

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 734

BY: CAIN

AS INTRODUCED

AN ACT RELATING TO CHILDHOOD VACCINES; CREATING THE CHILDHOOD VACCINE ACT; STATING SHORT TITLE; STATING LEGISLATIVE FINDINGS AND PURPOSE OF ACT; DEFINING TERMS; REQUIRING THE STATE BOARD OF HEALTH TO PROMULGATE CERTAIN RULES; REQUIRING THE STATE DEPARTMENT OF HEALTH TO PURCHASE CERTAIN VACCINES IN CERTAIN AMOUNTS, TO SECURE AND MAINTAIN CERTAIN FACILITIES FOR CERTAIN PURPOSES, AND TO DISTRIBUTE SUCH VACCINES TO CERTAIN PERSONS UNDER CERTAIN CONDITIONS; STATING CONDITIONS UNDER WHICH A PRACTITIONER SHALL BE ABLE TO RECEIVE CERTAIN VACCINES FOR CERTAIN PURPOSES; PROVIDING FOR CERTAIN ADMINISTRATION FEES; ESTABLISHING CERTAIN LIMIT ON ADMINISTRATION FEES; PROHIBITING FILING OF AN ACTION AGAINST CERTAIN PERSONS; PROVIDING FOR DISMISSAL OF CERTAIN ACTIONS; LIMITING LIABILITY OF VACCINE ADMINISTRATORS FOR CERTAIN DAMAGES UNDER CERTAIN CONDITIONS; PROVIDING FOR RECOVERY OF DAMAGES; LIMITING CERTAIN DAMAGES; SETTING TIME LIMIT FOR FILING OF CIVIL ACTION; ALLOWING CERTAIN OTHER PERSONS TO FILE CIVIL ACTIONS ON BEHALF OF MINORS OR INCOMPETENT PERSONS; ALLOWING CERTAIN CIVIL ACTIONS TO BE FILED WITHIN SIX YEARS OF ACT; PROVIDING FOR STAYING OF THE LIMITATIONS PERIOD;

PROVIDING FOR CODIFICATION; AND PROVIDING AN
EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 420 of Title 10, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Childhood Vaccine Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 421 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Legislature hereby finds and declares that:

1. Childhood communicable diseases constitute a serious threat to the public health of the people of this state, and the prevention of childhood disease is a goal of its people;

2. The effectiveness of childhood vaccines to save lives and prevent debilitating disease has been well documented. Vaccines are among the most cost-effective components of preventive medical care. For every dollar spent on childhood immunization, ten dollars are saved in later medical costs;

3. The average cost of fully vaccinating a child in the private sector has increased dramatically in the past decade. The full battery of childhood vaccines recommended by the Centers for Disease Control in 1982 increased five times in cost between 1982 and 1989. In 1989, the cost of the diphtheria-tetanus-pertussis vaccine alone was thirty times greater than it was in 1982. These increases have made it unaffordable for many children to receive their immunizations;

4. Administration of certain vaccines is required by law as a condition of entry into school in this state; and

5. There are specific vulnerable child populations that may require special additional vaccines.

B. The purpose of this act is to provide childhood vaccines to all children in this state in order to help prevent childhood disease and preserve the health of children.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 422 of Title 10, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Department" means the State Department of Health;

2. "Covered vaccine" means such vaccines as are recommended by guidelines of the Centers for Disease Control or the American Academy of Pediatrics to be administered to a child. Such term shall also include, without limitation, the following specific vaccines:

a. diphtheria-tetanus-pertussis (DTP),

b. oral polio vaccine (OPV) or intramuscular polio vaccine (IPV),

c. measles-mumps-rubella (MMR),

d. Haemophilus influenzae type b conjugate vaccines (Hib), and

e. pneumococcal vaccine, when medically indicated;

3. "Practitioner" means a doctor of medicine, doctor of osteopathy or other person who is permitted and otherwise qualified to administer vaccines under the laws of this state;

4. "Vaccine administrator" means any licensed health care professional, organization or institution, whether public or private, including federal, state and local departments, agencies, and instrumentalities, who administers a covered vaccine or under whose authority a covered vaccine is administered; and

5. "Vaccine-related injury" means any injury, disability, illness, condition or death associated with a covered vaccine, except that the term does not include an injury, disability, illness, condition or death associated with an adulterant or contaminant intentionally added to such a vaccine.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 423 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules establishing procedures and guidelines necessary to achieve the purposes of this act.

