

## **BILL ANALYSIS**

C.S.H.B. 2847  
By: Crownover  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to interested parties, food allergies are a growing public health issue that affects almost every school district. The parties suggest that a substantial percentage of epinephrine administrations made in a school setting to treat anaphylaxis resulting from a food allergy involve students whose allergy was unknown at the time of the event, who have no known history of allergies, and who, therefore, do not have a prescription. As such, the parties conclude, school districts need the legal authority to keep on-site "stock" epinephrine auto-injectors, not prescribed to a specific person, to be used in anaphylactic reaction emergencies. C.S.H.B. 2847 seeks to provide for such authority.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of state health services and the commissioner of education in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2847 amends the Education Code to require the commissioner of state health services to establish an advisory committee to examine and review the administration of epinephrine auto-injectors to a person experiencing an anaphylactic reaction on a campus of a school district or an open-enrollment charter school. The bill provides for the composition and organization of the advisory committee, exempts the advisory committee from Government Code provisions relating to state agency advisory committees, and subjects meetings of the advisory committee to state open meetings law. The bill establishes that members of the advisory committee serve without compensation but are entitled to reimbursement for travel expenses. The bill requires the advisory committee to advise the commissioner on the storage and maintenance of epinephrine auto-injectors on school campuses, the training of school personnel and school volunteers in the administration of an epinephrine auto-injector, and a plan for one or more school personnel members or school volunteers trained in the administration of an epinephrine auto-injector to be on each school campus.

C.S.H.B. 2847 authorizes each school district and open-enrollment charter school to adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors at each campus in the district or school. The bill requires the policy, if adopted, to provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus and authorizes the policy, if adopted, to provide that school personnel and school volunteers who are authorized and trained may administer an

epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event.

C.S.H.B. 2847 requires the commissioner of state health services, in consultation with the commissioner of education and with advice from the advisory committee, to adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector at a school campus that establish the number of epinephrine auto-injectors available at each campus, the amount of training required for school personnel and school volunteers to administer an epinephrine auto-injector, and the process for each school district and open-enrollment charter school to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement. The bill requires each school district and open-enrollment charter school that adopts an epinephrine auto-injector maintenance, administration, and disposal policy to require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an epinephrine auto-injector present during all hours the campus is open. The bill requires the supply of epinephrine auto-injectors at each campus to be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an epinephrine auto-injector.

C.S.H.B. 2847 requires a school, not later than the 10th business day after the date a school personnel member or school volunteer administers an epinephrine auto-injector, to report certain information to the school district or the charter holder if the school is an open-enrollment charter school, to the physician or other person who prescribed the epinephrine auto-injector, and to the commissioners of education and state health services.

C.S.H.B. 2847 makes each school district and open-enrollment charter school that adopts an epinephrine auto-injector maintenance, administration, and disposal policy responsible for training school personnel and school volunteers in the administration of an epinephrine auto-injector, sets out content requirements for such training, and requires the training to be provided in a formal training session or through online education and to be completed annually. The bill requires each school district and open-enrollment charter school to maintain records on the training.

C.S.H.B. 2847 authorizes a physician or a person who has been delegated prescriptive authority by a physician to prescribe epinephrine auto-injectors in the name of a school district or open-enrollment charter school. The bill requires a physician or other person who does so to provide the school district or open-enrollment charter school with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis. The bill exempts the standing order from being required to be patient-specific and authorizes the epinephrine auto-injector to be administered to a person without a previously established physician-patient relationship. The bill establishes that supervision or delegation by a physician is considered adequate if the physician periodically reviews the order and is available through direct telecommunication as needed for consultation, assistance, and direction. The bill requires the order to contain certain specified information and authorizes a pharmacist to dispense an epinephrine auto-injector to a school district or open-enrollment charter school without requiring any identifying information relating to the user.

C.S.H.B. 2847 requires a school district or open-enrollment charter school that implements an epinephrine auto-injector maintenance, administration, and disposal policy to provide written notice to a parent or guardian of each student enrolled in the district or school before the policy is implemented by the district or school and before the start of each school year.

