

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 28  
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State Affairs  
4/13/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill would encourage school districts to have non-student specific epinephrine on hand without fear of liability issues. Each year, students experience life threatening anaphylactic reactions at school not only to foods, but also to insect venom. While many students who have been previously diagnosed with life threatening allergies carry their own medication, some students do not know they are allergic until they have their first allergic reaction, which can be deadly.

While state law allows for districts to store non-student specific epinephrine, statute does not include specific liability protection for school districts and employees. S.B. 28 would explicitly provide liability protection for public school districts and schools to store and administer non-student specific epinephrine in emergency situations.

The committee substitute would clarify that the administration of an epinephrine auto-injector does not constitute unlawful practice of medicine; clarify that a governmental entity, its officers, or employees who in good faith administers or fails to administer an epinephrine auto-injector does not create any liability or standard of care unless the act is negligent; clarify immunity from liability for persons who prescribe, dispense, administer, or provide training, advice, or supervision on the use of, epinephrine auto-injectors; and replace the term "anaphylactic medicine" with "epinephrine auto-injector" to provide clarity regarding the medicine.

C.S.S.B. 28 amends current law relating to immunity from liability for public and open-enrollment charter school campuses that maintain a supply of epinephrine auto-injectors for emergency use.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 38.0151, Education Code, to read as follows:

Sec. 38.0151. POLICIES FOR CARE OF CERTAIN STUDENTS AT RISK FOR ANAPHYLAXIS; MAINTENANCE OF EPINEPHRINE AUTO-INJECTOR SUPPLY.

SECTION 2. Amends Section 38.0151, Education Code, by adding Subsections (b-1), (b-2), and (d-1) and amending Subsection (d), as follows:

(b-1) Authorizes each school district and open-enrollment charter school to maintain at each campus a supply of epinephrine auto-injectors that may be administered to a person on campus experiencing an anaphylactic reaction. Prohibits the medicine, for epinephrine auto-injectors to satisfy this subsection, from having an expiration date that has passed.

(b-2) Provides that the administration of an epinephrine auto-injector in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

(d) Provides that this section does not:

(1) waive any immunity from liability of a governmental entity or its officers or employees, rather than waive any liability or immunity of a governmental entity or its officers or employees;

(2) Makes a nonsubstantive change;

(3) waive any immunity from liability under Section 74.151 (Liability for Emergency Care), Civil Practice and Remedies Code, including immunity from liability to which a school district, open-enrollment charter school, or district or school employee is entitled under that section for an act associated with the administration of an epinephrine auto-injector to a person on campus or at an off-campus school-sanctioned event experiencing an anaphylactic reaction; or

(4) create any liability or standard of care for or a cause of action against a governmental entity or its officers or employees who in good faith administer or fail to administer an epinephrine auto-injector unless the act is wilfully or wantonly negligent.

(d-1) Provides that a person who in good faith prescribes, dispenses, or administers a non-patient specific epinephrine auto-injector or provides training, advice, or supervision on the use of an epinephrine auto-injector is immune from liability in a criminal, civil, disciplinary, or administrative action, including immunity from liability for civil damages, resulting from that action or failure to act.

SECTION 3. Effective date: upon passage or September 1, 2015.