

2013 DRAFTING REQUEST

Bill

Received: 10/23/2013 Received By: pgrant
Wanted: As time permits Same as LRB:
For: Erik Severson (608) 267-2365 By/Representing: AJ Scholz
May Contact: Drafter: pgrant
Subject: Education - miscellaneous Addl. Drafters: mgallagh
Education - school boards
Extra Copies: TKK
FFK

Submit via email: YES
Requester's email: Rep.Severson@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Epinephrine auto-injectors

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 10/23/2013	kfollett 10/24/2013	rschluet 10/24/2013	_____			
/1				_____	sbasford 10/24/2013	lparisi 10/24/2013	

FE Sent For:

NOT NEEDED

<END>

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/?	pgrant	1/15/13 10/24	 10/24/13	==			

FE Sent For:

<END>

Grant, Peter

From: Scholz, AJ
Sent: Wednesday, October 23, 2013 9:17 AM
To: Grant, Peter; Gallagher, Michael
Subject: LRB 2085

Hello Peter and Michael,

I was wondering if I could get an Assembly companion to LRB 2085 put together. I believe Sen. Vukmir's office contacted you to authorize that, but if not let me know.

Thanks!

AJ Scholz
Office of Representative Erik Severson
608-267-2365
221 North, State Capitol



State of Wisconsin
2013 - 2014 LEGISLATURE

SOON



LRB-2085/1
PG&MPG:kjfrs

DN

LRB-3497 / 1
PG & MPG:
GF

2013 BILL

Legen

1 AN ACT *to repeal* 118.29 (1) (bm) and 118.29 (2) (a) 2m.; *to amend* 118.29 (2) (a)
2 3. and 450.11 (1); and *to create* 118.2925 and 448.03 (2) (q) of the statutes;
3 **relating to:** the use of an epinephrine auto-injector on school premises or at
4 a school-sponsored activity.

Analysis by the Legislative Reference Bureau

Under current law, certain school personnel who are authorized to do so by the school administrator, may administer an epinephrine auto-injector (a device designated to prevent or treat a life-threatening allergic reaction) to a pupil who appears to be experiencing a severe allergic reaction if the person who does so reports the allergic reaction dialing 911 as soon as practicable.

This bill eliminates this provision. Under the bill, the governing body of a public, private, or tribal school may adopt a plan for the management of pupils attending the school who have life-threatening allergies. The plan must be approved by a physician. If the governing body adopts a plan, it may authorize a school nurse, or designated school personnel who have received training specified in the school's plan, to do any of the following on a school premises or at a school-sponsored activity.

1. Provide an epinephrine auto-injector to a pupil to self-administer the auto-injector in accordance with a prescription specific to the pupil that is on file with the school nurse.

2. Administer an epinephrine auto-injector to a pupil in accordance with a prescription specific to the pupil that is on file with the school nurse.

BILL

3. Administer an epinephrine auto-injector to a pupil or other person who the school nurse or designated personnel believes is experiencing anaphylaxis, regardless of whether the pupil or other person has a prescription for an epinephrine auto-injector.

The bill grants immunity from civil liability for a school and specified school personnel for injuries resulting from the administration or self-administration of epinephrine auto-injectors. The bill requires each school that has adopted a plan described above to report to the Department of Public Instruction each incident on school premises or at a school-sponsored activity that involved a severe allergic reaction or the administration of an epinephrine auto-injector.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 118.29 (1) (bm) of the statutes is repealed. ✓

2 SECTION 2. 118.29 (2) (a) 2m. of the statutes is repealed. ✓

3 SECTION 3. 118.29 (2) (a) 3. of the statutes is amended to read: ✓

4 118.29 (2) (a) 3. Subject to sub. (4m), is immune from civil liability for his or
5 her acts or omissions in administering a nonprescription drug product or
6 prescription drug to a pupil under subd. 1., 2., ~~2m.~~, or 2r. unless the act is in violation
7 of sub. (6) or the act or omission constitutes a high degree of negligence. This
8 subdivision does not apply to health care professionals.