C.S.H.B. 2847 authorizes a school district or open-enrollment charter school to accept gifts, grants, donations, and federal and local funds to implement the bill's provisions relating to epinephrine auto-injectors and requires the commissioners of education and state health services, except as otherwise provided, to jointly adopt rules necessary to implement those provisions. The bill grants a person who in good faith takes, or fails to take, any of certain specified actions

immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act. The bill establishes the immunities and protections are in addition to other immunities or limitations of liability provided by law and establishes that the bill's provisions relating to epinephrine auto-injectors do not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under the bill's provisions relating to the maintenance, administration, and disposal of epinephrine auto-injectors. The bill establishes that a cause of action does not arise from an act or omission described by the bill's provisions relating to immunity from liability. The bill grants a school district or open-enrollment charter school and school personnel and school volunteers immunity from suit resulting from an act, or failure to act, under the bill's provisions relating to the maintenance, administration, and disposal of epinephrine auto-injectors. The bill establishes that such an act or failure to act by school personnel or a school volunteer is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of the district's or school's liability.

C.S.H.B. 2847 exempts a school district or open-enrollment charter school that provides for the maintenance, administration, and disposal of epinephrine auto-injectors from being required to comply with statutory provisions relating to policies for the care of certain students at risk for anaphylaxis. The bill's provisions apply beginning with the 2015–2016 school year.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2847 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Chapter 38, Education Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS

Sec. 38.201. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the committee established under Section 38.202.

(2) "Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen.

(3) "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine that is intended to be used to treat anaphylaxis.

(4) "Physician" means a person who holds a license to practice medicine in this state.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 38, Education Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. MAINTENANCE, ADMINISTRATION, AND DISPOSAL OF EPINEPHRINE AUTO-INJECTORS

Sec. 38.201. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the committee established under Section 38.202.

(2) "Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen.

(3) "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine that is intended to be used to treat anaphylaxis.

(4) "Physician" means a person who holds a license to practice medicine in this state.

(5) "School personnel" means an employee

Sec. 38.202. ADVISORY COMMITTEE: ESTABLISHMENT AND COMPOSITION.

Sec. 38.203. ADVISORY COMMITTEE: PRESIDING OFFICER.

Sec. 38.204. ADVISORY COMMITTEE: COMPENSATION AND EXPENSES.

Sec. 38.205. ADVISORY COMMITTEE: APPLICABILITY OF OTHER LAW.

Sec. 38.206. ADVISORY COMMITTEE: OPEN MEETINGS.

Sec. 38.207. ADVISORY COMMITTEE: DUTIES. The advisory committee shall advise the commissioner of state health services on:

- (1) the storage and maintenance of epinephrine auto-injectors on school campuses;
- (2) the training of school personnel in the administration of an epinephrine auto-injector; and
- (3) a plan for one or more school personnel members trained in the administration of an epinephrine auto-injector to be on each school campus.

Sec. 38.208. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS. (a) Each school district and open-enrollment charter school may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors at each campus in the district or school.

(b) If a policy is adopted under Subsection (a), the policy:

(1) must provide that school personnel who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus; and

(2) may provide that school personnel who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event.

(c) The commissioner of state health

of a school district or open-enrollment charter school. The term includes a member of the board of trustees of a school district or the governing body of an open-enrollment charter school.

Sec. 38.202. ADVISORY COMMITTEE: ESTABLISHMENT AND COMPOSITION.

Sec. 38.203. ADVISORY COMMITTEE: PRESIDING OFFICER.

Sec. 38.204. ADVISORY COMMITTEE: COMPENSATION AND EXPENSES.

Sec. 38.205. ADVISORY COMMITTEE: APPLICABILITY OF OTHER LAW.

Sec. 38.206. ADVISORY COMMITTEE: OPEN MEETINGS.

Sec. 38.207. ADVISORY COMMITTEE: DUTIES. The advisory committee shall advise the commissioner of state health services on:

- (1) the storage and maintenance of epinephrine auto-injectors on school campuses;
- (2) the training of school personnel and school volunteers in the administration of an epinephrine auto-injector; and
- (3) a plan for one or more school personnel members or school volunteers trained in the administration of an epinephrine auto-injector to be on each school campus.

Sec. 38.208. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS. (a) Each school district and open-enrollment charter school may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors at each campus in the district or school.

(b) If a policy is adopted under Subsection (a), the policy:

(1) must provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus; and

(2) may provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event.

(c) The commissioner of state health

services, in consultation with the commissioner of education, and with advice from the advisory committee, shall adopt rules regarding the administration of an epinephrine auto-injector at a school campus subject to a policy adopted under Subsection

(a). The rules must establish:

(1) the number of epinephrine auto-injectors available at each campus;

(2) the process for each school district and open-enrollment charter school to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

(3) the amount of training required for school personnel to administer an epinephrine auto-injector.