B. The State Department of Health shall:

1. Purchase covered vaccines in sufficient quantity to achieve the purposes of this act;

2. Secure and maintain such facilities as may be necessary for the safe and adequate preservation and storage of such vaccines;

3. Distribute, free of any purchase, shipping, handling or other charges, such vaccines to practitioners who qualify under Section 5 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 424 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. In order to receive covered vaccines for administration to children pursuant to this act, a practitioner shall agree:

1. Not to impose on the child recipient, the parents of the child, a third-party payor, or any other person, any charge for such vaccine; and

2. To provide documentation to the State Department of Health detailing the vaccines administered, the dates of administration and the names and dates of birth of the children to whom administered.

B. Nothing in this section shall be construed to prohibit a practitioner from charging a reasonable administration fee in connection with administration of a covered vaccine.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 425 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. No action shall be filed by any individual or by any individual's parent, guardian ad litem, or personal representative against any vaccine administrator at common law or otherwise, for a vaccine-related injury unless such action is permitted under Subtitle 2 of Title XXI of the Public Health Service Act, 42 U.S.C., Section 201 et seq.

B. Any action filed in violation of this section shall be dismissed, with prejudice, on the motion of any party under law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 426 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. No vaccine administrator shall be liable in a civil action for damages arising from a vaccine-related injury for failure to provide adequate warnings to the injured party, or the injured party's legal representative, of the potential dangers resulting from the administration of the vaccine, if prior to the administration of the vaccine:

1. The vaccine administrator provided to the legal representative of the injured party the vaccine materials developed pursuant to Subtitle 2 of Title XXI of the Public Health Service Act, 42 U.S.C., Section 201 et seq.; or

2. The vaccine administrator otherwise provided written information to the legal representative of the injured party, as required under Subtitle 2 of Title XXI of the Public Health Service Act, relating to:

- a. the frequency, severity and potential long-term effects of the disease to be prevented by the vaccine,
- b. the symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of a health care provider,
- c. precautionary measures a legal representative should take to reduce the risk of any major adverse reactions to the vaccine that may occur,
- d. early warning signs or symptoms to which the legal representative should be alert as possible precursors to such adverse reactions,
- e. a description of the manner in which the legal representative should monitor such major adverse reactions,
- f. a specification of when, how and to whom the legal representative should report any major adverse reaction,
- g. the contraindications to and bases for delay of the administration of the vaccine, and
- h. an identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population.

B. No vaccine administrator shall be liable in a civil action for damages arising from a vaccine-related injury on any grounds other than failure to provide adequate warnings to the injured party or the injured party's legal representative of the potential damages resulting from the administration of the vaccine, unless the vaccine administrator administered the vaccine:

1. Under circumstances that a reasonably prudent administrator would not have administered the vaccine to the injured party; or

2. In a manner different from the manner that the vaccine would have been administered to the injured party by a reasonable prudent administrator under similar circumstances.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 427 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. In any action brought against a vaccine manufacturer or administrator as permitted by Subtitle 2 of Title XXI of the Public Health Service Act, 42 U.S.C., Section 201 et seq., and Section 6 of this act, the plaintiff may only recover damages for any or all of the following:

1. Actual and projected reasonable expenses of medical care, developmental evaluation, special education, vocational training, physical, emotional or behavioral therapy and residential and custodial care and service expenses;

2. Loss of earnings and projected earnings, determined in accordance with generally accepted actuarial principles; and

3. Noneconomic, general damages arising from pain, suffering and emotional distress.

B. Any award to a plaintiff for noneconomic general damages arising from pain, suffering and/or emotional distress shall not exceed an aggregate amount of the present day value of Two Hundred Fifty Thousand Dollars (\$250,000.00).

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 428 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, any civil action under this act that is filed more than six (6) years after the administration of a vaccine alleged to have caused a vaccine-related injury is barred. Civil actions on behalf of minors or incompetent persons shall be filed by their parents, guardians ad

litem, or guardians within the applicable limitations period established by this section.

B. Civil actions that are filed in accordance with the provisions of this act within six (6) years after the date of the enactment of this act shall not be barred unless on the date the civil action was filed, the plaintiff was barred by the applicable statute of limitations from filing a civil action for damages with respect to the subject matter of the claim.

C. If a petition for compensation for a vaccine-related injury is filed under Subtitle 2 of Title XXI of the Public Health Service Act, 42 U.S.C., Section 201 et seq., the limitations period set forth in this section shall be stayed for the period beginning on the date the petition is filed and ending on the date a final judgment is entered on the petition.

SECTION 10. This act shall become effective September 1, 1992.

43-2-1819 CJ