

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 279 CS Student and Parent Rights
SPONSOR(S): Grimsley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 890

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>PreK-12 Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Howlette</u>	<u>Mizereck</u>
2) <u>Health Care General Committee</u>	<u>11 Y, 0 N</u>	<u>Schiefelbein</u>	<u>Brown-Barrios</u>
3) <u>Civil Justice Committee</u>	<u></u>	<u>Lammers</u>	<u>Billmeier</u>
4) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 279 authorizes severely allergic K-12 students to carry and self-administer epinephrine by auto-injector, with parental and physician authorization, on school grounds and while on school trips. The bill gives the State Board of Education rule-making authority and provides for indemnification of school districts.

The bill does not appear to have an impact on state or local revenues.

This bill sets an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill provides the State Board of Education, in cooperation with the Department of Health, with rule-making authority.

Safeguard individual liberty - The bill increases the options of students regarding self-administration of epinephrine.

Promote personal responsibility - The bill allows students to assume responsibility for administering epinephrine.

Empower families – The bill supports families’ efforts to help their students take responsibility for self-administration of medication when a life threatening allergic reaction has occurred.

B. EFFECT OF PROPOSED CHANGES:

Prescription Medication in Public Schools

Under current law, district school board personnel may assist students with the administration of prescription medication when the school principal’s designated school personnel have been trained by a registered or licensed nurse or physician.¹ The school board must also adopt policies and procedures governing the administration of prescription medication, including a requirement that the student’s parent provide the school principal with a written statement for each prescribed medication granting the principal or principal’s designee to assist in the administration of the medication.² The letter to the school principal must also explain why the medication is necessary during the school day and give permission to administer the medication to the student when the student is away from school property on official school business.³ The student’s prescription medication, to be administered by school personnel, must be received, counted, and stored in its original container, and when the medicine is not in use, it is to be securely stored under lock and key in a location designated by the school principal.⁴ There is no liability for civil damages as a result of the administration of medicine when the school personnel acts as a reasonably prudent person.⁵

Current law also allows asthmatic students to carry metered dose inhalers while in school, upon providing the school principal with a copy of the parent’s and physician’s approval.⁶ Federal law gives a preference in grant distribution for states that allow students to self-administer medication to treat asthma and anaphylaxis.⁷

Epinephrine Auto-Injectors

Anaphylaxis is a systemic allergic reaction affecting people who have life-threatening allergies, particularly to certain foods and stinging insects, that can cause death within minutes upon contact.⁸ Approximately one to two percent of the general population is at risk for anaphylaxis from food allergies

¹ Section 1006.062(1)(a), F.S.

² Section 1006.062(1)(b)1., F.S.

³ *Id.*

⁴ Section 1006.062(1)(b)2., F.S.

⁵ Section 1006.062(2), F.S.

⁶ Section 1002.20(3)(h), F.S.

⁷ Pub. L. 108-377, HR 2023 (2004).

⁸ American Lung Association, *Anaphylaxis in Schools*.

and insect stings, and individuals with asthma experience a greater risk.⁹ Food is the leading cause of anaphylaxis in children, and an increasing number of students and school staff have life-threatening allergies.¹⁰ Although the best way to manage anaphylaxis is by avoiding its causes, if contact with an allergen occurs, treatment needs to be immediately available.¹¹ Epinephrine is the first drug that needs to be used to counteract a potentially life-threatening allergic reaction.¹² Because death from anaphylaxis can occur within minutes, the longer the delay in administering epinephrine, the greater the risk of a fatality.¹³ After self-administering epinephrine with an auto-injector, students will also need emergency transportation to a hospital for further evaluation.¹⁴

If a person has been prescribed an epinephrine auto-injector, the person should carry it at all times.¹⁵ According to the Department of Health, the nurse to student ratio in Florida public schools for the 2002-03 school year was one nurse per 2,718 students.¹⁶ This could result in potentially dangerous delays in the administration of medicine to children with anaphylaxis.¹⁷

School Responsibility for Students

Generally, "a school board has no sovereign immunity for the negligent performance of an operational duties."¹⁸ Operational duties include the duty to supervise the activity of students as long as they are on school premises.¹⁹ The teacher's duty of care towards the student is that which a reasonably prudent person would exercise in the same circumstances when charged with those responsibilities.²⁰ The breach of supervisory duties exposes the school to liability for the reasonably foreseeable injuries caused by the school's failure to exercise ordinary care.²¹

Indemnity is a duty to make restitution for the loss, damage, or liability another has incurred, or the right of an injured party to claim reimbursement for its loss, damage, or liability, from a person who has such a duty.²² A claim from indemnity may arise from an indemnity contract, where the promisor agrees to protect the promisee against loss or damage that occurs through the fault of another person.²³ The Florida Supreme Court has set forth the guidelines under which a party may prevail on a common law claim of indemnity as follows:

For a party to prevail on a claim of common law indemnity, the party must satisfy a two-prong test. First, the party seeking indemnification must be without fault, and its liability must be vicarious and solely for the wrong of another. See *K-Mart Corp. v. Chairs, Inc.*, 506 So. 2d 7, 9-10 (Fla. 5th DCA 1987). Second, indemnification can only come from a party who was at fault. See *Federal Ins. Co. v. Western Waterproofing Co.*, 500 So.2d 162, 165 (Fla. 1st DCA 1986); see

⁹ *Id.* (citing H.A. Sampson, L. Mendelson, & J.P. Rosen, *Fatal and Near Fatal Reactions to Food in Children and Adolescents*, 327 *New England Journal of Medicine* 380-84 (1992)).