(d) Each school district and open-enrollment charter school that adopts a policy under Subsection (a) must require that each campus have one or more school personnel members authorized and trained to administer an epinephrine auto-injector present during all hours the campus is open.

(e) The supply of epinephrine auto-injectors at each campus must be stored in a secure location and be easily accessible to school personnel authorized and trained to administer an epinephrine auto-injector.

Sec. 38.209. REPORT ON ADMINISTERING EPINEPHRINE AUTO-INJECTOR. (a) Not later than the 10th business day after the date a school personnel member administers an epinephrine auto-injector in accordance with a policy adopted under Section 38.208(a), the school shall report the information required under Subsection (b) to:

(1) the school district or the charter holder if the school is an open-enrollment charter school;

(2) the physician who prescribed the epinephrine auto-injector;

(3) the commissioner of education; and

(4) the commissioner of state health services.

(b) The report required under this section must include the following information:

(1) the age of the person who received the administration of the epinephrine auto-injector;

services, in consultation with the commissioner of education, and with advice from the advisory committee, shall adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector at a school campus subject to a policy adopted under Subsection

(a). The rules must establish:

(1) the number of epinephrine auto-injectors available at each campus;

(2) the process for each school district and open-enrollment charter school to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

(3) the amount of training required for school personnel and school volunteers to administer an epinephrine auto-injector.

(d) Each school district and open-enrollment charter school that adopts a policy under Subsection (a) must require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an epinephrine auto-injector present during all hours the campus is open.

(e) The supply of epinephrine auto-injectors at each campus must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an epinephrine auto-injector.

Sec. 38.209. REPORT ON ADMINISTERING EPINEPHRINE AUTO-INJECTOR. (a) Not later than the 10th business day after the date a school personnel member or school volunteer administers an epinephrine auto-injector in accordance with a policy adopted under Section 38.208(a), the school shall report the information required under Subsection (b) to:

(1) the school district or the charter holder if the school is an open-enrollment charter school;

(2) the physician or other person who prescribed the epinephrine auto-injector;

(3) the commissioner of education; and

(4) the commissioner of state health services.

(b) The report required under this section must include the following information:

(1) the age of the person who received the administration of the epinephrine auto-injector;

(2) whether the person who received the administration of the epinephrine auto-injector was a student, a school personnel member, or a visitor;

(3) the physical location where the epinephrine auto-injector was administered;

(4) the number of doses of epinephrine auto-injector administered;

(5) the title of the person who administered the epinephrine auto-injector; and

(6) any other information required by the commissioner of education.

Sec. 38.210. TRAINING. (a) Each school district and open-enrollment charter school that adopts a policy under Section 38.208(a) is responsible for training school personnel in the administration of an epinephrine auto-injector.

(b) Training required under this section must:

(1) include information on:

(A) recognizing the signs and symptoms of anaphylaxis;

(B) administering an epinephrine auto-injector;

(C) implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and

(D) properly disposing of used or expired epinephrine auto-injectors; and

(2) be provided in a formal training session or through online education and be completed annually.

(c) Each school district and open-enrollment charter school shall maintain records on the training required under this section.

Sec. 38.211. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS. (a) A physician may prescribe epinephrine auto-injectors in the name of a school district or open-enrollment charter school.

(b) A physician who prescribes epinephrine auto-injectors under Subsection (a) shall provide the school district or open-enrollment charter school with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(c) The standing order under Subsection (b) is not required to be patient-specific, and the epinephrine auto-injector may be

(2) whether the person who received the administration of the epinephrine auto-injector was a student, a school personnel member or school volunteer, or a visitor;

(3) the physical location where the epinephrine auto-injector was administered;

(4) the number of doses of epinephrine auto-injector administered;

(5) the title of the person who administered the epinephrine auto-injector; and

(6) any other information required by the commissioner of education.

Sec. 38.210. TRAINING. (a) Each school district and open-enrollment charter school that adopts a policy under Section 38.208(a) is responsible for training school personnel and school volunteers in the administration of an epinephrine auto-injector.

(b) Training required under this section must:

(1) include information on:

(A) recognizing the signs and symptoms of anaphylaxis;

(B) administering an epinephrine auto-injector;

(C) implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and

(D) properly disposing of used or expired epinephrine auto-injectors; and

(2) be provided in a formal training session or through online education and be completed annually.

(c) Each school district and open-enrollment charter school shall maintain records on the training required under this section.

