

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 369	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Local & Federal Affairs Committee, La Rosa and others	116 Y's	0 N's
COMPANION BILLS:	(CS/SB 284)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 369 passed the House on April 30, 2013 as CS/SB 284. The bill requires the agency responsible for notifying a school district for each type of emergency to be listed in a district school board's emergency response policy and in its model emergency management and preparedness procedures. The bill also authorizes private schools to opt into the district school board's emergency notification procedures and be notified by the relevant emergency response agencies.

Although current Florida law requires each district school board to establish policies and procedures for emergencies, the law does not require that district school board policies and procedures list the agencies responsible for notifying the school district in case of an emergency.

The emergency policies of private schools are not regulated by the state. Private schools typically make arrangements to receive notification of emergencies from the appropriate emergency response agency. Florida law does not expressly authorize private schools to opt into school district emergency notification procedures for the purpose of receiving emergency notifications.

Currently, students with proper authorization may carry epinephrine auto-injectors, also known as "epi-pens," at school activities for allergic reactions. The bill gives an option to public and private schools to purchase and store the same devices on campus. A school that stores the auto-injector must adopt a protocol for administering the device. The bill provides that except for willful and wanton conduct, trained school employees and the physicians who develop the school's protocol on administering the auto-injectors are protected from liability arising from administering the auto-injector.

The bill has no fiscal impact on state or local governments.

The bill was approved by the Governor on May 30, 2013, ch. 2013-63, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Emergency notification procedures

Florida law does not expressly require that school district emergency response policies and model emergency management and preparedness procedures list the agencies responsible for notifying the school district regarding emergencies. However, cooperation with emergency response agencies is incorporated into the *Safety and Security Best Practices*, a self-assessment tool that each school district must use to annually assess the effectiveness of district emergency response policies. Among other “best practices,” the self-assessment suggests that school districts:

- Make arrangements to work with local emergency officials, including, without limitation, law enforcement; fire department; emergency management; hospital, mental health, health, and social services agencies; and court officials.
- Share comprehensive school safety plans and emergency procedures with appropriate emergency response agencies.
- Implement procedures for contacting all district schools simultaneously regarding an emergency.¹

Florida law requires each district school board to establish emergency response policies and model emergency management and preparedness procedures. Emergency response policies must include procedures for responding to fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.² Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies.³

Private school emergency policies are not regulated by the state.⁴ Private schools typically make arrangements to receive notification of emergencies from the appropriate emergency response agency. Despite such arrangements, private schools do not always receive notification.⁵ Florida law does not expressly authorize private schools to opt into district school board emergency notification procedures for the purpose of receiving notification of emergencies from an emergency response agency.⁶

¹ Section 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited April 1, 2013). The Best Practices are developed by the Office of Program Policy Analysis and Government Accountability. Section 1006.07(6), F.S. Each district school superintendent must make recommendations to the school board for improving safety and security based upon the self-assessment results. The self-assessment results and superintendent’s recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent’s recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.

² Section 1006.07(4)(a), F.S.

³ Section 1006.07(4)(b), F.S.

⁴ Telephone interview with Bureau Chief, Emergency Management, Florida Department of Education (Mar. 17, 2011), confirmed by Bureau Chief, Emergency Management, Florida Department of Education (Mar. 15, 2013).

⁵ Telephone interview with Executive Director, Florida Council of Independent Schools (Mar. 11, 2011), confirmed by Executive Director, Florida Council of Independent Schools (Mar. 21, 2013).

⁶ *See s. 1002.42*, F.S.

Allergic Reactions

The law currently permits a student with parental or physician authorization to carry an epinephrine auto-injector at school activities for allergic reactions. As regards to any liability arising from the student's own use of an auto-injector, the parent of such a student must indemnify the school district and its employees of such liability.

Liability

Public school personnel

Currently, there is no civil liability for public school personnel who administer medication unless the person administering the medication acts negligently.⁷

Private persons

There does not appear to be any law specifically addressing the liability of private school personnel who administer medicine. However, Florida law does contain the Insect Sting Emergency Treatment Act, which applies to school teachers who have responsibility for a person with severe reactions to insect stings.⁸ That law establishes a certification scheme for administering epinephrine auto-injectors.⁹ That scheme merely authorizes a person to administer an auto-injector and does not address liability for improper administration.

For private persons, Florida's Good Samaritan Act may apply.¹⁰ However, that act still permits liability when an individual renders aid in a negligent fashion.¹¹ In addition, the actual protection of that act likely does not apply to private school personnel since only licensed hospitals, employees of such hospitals working in a clinic inside the hospital facility, and emergency room physicians are protected by the act.¹²

Thus, it seems the general rules of negligence and civil liability would apply to private school personnel who cause harm to a student by improper administration of an auto-injector.

Effect of Proposed Changes

Emergency notification procedures

The bill requires the agency responsible for notifying a school district for each type of emergency to be listed in each district school board's emergency response policy and in its model emergency management and preparedness procedures.

The bill provides that if a private school requests such notification by opting into the district school board's emergency notification procedures, then the emergency response agencies listed must notify a private school in the school district of occurrences that threaten student safety. This will enable a private school to receive emergency notifications in the same manner as district public schools.

⁷ Section 1006.062(2), F.S.

⁸ Section 381.88, F.S.

⁹ *Id.*

¹⁰ Section 768.13, F.S.

¹¹ Section 768.13(2)(a), F.S.

¹² See *Jackson County Hosp. Corp. v. Aldrich*, 835 So.2d 318 (2002).

Allergic Reactions

The bill gives an option to private and public schools to purchase and store epinephrine auto-injectors, also known as “epi-pens,” on campus. The bill requires schools that possess such auto-injectors to adopt a protocol developed by a licensed physician for the purpose of training school personnel to administer the device in the event of an allergic reaction. According to the bill, students who are authorized to self-administer may use the school’s auto-injectors.

Liability

The bill protects public and private school employees from liability for harm caused by their use of the auto-injector unless the employee acted in a willful and wanton manner. The same liability protection applies to physicians who develop the school’s protocol on administering the auto-injectors.

The bill further provides that liability does not exist for school employees despite:

- 1) the fact the parents of the affected student did not receive notice or sign an indemnity; and
- 2) the fact the student’s parents, physician, physician’s assistant, or advanced nurse practitioner have not authorized the administration of an epinephrine auto-injector on the student.

The bill effectively increases the protection for school employees who administer an auto-injector. Whereas, a plaintiff suing public school personnel under the current law must only prove negligence, this bill would increase the required proof to willful and wanton conduct.

For suits against private school personnel, the bill would increase the legal protection by increasing the necessary standard of proof for liability. Instead of mere negligence, the bill would require that a plaintiff prove willful and wanton conduct. Wantonness is a standard of proof used for the more extreme remedy of punitive damages.¹³

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

¹³ See *Penzer v. Transportation Ins. Co.*, 29 So. 3d 100 (Fla. 2010). Other terms that are associated with the standard of proving punitive damages in Florida are willfulness, malice, moral turpitude, outrageous aggravation, or reckless indifference.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.