



2011 ASSEMBLY BILL 62

March 28, 2011 - Introduced by Representatives KESTELL, KOOYENGA, BROOKS, JACQUE, KAUFERT, LEMAHIEU, MARKLEIN, PETERSEN, SPANBAUER, STRACHOTA, THIESFELDT and ZIEGELBAUER, cosponsored by Senators OLSEN and HARSDFORF. Referred to Committee on Education.

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

Analysis by the Legislative Reference Bureau

2009 Wisconsin Act 160 (Act 160) made several changes to the law governing the administration of medication to pupils, all of which take effect on March 1, 2011. With one exception, this bill repeals the changes made in Act 160.

School nurses

Under Act 160, 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 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 the Department of Public Instruction (DPI) to enjoy immunity from civil liability for referring a pupil to law enforcement authorities or to be employed for a special education program.

This bill directs 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

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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.

Administration of drugs to pupils

Under Act 160, 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 and if the following conditions are satisfied: the nonprescription drug is supplied by the pupil's parent or guardian in the original sealed manufacturer's package and the package lists 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.

This bill eliminates the requirements relating to the packaging and labeling of a nonprescription drug and the requirement that the nonprescription drug be supplied by the pupil's parent or guardian. The bill also eliminates the provision related to administration of a dosage other than the recommended therapeutic dose.

Under Act 160, the persons enumerated above may administer a prescription drug to a pupil if the pupil's parent or guardian consents and all of the following conditions are met: the prescription drug is supplied by the pupil's parent or guardian in the original pharmacy-labeled package, and the package specifies the pupil's name, the prescriber's name, the name of the drug, the dose, the effective date, and the directions. This bill eliminates the requirements relating to the packaging and labeling of the prescription drug and the requirement that the prescription drug be supplied by the pupil's parent or guardian.

Under Act 160, none of the persons enumerated above may administer prescription or drugs to a pupil unless the person has received appropriate training that has been approved by DPI. This bill eliminates the training requirement.

Under Act 160, a person administering a drug to a pupil is not immune from civil liability if he or she has not received DPI-approved training, and 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.

This bill 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.

Prior to Act 160, each school board, CESA, CCDEB, and governing body of a private school whose employees or volunteers are authorized to administer drugs or

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prescription drugs to pupils was required to adopt a written policy governing the procedures for administering drugs to pupils, including certain record-keeping requirements. Act 160 made several modifications to the written policy requirements, including the addition of a requirement that the written policy require the documentation of the administration of each dose, including errors. This bill retains this additional requirement, but restores the remainder of the written policy language to pre-Act 160 law.

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

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

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

2 115.001 (11) SCHOOL NURSE. "School nurse" means a registered nurse licensed
3 under s. 441.06 ch. 441 or in a party state, as defined in s. 441.50 (2) (j), who is also
4 ~~meets the qualifications for school nurses prescribed by the department by rule~~
5 certified by the department as being qualified to perform professional nursing
6 services in a public school.

7 **SECTION 2.** 115.88 (1m) (am) of the statutes is amended to read:

8 115.88 (1m) (am) Subject to par. (b), if the operator of a charter school
9 established under s. 118.40 (2r) operates a special education program and the state
10 superintendent is satisfied that the operator of the charter school is complying with
11 20 USC 1400 to 1491o, the state superintendent shall certify to the department of
12 administration in favor of the operator of the charter school a sum equal to the
13 amount that the operator of the charter school expended during the previous school
14 year for salaries of full-time or part-time licensed teachers, licensed coordinators of
15 special education, licensed school nurses, licensed school social workers, licensed
16 school psychologists, licensed school counselors, paraprofessionals, licensed
17 consulting teachers to work with any teacher of regular education programs who has

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1 a child with a disability in a class and any other personnel, as determined by the state
2 superintendent, as costs eligible for reimbursement from the appropriation under s.
3 20.255 (2) (b). The state superintendent may audit costs under this paragraph and
4 adjust reimbursement to cover only actual, eligible costs.

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

6 115.88 **(1m)** (b) The department shall promulgate rules establishing the
7 percentage of the salaries of licensed school nurses, licensed school social workers,
8 licensed school psychologists, and licensed school counselors that may be certified
9 under pars. (a) and (am) as costs eligible for reimbursement. For each category of
10 personnel, the department shall base the percentage on the average percentage of
11 work time that the category spends providing services to children with disabilities,
12 including conducting evaluations under s. 115.782.

