

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1305 Student Health  
**SPONSOR(S):** Education Committee, Eagle and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	12 Y, 0 N	Dehmer	Fudge
2) Education Appropriations Subcommittee	13 Y, 0 N	deNagy	Heflin
3) Education Committee	18 Y, 0 N, As CS	Dehmer	Mizereck

### SUMMARY ANALYSIS

In 2012, the Legislature authorized pharmacists to administer epinephrine using an epinephrine auto-injector (EAI) in the event of an allergic reaction from a vaccine.

In 2013, public and private schools were authorized to purchase and store EAIs on campus. A school that stores EAIs must adopt a physician's protocol for administering the device. The law provides that except for willful and wanton conduct, trained school employees and the physicians who develop the school's protocol on administering the EAIs are protected from liability that may result from administering EAIs.

In 2014, the Legislature amended the law governing insect sting emergency treatment by creating new and expanding existing provisions in s. 381.88, F.S., related to emergency allergy treatment. The law also created s. 381.885, F.S. Together, these laws are referred to as the "Emergency Allergy Treatment Act."

Section 381.88(2)(b), F.S. defines "authorized entity" as an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. The term also includes a school for the purposes of the educational training programs for recognizing the symptoms of a severe allergic reaction and administering an EAI.

The bill includes private schools in the definition of authorized entities for the purpose of acquiring a supply of and administering EAIs. The law also applies the civil liability immunity protections in the Good Samaritan Act to private schools.

The bill authorizes public and private schools to enter into an arrangement with a wholesale distributor or a manufacturer to acquire EAIs at fair-market, free or reduced prices for use when a student has an anaphylactic reaction.

The bill removes the requirement that schools maintain EAIs in a locked location. However, the bill requires that EAIs must be maintained in a secure location.

The bill does not appear to have a fiscal impact, see fiscal comments.

The bill takes effect July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

In 2012, the Legislature authorized pharmacists to administer epinephrine using an EAI in the event of an allergic reaction from a vaccine.<sup>1</sup> Pharmacists who obtain certification and are authorized to provide vaccines are required to complete a 3-hour continuing education course every two years on the safe and effective administration of vaccines.<sup>2</sup> The 3-hour course must be offered by a statewide professional association of physicians in this state and is considered part of the 30-hour continuing education requirement for biennial licensure renewal and recertification.<sup>3</sup> If a pharmacist fails to take the 3-hour course, the authorization to administer vaccines or epinephrine is revoked.<sup>4</sup>

In 2013, the Legislature authorized public and private schools to purchase and store EAI on campus.<sup>5</sup> A school that stores EAI must adopt a physician's protocol for administering the device.<sup>6</sup> The law provides that except for willful and wanton conduct, trained school employees and the physicians who develop the school's protocol on administering the EAI are protected from liability that may result from administering EAI.<sup>7</sup>

#### Good Samaritan Act

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity from liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>8</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.<sup>9</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>10</sup>

In 2014, the Legislature amended the law governing insect sting emergency treatment by creating new and expanding existing provisions in s. 381.88, F.S., related to emergency allergy treatment.<sup>11</sup> The law also created s. 381.885, F.S.<sup>12</sup> Together, these laws are referred to as the "Emergency Allergy Treatment Act" ("the Act").

#### Authorized Entity

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<sup>1</sup> Section 465.189(3), F.S.

<sup>2</sup> Section 465.009(6)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 465.009(6)(c), F.S.

<sup>5</sup> Section 1002.20(3)(i)2., F.S. (public schools) and section 1002.42(17)(a), F.S. (private schools).

<sup>6</sup> *Id.*

<sup>7</sup> Section 1002.20(3)(i)3., F.S. (public schools) and s. 1002.42(17)(b), F.S. (private schools).

<sup>8</sup> Section 768.13(2)(a), F.S.

<sup>9</sup> Section 768.13(2)(d), F.S.

<sup>10</sup> Section 768.13(3), F.S.

<sup>11</sup> Section 381.88, F.S.

<sup>12</sup> Section 381.885, F.S.

The law defines “authorized entity” as an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. The term also includes a school for the purposes of the educational training programs for recognizing the symptoms of a severe allergic reaction and administering an EAI.<sup>13</sup>

### Epinephrine Use and Supply

Currently, public and private schools may purchase EAIs from a wholesale distributor and maintain the EAIs in a locked, secure location on its premises.

### Effect of Proposed Changes

The bill includes private schools along with public schools in the definition of authorized entities for the purpose of acquiring a supply of and administering EAIs. The law also applies the civil liability immunity protections in the Good Samaritan Act to private schools.

The bill authorizes public and private schools to enter into an arrangement with a wholesale distributor or a manufacturer to acquire EAIs at fair-market, free or reduced prices for use when a student has an anaphylactic reaction.

The bill removes the requirement that schools maintain EAIs in a locked location. However, the bill requires that EAIs must be maintained in a secure location.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 381.88, F.S., relating to emergency allergy treatment.

**Section 2.** Amends s. 1002.20, F.S., K-12 student and parent rights.

**Section 3.** Creates s. 1002.42, F.S., relating to private school’s epinephrine supply.

**Section 4.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government revenues.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>13</sup> Section 381.88(2)(b), F.S.  
**STORAGE NAME:** h1305e.EDC  
**DATE:** 2/10/2016

None.

D. FISCAL COMMENTS:

According to the Department of Education, this bill has no fiscal impact.<sup>14</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Education Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement that schools maintain EAls in a locked location. However, the bill requires that EAls must be maintained in a secure location.
- Authorizes public and private schools to enter into an arrangement with a wholesale distributor or a manufacturer to acquire EAls at fair-market, free or reduced prices for use when a student has an anaphylactic reaction.

This bill analysis is drafted to the committee substitute as passed by the Education Committee.