



## 2009 SENATE BILL 414

December 2, 2009 – Introduced by Senators LEHMAN, ROBSON, MILLER and TAYLOR, cosponsored by Representatives POPE-ROBERTS, PASCH and TURNER. Referred to Committee on Education.

1     **AN ACT** *to renumber and amend* 115.001 (11) and 118.29 (2) (a) 1.; *to amend*  
2           115.88 (1), 115.88 (1m) (am), 115.88 (1m) (b), 118.29 (1) (a), 118.29 (2) (a) 2., 2r.  
3           and 3. and (b), 118.29 (4) and 118.29 (5); *to repeal and recreate* 118.29 (1) (b);  
4           and *to create* 115.001 (11) (a) and (b), 118.29 (1) (bg), 118.29 (1) (dm), 118.29  
5           (2) (a) 1. b. and 118.29 (6) of the statutes; **relating to:** school nurses and the  
6           administration of drugs to pupils.

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### *Analysis by the Legislative Reference Bureau*

#### ***School nurses***

Current law directs the Department of Public Instruction (DPI) to license as a school nurse any registered nurse who is qualified to perform professional nursing services in a public school. A school district may employ or contract for the services of a registered nurse who is not licensed as a school nurse; only a licensed school nurse, however, is immune from civil liability for referring a pupil to law enforcement authorities, or for removing a pupil from school premises, for suspicion of possession, distribution, delivery, or consumption of an alcohol beverage or controlled substance, and only a licensed school nurse may be employed for a special education program.

Under this bill, a school nurse is defined as a registered nurse who has a bachelor's degree in nursing or who is employed by, or under contract with, a school board, a cooperative educational service agency (CESA), a county children with

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disabilities education board (CCDEB), or an independent charter school as a nurse on the effective date of the bill. A school nurse need not be licensed by DPI to enjoy immunity from civil liability for referring a pupil to law enforcement authorities or to be employed for a special education program.

***Administration of drugs to pupils***

Under current law, a school bus operator, and any school, CCDEB, or CESA employee or volunteer authorized by a school district, CCDEB, or CESA administrator, or by a school principal, may administer a nonprescription drug to a pupil in compliance with the written instructions of the pupil's parent or guardian if the pupil's parent or guardian consents. This bill adds the following conditions: the nonprescription drug must be supplied by the pupil's parent or guardian in the original sealed manufacturer's package and the package must list the ingredients and recommended therapeutic dose. A pupil may be administered a nonprescription drug in a dosage other than the recommended therapeutic dose only with the written approval of the pupil's practitioner.

Under current law, the persons enumerated above may administer a prescription drug to a pupil if the pupil's parent or guardian consents. This bill adds the following conditions: the prescription drug must be supplied by the pupil's parent or guardian in the original pharmacy-labeled package, and the package must specify the pupil's name, the prescriber's name, the name of the drug, the dose, the effective date, and the directions.

The bill also adds a condition that applies to both prescription and nonprescription drugs: none of the persons enumerated above may administer either to a pupil unless the person has received appropriate training that has been approved by DPI.

Current law exempts any person enumerated above from civil liability for his or her acts or omissions in administering a prescription or nonprescription drug to a pupil unless he or she is a health care professional or the act or omission constitutes a high degree of negligence. Similarly, any person who authorizes a person enumerated above to administer a prescription or nonprescription drug to a pupil is immune from civil liability for the act of authorization unless it constitutes a high degree of negligence.

This bill provides that the person administering the drug to a pupil is not immune from civil liability if he or she has not received DPI-approved training, and that the authorizer is not immune from civil liability if he or she authorizes a person who has not received DPI-approved training to administer a drug to a pupil.

The bill takes effect on the first day of the 12th month beginning after publication.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

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1           **SECTION 1.** 115.001 (11) of the statutes is renumbered 115.001 (11) (intro.) and  
2 amended to read:

3           115.001 **(11)** SCHOOL NURSE. (intro.) “School nurse” means a registered nurse  
4 licensed under ~~ch. 441 s. 441.06~~ or in a party state, as defined in s. 441.50 (2) (j), who  
5 is also certified by the department as being qualified to perform professional nursing  
6 services in a public school. satisfies one or both of the following:

7           **SECTION 2.** 115.001 (11) (a) and (b) of the statutes are created to read:

8           115.001 **(11)** (a) Has a baccalaureate in nursing.

