunization advisory committee.

Sec. 110.002. COMMITTEE ESTABLISHED. Provides that the Texas immunization advisory committee is established to assist the Texas Board of Health (board) and the Texas Department of Health (department) in the development of procedures, guidelines, and policies related to immunizations in this state.

Sec. 110.003. COMPOSITION OF COMMITTEE. Sets forth the composition of the committee.

Sec. 110.004. DUTIES. Sets forth the duties of the committee.

Sec. 110.005. APPLICABLE LAW. Provides that the committee is subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 2. Amends Sections 161.001(b) and (c), Health and Safety Code, as follows:

(b) Adds language relating to a person who administers or authorizes the administration of a

vaccine or immunizing agent to provide that the person is not liable for the failure or refusal to consent to the immunization because immunization is declined by a child's parent, managing conservator, or guardian for reasons of conscience or religious belief.

(c) Adds language to prohibit a parent, managing conservator, or guardian who fails or refuses to consent to the vaccination or immunization required under this chapter, including a parent, managing conservator, or guardian who fails or refuses to consent to the vaccination or immunization because immunization is declined for reasons of conscience or religious belief, from bringing a cause of action against any person for the other person's failure to immunize the child. Deletes language providing that a person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

SECTION 3. Amends Section 161.004(d), Health and Safety Code, to delete language providing that a child is exempt from an immunization required by this section if immunization conflicts with the tenets of an organized religion. Makes a conforming change.

SECTION 4. Amends Chapter 161A, Health and Safety Code, by adding Section 161.0045, as follows:

Sec. 161.0045. IMMUNIZATION EXEMPTION FORM. (a) Requires the Texas Department of Health (department) to develop and provide an exemption form to a person subject to exclusion from a school or facility because the person declines a required immunization for reasons of conscience or because of a religious belief.

(b) Requires the exemption form to include certain information.

(c) Requires the department to make the exemption form available in a printable format on the department's Internet website and to provide the form on request by facsimile transmission, mail, or electronic mail.

SECTION 5. Amends Section 161.007, Health and Safety Code, as follows:

(a) Deletes a reference to Section 5.08, Medical Practices Act (Article 4495b, V.T.C.S.), and changes language requiring the written consent of a parent, managing conservator, or guardian of a patient before any information relating to the patient is included in the registry to permit one of the above people to choose to have the patient excluded from the registry. Deletes language permitting a parent, managing conservator, or guardian to withdraw consent for the patient to be included in the registry.

(b) Adds an exception as provided by Section 161.0071 and deletes language relating to a person for whom consent has been obtained in accordance with the guidelines adopted under Subsection (a). Deletes language requiring the department to remove from the registry information for any person for whom consent has been withdrawn.

(c) Adds language to require the report to contain the elements prescribed by the department, which may include submission in writing, by electronic format, or by voice. Requires the department to consult with entities required to report under this section to determine the most efficient and cost-effective manner of reporting immunization history. Makes conforming changes.

(d) Makes conforming changes.

(e) Adds language requiring the notice to contain instructions for the parent, managing conservator, or guardian to request that future notices not be sent and to remove the child's immunization record from the registry and any other registry-related record that individually

identifies the child. Requires the notice to describe the procedure to report a violation if a child is included in the registry after requesting exclusion.

(f)-(h) Make conforming changes.

(i) Adds language providing that, to the extent that the confidentiality requirements imposed under this subchapter are more stringent than those imposed under Chapter 159, Occupations Code, the requirements of this subchapter prevail.

SECTION 6. Amends Chapter 161A, Health and Safety Code, by adding Section 161.0071, as follows:

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) Requires the department, the first time the department receives registry data for a child, to send a written notification to the child's parent, managing conservator, or guardian disclosing certain information.

(b) Requires the department to delete the child's immunization records from the registry and any other registry-related department record that individually identifies the child, not later than the 30th day after the date the department receives from the parent, managing conservator, or guardian of the child a written request that the child be excluded from the registry. Requires the department to maintain only those records related to the child necessary to ensure that the child continues to be excluded from the registry and prohibits the release of the identity of a child excluded from the registry.

(c) Requires the department to send to a parent, managing conservator, or guardian who makes a written request under Subsection (b) a written confirmation of receipt of the request for exclusion and the exclusion of the child's records from the registry.

(d) Provides that the department commits a violation if the department fails to exclude a child from the registry within the period required by Subsection (b).

