

By the Committee on Education; and Senator Dawson

304-2665-04

1 A bill to be entitled
2 An act relating to the prescription of
3 medications to minors; amending s. 39.401,
4 F.S.; providing that the refusal of a parent,
5 legal guardian, or other person responsible for
6 a child's welfare to administer or consent to
7 the administration of a psychotropic medication
8 does not by itself constitute grounds for
9 taking the child into custody; providing an
10 exception; creating s. 402.3127, F.S.;
11 prohibiting the unauthorized administration of
12 medication by personnel associated with child
13 care entities; providing an exception for
14 emergency medical conditions when the child's
15 parent or legal guardian is unavailable;
16 defining the term "emergency medical
17 condition"; providing penalties for violations;
18 amending s. 1006.062, F.S.; requiring district
19 school boards to adopt rules prohibiting
20 district school board personnel from
21 recommending the use of psychotropic
22 medications for any student; allowing such
23 personnel to recommend that a medical
24 practitioner evaluate a student and to consult
25 with such practitioners; providing that a
26 school district may not require a student to
27 obtain a prescription for any specified
28 controlled substance as a prerequisite to the
29 student's attending school or receiving other
30 services of the school district; providing for
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1 rulemaking by the Department of Education;
2 providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsection (1) of section 39.401, Florida
7 Statutes, is amended to read:

8 39.401 Taking a child alleged to be dependent into
9 custody; law enforcement officers and authorized agents of the
10 department.--

11 (1) A child may only be taken into custody:

12 (a) Pursuant to the provisions of this part, based
13 upon sworn testimony, either before or after a petition is
14 filed; or

15 (b) By a law enforcement officer, or an authorized
16 agent of the department, if the officer or authorized agent
17 has probable cause to support a finding:

18 1. That the child has been abused, neglected, or
19 abandoned, or is suffering from or is in imminent danger of
20 illness or injury as a result of abuse, neglect, or
21 abandonment;

22 2. That the parent or legal custodian of the child has
23 materially violated a condition of placement imposed by the
24 court; or

25 3. That the child has no parent, legal custodian, or
26 responsible adult relative immediately known and available to
27 provide supervision and care.

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29 The refusal of a parent, legal guardian, or other person
30 responsible for a child's welfare to administer or consent to
31 the administration of any psychotropic medication to the child

1 does not, in and of itself, constitute grounds for the
2 department to take the child into custody, or for any court to
3 order that the child be taken into custody by the department,
4 unless the refusal to administer or consent to the
5 administration of psychotropic medication causes the child to
6 be neglected or abused.

7 Section 2. Section 402.3127, Florida Statutes, is
8 created to read:

9 402.3127 Unauthorized administration of medication.--

10 (1) An employee, owner, household member, volunteer,
11 or operator of a child care facility, large family child care
12 home, or family day care home, as defined in s. 402.302,
13 including a child care program operated by a public or
14 nonpublic school deemed to be child care under s. 402.3025,
15 which is required to be licensed or registered, may not,
16 without written authorization from a child's parent or legal
17 guardian, administer any medication to a child attending the
18 child care facility, large family child care home, or family
19 day care home. The written authorization to administer
20 medication must include the child's name, the date or dates
21 for which the authorization is applicable, dosage
22 instructions, and the signature of the child's parent or legal
23 guardian.

24 (2) In the event of an emergency medical condition
25 when a child's parent or legal guardian is unavailable, an
26 employee, owner, household member, volunteer, or operator of a
27 licensed or unlicensed child care facility, large family child
28 care home, or family day care home may administer medication
29 to a child attending the facility or home without the written
30 authorization required in subsection (1) if the medication is
31 administered according to instructions from a prescribing

1 health care practitioner. The child care facility, large
2 family child care home, or family day care home must
3 immediately notify the child's parent or legal guardian of the
4 emergency medical condition and of the corrective measures
5 taken. If the parent or legal guardian remains unavailable and
6 the child's emergency medical condition persists, the child
7 care facility must immediately notify the child's medical care
8 provider.

9 (3) As used in this section, the term "emergency
10 medical condition" means circumstances in which a prudent
11 layperson acting reasonably would believe that an emergency
12 medical condition exists.

13 (4)(a) A person who violates this section commits a
14 felony of the third degree, punishable as provided in s.
15 775.082 or s. 775.083, if the violation results in serious
16 injury to the child.

17 (b) A person who violates this section commits a
18 misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083, if the violation does not result in
20 serious injury to the child.

21 Section 3. Subsections (8) and (9) are added to
22 section 1006.062, Florida Statutes, to read:

23 1006.062 Administration of medication and provision of
24 medical services by district school board personnel.--

25 (8) Each district school board shall adopt rules that
26 prohibit all district school board personnel from recommending
27 the use of psychotropic medications for any student. This
28 subsection does not prohibit district school board personnel
29 from recommending that a student be evaluated by an
30 appropriate medical practitioner and does not prohibit
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1 district school board personnel from consulting with such a
2 practitioner with the consent of the student's parent.

3 (9)(a) A school district may not require that a
4 student who attends school in the district must, as a
5 prerequisite to the student's attending school or receiving
6 any other services of the school district, obtain a
7 prescription for a controlled substance listed in schedule II
8 under s. 202(c) of the federal Controlled Substances Act, 21
9 U.S.C. s. 812(c), as amended by Title 21 C.F.R. part 1308.

10 (b) The Department of Education shall develop rules
11 containing policies and procedures that prohibit school
12 personnel from requiring a student to obtain a prescription
13 for a controlled substance in violation of paragraph (a).

14 Section 4. This act shall take effect July 1, 2004.

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16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bill 1578

19 The committee substitute adds the provisions from CS/CS for SB
20 2262 relating to providing medication to children taken into
21 protective custody and in child care settings. Specifically
22 the committee substitute:

23 -prohibits a child from being taken into custody due to a
24 parent's refusal to administer psychotropic medications,
25 unless the refusal caused the child's neglect or abuse.

26 -establishes requirements for obtaining parental authorization
27 to administer medications to children in child care programs
28 and creates criminal penalties for violations of these
29 requirements.

30 -requires school districts from recommending the use of
31 psychotropic medications for students and provides an
exception.