13 **SECTION 4.** 118.29 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 160,
14 is amended to read:

15 118.29 **(1)** (a) “Administer” means the direct application of a ~~nonprescription~~
16 drug ~~product~~ or prescription drug, whether by injection, ingestion or other means,
17 to the human body.

18 **SECTION 5.** 118.29 (1) (b) of the statutes, as affected by 2009 Wisconsin Act 160,
19 is repealed and recreated to read:

20 118.29 **(1)** (b) “Drug” has the meaning specified in s. 450.01 (10).

21 **SECTION 6.** 118.29 (1) (bg) of the statutes, as affected by 2009 Wisconsin Act 160,
22 is repealed.

23 **SECTION 7.** 118.29 (1) (dm) of the statutes, as affected by 2009 Wisconsin Act
24 160, is repealed.

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1 **SECTION 8.** 118.29 (2) (a) 1. a. of the statutes, as affected by 2009 Wisconsin Act
2 160, is renumbered 118.29 (2) (a) 1. and amended to read:

3 118.29 (2) (a) 1. ~~Except as provided in subd. 1. b., may~~ May administer any
4 ~~nonprescription drug product which may lawfully be sold over the counter without~~
5 ~~a prescription~~ to a pupil in compliance with the written instructions of the pupil's
6 parent or guardian if the pupil's parent or guardian consents in writing; ~~the~~
7 ~~nonprescription drug product is supplied by the pupil's parent or guardian in the~~
8 ~~original manufacturer's package, and the package lists the ingredients and~~
9 ~~recommended therapeutic dose in a legible format.~~

10 **SECTION 9.** 118.29 (2) (a) 1. b. of the statutes, as affected by 2009 Wisconsin Act
11 160, is repealed.

12 **SECTION 10.** 118.29 (2) (a) 2. of the statutes, as affected by 2009 Wisconsin Act
13 160, is amended to read:

14 118.29 (2) (a) 2. May administer a prescription drug to a pupil in compliance
15 with the written instructions of a practitioner if the pupil's parent or guardian
16 consents in writing; ~~the prescription drug is supplied by the pupil's parent or~~
17 ~~guardian in the original pharmacy-labeled package; and the package specifies the~~
18 ~~name of the pupil, the name of the prescriber, the name of the prescription drug, the~~
19 ~~dose, the effective date, and the directions in a legible format.~~

20 **SECTION 11.** 118.29 (2) (a) 2r. of the statutes, as affected by 2009 Wisconsin Act
21 160, is amended to read:

22 118.29 (2) (a) 2r. Except for glucagon administered under subd. 2., may
23 administer glucagon to any pupil who ~~the school bus driver, employee, or volunteer~~
24 ~~knows is diabetic and who appears to be experiencing a severe low blood sugar~~
25 hypoglycemic event ~~with altered consciousness~~ if, as soon as practicable, the school

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1 bus operator, employee, or volunteer reports the event by dialing the telephone
2 number "911" or, in an area in which the telephone number "911" is not available, the
3 telephone number for to an emergency medical service provider.

4 **SECTION 12.** 118.29 (2) (a) 3. of the statutes, as affected by 2009 Wisconsin Act
5 160, is amended to read:

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

11 **SECTION 13.** 118.29 (2) (b) of the statutes, as affected by 2009 Wisconsin Act
12 160, is amended to read:

13 118.29 (2) (b) Subject to sub. (4m), any school district administrator, county
14 children with disabilities education board administrator, cooperative educational
15 service agency administrator, public, private, or tribal school principal, or private or
16 tribal school administrator who authorizes an employee or volunteer to administer
17 a ~~nonprescription drug product~~ or prescription drug to a pupil under par. (a) is
18 immune from civil liability for the act of authorization unless it constitutes a high
19 degree of negligence ~~or the administrator or principal authorizes a person who has~~
20 ~~not received the required training under sub. (6) to administer a nonprescription~~
21 ~~drug product or prescription drug to a pupil.~~

22 **SECTION 14.** 118.29 (4) of the statutes, as affected by 2009 Wisconsin Act 160,
23 is amended to read:

24 118.29 (4) WRITTEN POLICIES. Any school board, county children with
25 disabilities education board, cooperative educational service agency or governing

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

17 **SECTION 15.** 118.29 (5) of the statutes is amended to read:

18 118.29 (5) EXEMPTION. No employee except a health care professional may be
19 required to administer a ~~nonprescription drug product~~ or prescription drug to a pupil
20 under this section by any means other than ingestion.

21 **SECTION 16.** 118.29 (6) of the statutes, as affected by 2009 Wisconsin Act 160,
22 is repealed.

23 **SECTION 17. Effective date.**