(e) Requires the department to accept any written indication from a parent, managing conservator, or guardian communicating to the department that a child should be excluded from the registry, including a statement on the child's birth certificate, as a request for exclusion under Subsection (b).

SECTION 7. Amends Chapter 161A, Health and Safety Code, by adding Section 161.0072, as follows:

Sec. 161.0072. REGISTRY CONFIDENTIALITY. (a) Provides that the information that individually identifies a child received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Prohibits the department, unless specifically authorized under this subchapter, from releasing registry information to any individual or entity without the consent of the person, or if a minor, the parent, managing conservator, or guardian of the child.

(c) Prohibits a person required to report information to the department for registry purposes or authorized to receive information from the registry, from disclosing the individually identifiable information to any other person without written consent of the parent, managing conservator, or guardian of the child, except as provided by Chapter 159 (Physician-Patient Communication), Occupations Code.

(d) Provides that registry information is not subject to discovery, subpoena, or other

means of legal compulsion for release to any person or entity except as provided by this subchapter or admissible in any civil, administrative, or criminal proceeding.

SECTION 8. Amends Chapter 161A, Health and Safety Code, by adding Section 161.0075, as follows:

Sec. 161.0075. REPORT TO LEGISLATURE. (a) Requires the department to report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) Requires the department to use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) Requires the report to include certain information.

SECTION 9. Amends Section 161.008, Health and Safety Code, by amending Subsections (c) and (d) and adding Subsections (e)-(g), as follows:

(c) Adds language authorizing the department to obtain the data constituting an immunization record for the child from an insurance company, a health maintenance organization, or any other organization that pays or reimburses a claim for immunization, or any physician, health care professional, or health care facility personnel licensed or otherwise authorized to administer vaccines. Makes a conforming change.

(d) Authorizes the department, after the 30th day after the date notice was sent by the department to the child's parent, managing conservator, or guardian under Section 161.0071, if the department has not received a written request to exclude the child from the registry, to enter the child into the registry and release the data constituting an immunization record for the child to any entity in this state that is described by Subsection (c) and is providing immunization services to the child or is paying or reimbursing a claim for an immunization for the child or to a school or child care facility in which the child is enrolled.

(f) Authorizes the department to release nonidentifying summary statistics related to the registry that do not individually identify a child.

(g) Prohibits the department from releasing individually identifiable information under Subsection (d)(2) to an entity outside of this state.

SECTION 10. Amends Section 161.009(a), Health and Safety Code, to add references to Sections 161.0071 and 161.0072.

SECTION 11. Amends Section 38.001, Education Code, by amending Subsection (c) and adding Subsection (f), as follows:

(c) Changes a reference from "an affidavit or a certificate" to "a letter" in (c)(1)(A) and changes a reference from "an affidavit" to "a form provided by the Texas Department of Health in accordance with Section 161.0045, Health and Safety Code, in (c)(1)(B). Adds language to provide that the form from the Texas Department of Health be notarized stating that the applicant declines a required immunization for reasons of conscience or because of a religious belief, except that an applicant admitted to a school without a required immunization under this subchapter is subject to exclusion from the school. Deletes language relating to the immunization conflicting with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member.

(f) Prohibits an admitting official of a school from requesting the submission of a letter or form under Subsection (c) more than once each year.

SECTION 12. Amends Section 38.002(a), Education Code , to add language requiring each public school to keep an individual immunization record or a record of the number and type of exemptions as permitted under Section 38.001(c) during the period of attendance for each student admitted. Requires the school to annually submit a report on a form prescribed by the Texas Department of Health to the department stating the number and type of exemptions on file for children who are attending the school and exercising the exemption.

SECTION 13. Amends Section 51.933, Education Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Adds language to provide that a student who declines a required immunization for reasons of conscience or because of a religious belief, except that an applicant admitted to an institution without a required immunization under this subdivision is subject to exclusion from the institution in times of emergency or epidemic disease declared by the commissioner of public health. Makes conforming changes.

(f) Prohibits an admitting official of a school from requesting the submission of a letter or form under Subsection (c) more than once each year.

SECTION 14. Amends Section 42.043(d), Human Resources Code, to add language relating to a letter signed by a physician who is duly registered and licensed to practice medicine in the United States in which it is stated that in the physician's opinion the immunization would be injurious to the health and well-being of the child or a member of the child's family. Makes conforming changes.

SECTION 15. Sets forth provisions relating to implementation of this Act.

SECTION 16. Effective date: upon passage or September 1, 2001.