9           (b) Was employed by, or under contract with, a school board, a board of control  
10 of a cooperative educational service agency, a county children with disabilities  
11 education board, or an operator of a charter school established under s. 118.40 (2r),  
12 as a nurse, on the effective date of this paragraph .... [LRB inserts date].

13           **SECTION 3.** 115.88 (1) of the statutes is amended to read:

14           115.88 **(1)** PERSONNEL. A school board, board of control of a cooperative  
15 educational service agency or, upon authorization of the county board, a county  
16 children with disabilities education board may employ, for a special education  
17 program, either full- or part-time licensed teachers, licensed coordinators of special  
18 education, licensed school nurses, licensed school social workers, licensed school  
19 psychologists, licensed school counselors, paraprofessionals, licensed consulting  
20 teachers to work with any teacher of regular education programs who has a child  
21 with a disability in a class and any other personnel approved by the department. The  
22 board may contract with private or public agencies for physical or occupational  
23 therapy services on the basis of demonstrated need. A school board may contract  
24 with a charter school to provide special education services to pupils attending the

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1 charter school if the charter school is under contract with the school board under s.  
2 118.40 (2m) and the charter school is not an instrumentality of the school district.

3 **SECTION 4.** 115.88 (1m) (am) of the statutes is amended to read:

4 115.88 **(1m)** (am) Subject to par. (b), if the operator of a charter school  
5 established under s. 118.40 (2r) operates a special education program and the state  
6 superintendent is satisfied that the operator of the charter school is complying with  
7 20 USC 1400 to 1491o, the state superintendent shall certify to the department of  
8 administration in favor of the operator of the charter school a sum equal to the  
9 amount that the operator of the charter school expended during the previous school  
10 year for salaries of full-time or part-time licensed teachers, licensed coordinators of  
11 special education, licensed school nurses, licensed school social workers, licensed  
12 school psychologists, licensed school counselors, paraprofessionals, licensed  
13 consulting teachers to work with any teacher of regular education programs who has  
14 a child with a disability in a class and any other personnel, as determined by the state  
15 superintendent, as costs eligible for reimbursement from the appropriation under s.  
16 20.255 (2) (b). The state superintendent may audit costs under this paragraph and  
17 adjust reimbursement to cover only actual, eligible costs.

18 **SECTION 5.** 115.88 (1m) (b) of the statutes is amended to read:

19 115.88 **(1m)** (b) The department shall promulgate rules establishing the  
20 percentage of the salaries of licensed school nurses, licensed school social workers,  
21 licensed school psychologists, and licensed school counselors that may be certified  
22 under pars. (a) and (am) as costs eligible for reimbursement. For each category of  
23 personnel, the department shall base the percentage on the average percentage of  
24 work time that the category spends providing services to children with disabilities,  
25 including conducting evaluations under s. 115.782.

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1           **SECTION 6.** 118.29 (1) (a) of the statutes is amended to read:

2           118.29 (1) (a) “Administer” means the direct application of a nonprescription  
3 drug product or prescription drug, whether by injection, ingestion or other means,  
4 to the human body.

5           **SECTION 7.** 118.29 (1) (b) of the statutes is repealed and recreated to read:

6           118.29 (1) (b) “Drug” means any substance recognized as a drug in the official  
7 U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia  
8 of the United States or any supplement to either of them.

9           **SECTION 8.** 118.29 (1) (bg) of the statutes is created to read:

10          118.29 (1) (bg) “Drug product” means a specific drug or drugs in a specific  
11 dosage form and strength from a known source of manufacture.

12          **SECTION 9.** 118.29 (1) (dm) of the statutes is created to read:

13          118.29 (1) (dm) “Nonprescription drug product” means any nonnarcotic drug  
14 product which may be sold without a prescription order and which is prepackaged  
15 for use by consumers and labeled in accordance with the requirements of state and  
16 federal law.

