

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/SB 890

SPONSOR: Education Committee and Senator Wise

SUBJECT: Student and Parent Rights

DATE: March 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hermanson</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HE</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute gives K-12 students the right to carry an epinephrine auto-injector and self-administer epinephrine by auto-injector if the school is provided with parental and physician authorization. After the school has appropriate authorization, the student may carry and self-administer epinephrine from an auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities.

The committee substitute also requires the State Board of Education (SBE), with the cooperation of the Department of Health (DOH), to adopt rules for student use of epinephrine auto-injectors, and these rules must include provisions to protect the safety of all students from the misuse or abuse of auto-injectors. Additionally, a school district, county health department, public-private partner, and their employees and volunteers are indemnified by the parent of a student authorized to carry an auto-injector for any and all liability with respect to the student's use of an epinephrine auto-injector.

The committee substitute amends s.1002.20, F.S., and will take effect January 1, 2006.

II. Present Situation:

Epinephrine is used to treat anaphylaxis—a severe and potentially life-threatening allergic reaction to a variety of allergens including insect venom, food, medication and latex. While people who are prone to anaphylaxis try and avoid contact with the culpable allergens, accidental food ingestion and insect stings can still occur. In the event of a severe allergic reaction, immediate treatment is necessary, and epinephrine is one of the first drugs given to a patient experiencing anaphylaxis. Given the need for immediate treatment, many people who are prone to anaphylactic reactions carry a prescription epinephrine injection kit, such as EpiPen, to

administer to themselves in case they have a severe allergic reaction.¹ Epinephrine is usually administered by injection into the thigh with an automatic injection device, and emergency medical services should be called immediately after injection.²

At least eighteen states allow students who are prescribed epinephrine auto-injectors to carry and self-administer them if necessary.³ Last year, Congress passed the Asthmatic School Children's Treatment and Health Management of 2004 which gives grant preference to any state that authorizes students to self-administer medication to treat asthma and anaphylaxis. Under the federal law, the student must have a prescription for the medication and have been instructed on how to use that medication.⁴

Currently, Florida students do not have a statutory right to carry epinephrine auto-injectors. However, s. 1002.20(3)(h), F.S., allows asthmatic students, upon approval from their parent and physician, to carry inhalers while in school. Even though there is not a statute allowing students to carry epinephrine auto-injectors, a few school districts currently have their own policies that allow students to self-medicate with epinephrine auto-injectors. These districts require medical and parental authorization, and judgments are made on the responsibility level of each student. Other school districts require epinephrine auto-injectors to be stored in a specific location.⁵ Once epinephrine has been administered, the school health staff or the person designated to administer medication should call 911 for emergency medical services.⁶

At present, Palm Beach County School District is the only district known to have a school nurse at every school.⁷ Despite the fact that not every school has a nurse, s. 1006.062, F.S., allows school district nonmedical personnel to perform health-related services, including administering injectable medication, upon successful completion of child-specific training by certain medical practitioners, subject to periodic monitoring by a nurse.

While current Florida law does not specifically address student epinephrine use, it does provide guidelines for administering prescription medication. Under s. 1006.062, F.S., district school board personnel, including school nurses, may assist students in the administration of prescription medication under certain conditions. First, each school district must have a procedure to provide training by certain registered or licensed medical practitioners to the district school board personnel who have been designated to assist students in the administration of prescribed medication. Second, each district school board must adopt policies and procedures governing the administration of prescription medication by district school board personnel. The policy must require that the student's parent provide a written statement granting the school principal or the principal's designee permission to assist in the administration of such medication and explaining the necessity for the medication to be administered during the school day. After receiving the medication, the school principal or the principal's trained designee assists the

¹ Source: From PDR Health, available at: http://www.pdrhealth.com/content/rx_drugs/chapters/fgrx14.shtml

² Source: DOH SB 890 analysis

³ PL 108-377 (2004)

⁴ PL 108-377 (2004)

⁵ Source: DOE personnel, March 18, 2005

⁶ Source: DOH SB 890 analysis (Feb. 3, 2005)

⁷ Source: DOE personnel, March 18, 2005

student in administering the medication. In addition, the school must receive, count and store all student medication in its original container, and that container must be stored in a secure location.

Additionally, under s. 1006.062, F.S., if the school district employee administering the medication acts as a reasonably prudent person would have acted in the same or similar situation, the district school board is not liable for civil damages.

III. Effect of Proposed Changes:

The committee substitute amends s. 1002.20, F.S., and gives a student who is at risk of experiencing life-threatening allergic reactions the right to carry an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities. In order for a student to carry an epinephrine auto-injector, the school must be given both parental and physician authorization.

By allowing students who are at risk of a severe allergic reaction to carry epinephrine auto-injectors, valuable time may be saved in the event of a reaction. Additionally, the requirement of parental and physician approval should ensure that only students who need to carry epinephrine auto-injectors do so.

The committee substitute also requires the SBE, with the cooperation of the DOH, to adopt rules for the use of epinephrine auto-injectors. Those rules must include provisions to protect the safety of all students from the misuse or abuse of auto-injectors.

Since students may have to self-inject at a location away from medically-trained school staff, there may be a need to train all school personnel on auto-injector safety procedures. This concern, as well as any others, can be addressed in the SBE rules for student use of epinephrine.⁸

The committee substitute also requires that the parent of a student authorized to carry an auto-injector indemnify the school district, county health department, public-private partner, and their employees and volunteers for any and all liability with respect to the student's use of an epinephrine auto-injector pursuant to this act.

This committee substitute will take effect January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸ Source: DOH SB 890 analysis (Feb. 3, 2005)

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

District school boards may be spared litigation and law suits that could result, as they have in other states, from tragic results of a student not having an auto-injector at the onset of a severe allergic reaction. Conversely, school districts may be subject to litigation occurring from improper use of epinephrine auto-injectors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The indemnity provision does not prohibit a person from filing suit against a school district, county health department, public-private partner, and their employees or volunteers if an epinephrine auto-injector is used in a manner that results in injuries to the student or a third party. Moreover, the bill does not prevent a putative plaintiff in such a suit from executing judgment against the above mentioned parties. Instead, the indemnity provision merely provides that the aforementioned parties may recover from the parent of the student authorized to carry the auto-injector. As a practical matter, many parents may not have sufficient recoverable assets from which a school district, county health department, public-private provider, or their employees or volunteers could execute a judgment.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