9 SECTION 4. 118.2925 of the statutes is created to read: ✓

10 **118.2925 Life-threatening allergies in schools; use of epinephrine**
11 **auto-injectors.** (1) DEFINITIONS. In this section:

12 (a) "Administer" means the direct application of an epinephrine auto-injector
13 to a person's body.

14 (b) "Advanced practice nurse prescriber" means an advanced practice nurse
15 who is certified under s. 441.16.

16 (c) "Designated school personnel" means an employee, agent, or volunteer of
17 a school, designated by the governing body of the school, who has completed the

BILL

1 training specified in the plan adopted by the governing body of the school in sub. (2)
2 (a).

3 (d) “Epinephrine auto-injector” means a device used for the automatic
4 injection of epinephrine into the human body to prevent or treat a life-threatening
5 allergic reaction.

6 (e) “Physician” means a person licensed to practice medicine and surgery under
7 ch. 448.

8 (f) “Physician assistant” means a person licensed under s. 448.04 (1) (f).

9 (g) “School” means a public, private, or tribal school.

10 (h) “Self-administer” means to administer an epinephrine auto-injector to
11 one’s own body.

12 (2) SCHOOL PLAN. (a) The governing body of a school may adopt a plan for the
13 management of pupils attending the school who have life-threatening allergies. If
14 the governing body of a school does so, it shall specify in the plan the training
15 necessary to perform the activities under sub. (4). The governing body of a school
16 may not adopt a plan unless it has been approved by a physician.

17 (b) The governing body of a school that has adopted a plan under par. (a) shall
18 make the plan available on the governing body’s Internet site or the Internet site of
19 each school under its jurisdiction or, if an Internet site does not exist, give a copy of
20 the plan to any person upon request.

21 (3) PRESCRIPTIONS FOR SCHOOLS. A physician, an advanced practice nurse
22 prescriber, or a physician assistant may prescribe epinephrine auto-injectors in the
23 name of a school that has adopted a plan under sub. (2) (a), to be maintained by the
24 school for use under sub. (4).

BILL**SECTION 4**

1 (4) USE OF EPINEPHRINE AUTO-INJECTORS. The governing body of a school that
2 has adopted a plan under sub. (2) (a) may authorize a school nurse or designated
3 school personnel to do any of the following on school premises or at a
4 school-sponsored activity:

5 (a) Provide an epinephrine auto-injector to a pupil to self-administer the
6 epinephrine auto-injector in accordance with a prescription specific to the pupil that
7 is on file with the school nurse.

8 (b) Administer an epinephrine auto-injector to a pupil in accordance with a
9 prescription specific to the pupil that is on file with the school nurse.

10 (c) Administer an epinephrine auto-injector to a pupil or other person who the
11 school nurse or designated school personnel in good faith believes is experiencing
12 anaphylaxis in accordance with a standing protocol from a physician, an advanced
13 practice nurse prescriber, or a physician assistant, regardless of whether the pupil
14 or other person has a prescription for an epinephrine auto-injector.

15 (5) IMMUNITY FROM CIVIL LIABILITY; EXEMPTION FROM PRACTICE OF MEDICINE. A
16 school and its designated school personnel, and a physician, advanced practice nurse
17 prescriber, or physician assistant who provides a prescription or standing protocol
18 for school epinephrine auto-injectors, are not liable for any injury that results from
19 the administration or self-administration of an epinephrine auto-injector under
20 this section, regardless of whether authorization was given by the pupil's parent or
21 guardian or by the pupil's physician, physician assistant, or advanced practice nurse
22 prescriber, unless the injury is the result of an act or omission that constitutes gross
23 negligence or willful or wanton misconduct. The immunity from liability provided
24 under this subsection is in addition to and not in lieu of that provided under s. 895.48.

BILL

1 **(6) REPORTS.** (a) The governing body of a school that has adopted a plan under
2 sub. (2) (a) shall submit to the department, on a form developed by the department,
3 a report of each incident on school premises or at a school-sponsored activity that
4 involved a severe allergic reaction or the administration of an epinephrine
5 auto-injector.