17          **SECTION 10.** 118.29 (2) (a) 1. of the statutes is renumbered 118.29 (2) (a) 1. a.  
18 and amended to read:

19          118.29 (2) (a) 1. a. ~~May~~ Except as provided in subd. 1. b., may administer any  
20 nonprescription drug which ~~may lawfully be sold over the counter without a~~  
21 prescription product to a pupil in compliance with the written instructions of the  
22 pupil’s parent or guardian if the pupil’s parent or guardian consents in writing, the  
23 nonprescription drug product is supplied by the pupil’s parent or guardian in the  
24 original sealed manufacturer’s package, and the package lists the ingredients and  
25 recommended therapeutic dose in a legible format.

**SENATE BILL 414****SECTION 11**

1           **SECTION 11.** 118.29 (2) (a) 1. b. of the statutes is created to read:

2           118.29 (2) (a) 1. b. May administer a nonprescription drug product to a pupil  
3 in a dosage other than the recommended therapeutic dose only if the request to do  
4 so is accompanied by the written approval of the pupil's practitioner.

5           **SECTION 12.** 118.29 (2) (a) 2., 2r. and 3. and (b) of the statutes are amended to  
6 read:

7           118.29 (2) (a) 2. May administer a prescription drug to a pupil in compliance  
8 with the written instructions of a practitioner if the pupil's parent or guardian  
9 consents in writing; the prescription drug is supplied by the pupil's parent or  
10 guardian in the original pharmacy-labeled package; and the package specifies the  
11 name of the pupil, the name of the prescriber, the name of the prescription drug, the  
12 dose, the effective date, and the directions in a legible format.

13           2r. Except for glucagon administered under subd. 2., may administer glucagon  
14 to any pupil who the school bus driver, employee, or volunteer knows is diabetic and  
15 who appears to be experiencing a severe hypoglycemic low blood sugar event with  
16 altered consciousness if, as soon as practicable, the school bus operator, employee,  
17 or volunteer reports the event to by dialing the telephone number "911" or, in an area  
18 in which the telephone number "911" is not available, the telephone number for an  
19 emergency medical service provider.

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

24           (b) Any school district administrator, county children with disabilities  
25 education board administrator, cooperative educational service agency

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1 administrator, public or private school principal, or private school administrator who  
2 authorizes an employee or volunteer to administer a nonprescription drug product  
3 or prescription drug to a pupil under par. (a) is immune from civil liability for the act  
4 of authorization unless it constitutes a high degree of negligence or the administrator  
5 or principal authorizes a person who has not received the required training under  
6 sub. (6) to administer a nonprescription drug product or prescription drug to a pupil.

7 **SECTION 13.** 118.29 (4) of the statutes is amended to read:

8 118.29 (4) WRITTEN POLICIES. Any school board, county children with  
9 disabilities education board, cooperative educational service agency or governing  
10 body of a private school whose employees or volunteers may be authorized to  
11 administer ~~drugs~~ nonprescription drug products or prescription drugs to pupils  
12 under this section shall adopt a written policy governing the administration of ~~drugs~~  
13 nonprescription drug products and prescription drugs to pupils. In developing the  
14 policy, the school board, board, agency or governing body shall seek the assistance  
15 of one or more ~~appropriate health care professionals~~ school nurses who are  
16 employees of the school board, board, agency or governing body or are providing  
17 services or consultation under s. 121.02 (1) (g). The policy shall include procedures  
18 for obtaining and filing in the school or other appropriate facility the written  
19 instructions and consent required under sub. (2) (a), for the periodic review of such  
20 written instructions by a registered nurse licensed under s. 441.06 or in a party state,  
21 as defined in s. 441.50 (2) (j), for the storing of drugs nonprescription drug products  
22 and prescription drugs, and for record keeping and for the appropriate instruction  
23 of persons who may be authorized to administer drugs or prescription drugs to pupils  
24 under this section, including documenting the administration of each dose, including  
25 errors.