¹⁰ Florida Department of Education, Governmental Relations, 2005 Legislative Bill Analysis.

¹¹ American Lung Association, *Anaphylaxis in Schools*.

¹² *Id.* (citing American Academy of Allergy, Asthma & Immunology, *Position Statement: Anaphylaxis in Schools and Other Child-Care Settings* (Oct. 2004)).

¹³ American Lung Association, *Anaphylaxis in Schools* (citing H.A. Sampson, L. Mendelson, & J.P. Rosen, *Fatal and Near Fatal Reactions to Food in Children and Adolescents*, 327 *New England Journal of Medicine* 380-84 (1992)).

¹⁴ Florida Department of Education, Governmental Relations, 2005 Legislative Bill Analysis.

¹⁵ *Id.*; American Lung Association, *Anaphylaxis in Schools*; The Food Allergy & Anaphylaxis Network, *Information About Anaphylaxis*, at <http://www.foodallergy.org/anaphylaxis.html> (last visited Mar. 11, 2005).

¹⁶ American Lung Association, *Anaphylaxis in Schools*.

¹⁷ *Id.* (citing L. Hendeles, K.M. Altenburger, & T. Benton, *Self-Administration at School of Prescribed Medication for Asthma and Anaphylaxis*, 8 *J. Ped. Pharmacol. Ther.* 4 (2003)).

¹⁸ 28 Fla. Jur. 2d Government Tort Liability s. 46 (2004).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² BLACK'S LAW DICTIONARY 308 (Bryan A. Garner, ed., 1996).

²³ 12 Fla. Jur. 2d Contribution, Etc. s. 2 (2004).

also *State Dep't of Transp. v. Southern Bell Tel. & Tel. Co.*, 635 So. 2d 74, 77 (Fla. 1st DCA 1994). Additionally, Florida courts have required a special relationship between the parties in order for common law indemnification to exist. See *Houdaille Indus., Inc. v. Edwards*, 374 So. 2d 490, 493 (Fla. 1979).²⁴

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This bill would allow K-12 students who have or are at risk of life-threatening allergic reactions to carry epinephrine in an auto-injector and to self-administer epinephrine by auto-injector while at school, participating in school-sponsored activities, and while traveling to or from school or school-sponsored activities. Such students must provide the school with parental and physician authorization.

The Department of Health and the State Board of Education shall adopt rules regarding the use of epinephrine auto-injectors, including rules to provide for the safety of all students from the abuse or misuse of auto-injectors. The bill indemnifies school districts of any and all liability with regard to the use of epinephrine auto-injectors.

C. SECTION DIRECTORY:

Section 1: Amends s.1002.20 (3) (i), F.S., adding new language regarding the administration of epinephrine by auto-injector by certain K-12 students, requires the State Board of Education and the Department of Health to adopt rules for such use, and provides for indemnification of school districts.

Section 2: Sets an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill may increase the workload at the county school district level and would require training of a large number of school staff regarding the execution of individual health care plans.²⁵ However, an estimate of the costs associated with this workload increase is not possible at this time.²⁶ The Department of Education does not believe that this bill will require any expenditures by local governments.²⁷

²⁴ *Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d 638, 642 (Fla. 1999).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Florida Department of Education, Governmental Relations, 2005 Legislative Bill Analysis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

According to the Department of Health, this bill will require additional training for local school district staff, although no estimate of the cost of this training is available.²⁸ However, school districts provide staff with training for medication administration and selected special procedures at the beginning of each school year.²⁹ Therefore, it is not certain that there will be a significant fiscal impact from the addition of medical training for overseeing student administration of epinephrine.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Education and the State Board of Education are provided with rule-making authority to implement this act, particularly for the purpose of ensuring the safety of all students from the misuse or abuse of auto-injectors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Health, this bill's effective date does not provide sufficient time for the development and promulgation of guidelines and procedures for safe implementation of student self-administration of epinephrine auto-injectors.³⁰

The bill's language regarding the indemnification of the school districts with respect to the use of epinephrine auto-injectors raises concerns because it is unclear just who is to indemnify the school districts. The language of the bill also raises questions as to whether the school districts would be responsible for any negligent behavior they might engage in with regard to supervision of the use of auto-injectors.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The PreK-12 Committee met on February 22, 2005, and adopted one amendment to the bill. The bill provides the State Board of Education with rule-making authority, and the amendment requires the rules to address the safety of all students.

The PreK-12 Committee reported the bill favorably as HB 279 with a committee substitute.

²⁸ Department of Health, Bill Analysis, Economic Statement and Fiscal Note.

²⁹ *Id.*

³⁰ *Id.*