6 (b) The department shall annually publish a report that summarizes and
7 analyzes all reports submitted to the department under par. (a) in the previous school
8 year.

9 **SECTION 5.** 448.03 (2) (q) of the statutes is created to read:

10 448.03 (2) (q) The administration of an epinephrine auto-injector in
11 accordance with s. 118.2925.

12 **SECTION 6.** 450.11 (1) of the statutes is amended to read:

13 450.11 (1) **DISPENSING.** No person may dispense any prescribed drug or device
14 except upon the prescription order of a practitioner. All prescription orders shall
15 specify the date of issue, the name and address of the practitioner, the name and
16 quantity of the drug product or device prescribed, directions for the use of the drug
17 product or device, the symptom or purpose for which the drug is being prescribed if
18 required under sub. (4) (a) 8., and, if the order is written by the practitioner, the
19 signature of the practitioner. Except as provided in s. ss. 118.2925 (3) and 448.035
20 (2), all prescription orders shall also specify the name and address of the patient. A
21 prescription order issued under s. 118.2925 (3) shall specify the name and address
22 of the school. Any oral prescription order shall be immediately reduced to writing
23 by the pharmacist and filed according to sub. (2).

24

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2085/1dn

PG:kjfrs

September 18, 2013

AJ:
Dean:

It's unclear how s. 118.292, stats., and this bill, should it become law, will be interpreted. Section 118.092 allows a pupil to possess and use an EpiPen if it is used to prevent the onset or alleviate the symptoms of a severe allergic reaction, the pupil has the written approval of his or her physician (and his or her parent or guardian, if the pupil is a minor), and the pupil has provided the school principal with copies of these approvals.

Under this bill, if the governing body of a school adopts a plan for the management of pupils who have life threatening allergies, a school nurse or other designated personnel may provide an EpiPen to a pupil to self-administer the EpiPen in accordance with a prescription on file with the school nurse.

If these two provisions are read as totally separate methods for pupils to have access to EpiPens, there is no issue. However, they may be interpreted quite differently. The bill allows a school nurse to provide an EpiPen to a pupil for his or her use, but s. 118.292 provides that a pupil may possess and use an EpiPen only if three conditions are met. If one reads these provisions together, one could conclude that the three conditions apply even when the school nurse provides the EpiPen to the pupil. In other words, the pupil may not possess or use the EpiPen unless the pupil has the written approval of his or her physician and his or her parent or guardian and the principal has been provided copies of the approvals.

If you wish to clear up this ambiguity, please let me know.

these

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3497/1dn
PG:kjfrs

October 24, 2013

AJ:

It's unclear how s. 118.292, stats., and this bill, should it become law, will be interpreted. Section 118.292 allows a pupil to possess and use an EpiPen if it is used to prevent the onset or alleviate the symptoms of a severe allergic reaction, the pupil has the written approval of his or her physician (and his or her parent or guardian, if the pupil is a minor), and the pupil has provided the school principal with copies of these approvals.

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If these two provisions are read as totally separate methods for pupils to have access to EpiPens, there is no issue. However, they may be interpreted quite differently. The bill allows a school nurse to provide an EpiPen to a pupil for his or her use, but s. 118.292 provides that a pupil may possess and use an EpiPen only if three conditions are met. If one reads these provisions together, one could conclude that the three conditions apply even when the school nurse provides the EpiPen to the pupil. In other words, the pupil may not possess or use the EpiPen unless the pupil has the written approval of his or her physician and his or her parent or guardian and the principal has been provided copies of the approvals.

If you wish to clear up this ambiguity, please let me know.

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Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.wisconsin.gov

Barman, Mike

From: Scholz, AJ
Sent: Thursday, October 24, 2013 10:48 AM
To: LRB.Legal
Subject: Draft Review: LRB -3497/1 Topic: Epinephrine auto-injectors

Please Jacket LRB -3497/1 for the ASSEMBLY.