Sec. 38.211. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS. (a) A physician or person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors in the name of a school district or open-enrollment charter school.

(b) A physician or other person who prescribes epinephrine auto-injectors under Subsection (a) shall provide the school district or open-enrollment charter school with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(c) The standing order under Subsection (b) is not required to be patient-specific, and the epinephrine auto-injector may be

administered to a person without an established physician-patient relationship.

(d) Notwithstanding any other provisions of law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and  
(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(e) An order issued under this section must contain:

(1) the name and signature of the prescribing physician;

(2) the name of the school district or open-enrollment charter school to which the order is issued;

(3) the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

(4) the date of issue.

(f) A pharmacist may dispense an epinephrine auto-injector to a school district or open-enrollment charter school without requiring the name or any other identifying information relating to the user.

Sec. 38.212. GIFTS, GRANTS, AND DONATIONS.

Sec. 38.213. RULES.

Sec. 38.214. IMMUNITY FROM LIABILITY. (a) A person who in good faith takes, or fails to take, any of the following actions under this subchapter is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act:

(1) issuing an order for epinephrine auto-injectors;

(2) supervising or delegating the administration of an epinephrine auto-injector;

(3) possessing an epinephrine auto-injector;

administered to a person without a previously established physician-patient relationship.

(d) Notwithstanding any other provisions of law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and  
(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(e) An order issued under this section must contain:

(1) the name and signature of the prescribing physician or other person;

(2) the name of the school district or open-enrollment charter school to which the order is issued;

(3) the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

(4) the date of issue.

(f) A pharmacist may dispense an epinephrine auto-injector to a school district or open-enrollment charter school without requiring the name or any other identifying information relating to the user.

Sec. 38.212. NOTICE TO PARENTS. If a school district or open-enrollment charter school implements a policy under this subchapter for the maintenance, administration, and disposal of epinephrine auto-injectors, the district or school shall provide written notice to a parent or guardian of each student enrolled in the district or school. Notice required under this section must be provided before the policy is implemented by the district or school and before the start of each school year.

Sec. 38.213. GIFTS, GRANTS, AND DONATIONS.

Sec. 38.214. RULES.

Sec. 38.215. IMMUNITY FROM LIABILITY. (a) A person who in good faith takes, or fails to take, any action under this subchapter is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1) issuing an order for epinephrine auto-injectors;

(2) supervising or delegating the administration of an epinephrine auto-injector;

(3) possessing, maintaining, storing, or

(4) prescribing an epinephrine auto-injector;  
(5) dispensing an epinephrine auto-injector;  
(6) administering, or assisting in administering, an epinephrine auto-injector;  
(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or  
(8) undertaking any other act permitted or required under this subchapter.

(b) The immunity provided by Subsection (a) is in addition to other immunity or limitations of liability provided by law.

(c) Notwithstanding any other law, this subchapter does not create a cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action against a school district or open-enrollment charter school or district or school personnel for the use of, or failure to use, an epinephrine auto-injector as provided by this subchapter.

SECTION 2. Section 38.0151, Education Code, is amended by adding Subsection (f) to read as follows:

(f) A school district or open-enrollment charter school that provides for the maintenance and administration of epinephrine auto-injectors under Subchapter E is not required to comply with this section.

SECTION 3. This Act applies beginning with the 2015-2016 school year.

disposing of an epinephrine auto-injector;

(4) prescribing an epinephrine auto-injector;  
(5) dispensing an epinephrine auto-injector;  
(6) administering, or assisting in administering, an epinephrine auto-injector;  
(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or  
(8) undertaking any other act permitted or required under this subchapter.

(b) The immunities and protections provided by this subchapter are in addition to other immunities or limitations of liability provided by law.

(c) Notwithstanding any other law, this subchapter does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this subchapter.

(d) A cause of action does not arise from an act or omission described by this section.

(e) A school district or open-enrollment charter school and school personnel and school volunteers are immune from suit resulting from an act, or failure to act, under this subchapter, including an act or failure to act under related policies and procedures.

(f) An act or failure to act by school personnel or a school volunteer under this subchapter, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or open-enrollment charter school.

SECTION 2. Section 38.0151, Education Code, is amended by adding Subsection (f) to read as follows:

(f) A school district or open-enrollment charter school that provides for the maintenance, administration, and disposal of epinephrine auto-injectors under Subchapter E is not required to comply with this section.

SECTION 3. Same as introduced version.



SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.