

## BILL ANALYSIS

Senate Research Center

S.B. 66  
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Education  
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Enrolled

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

Anaphylaxis is a severe allergic reaction that is rapid in onset and includes a widerange of potentially life-threatening symptoms. These symptoms can occur in many combinations and are highly unpredictable. Symptoms can occur immediately or up to two hours after exposure to an allergen and may include skin reactions, constriction of the airways, swelling of the tongue and throat, a weak and rapid pulse, nausea, dizziness, and fainting.

Food allergies are among the most common medical conditions affecting children in the United States, and are also the most common cause of anaphylaxis among children. Current estimates are that one in 13 children have food allergies, and about 40 percent of those have had a severe allergic reaction. More alarmingly, 25 percent of anaphylactic reactions in schools occur among students without a previous food allergy diagnosis.

Primary treatment of anaphylaxis consists of administration of epinephrine as soon as the reaction is identified. Failure to treat anaphylaxis with epinephrine within minutes is a major risk factor for fatality from anaphylaxis.

The problem is that public schools are not currently required to have the necessary, unassigned epinephrine auto-injectors available to treat individuals suffering from anaphylaxis who may have an undiagnosed food allergy and are without a prescribed (assigned) epinephrine auto-injector.

S.B. 66 requires that Texas public and open-enrollment charter schools have unassigned epinephrine auto-injectors available on campus and at school events to treat anaphylaxis, and to have staff who are well trained in how to recognize and respond to it.

The commissioner of state health services, in consultation with the commissioner of education and an advisory committee composed of physicians with expertise in treating anaphylaxis, will adopt rules for school districts to use in carrying out this policy. The rules will establish:

- The quantity of epinephrine auto-injectors to be stored at each campus, including a requirement that stock inventory be checked at regular intervals for expiration and replacement;
- The level of training required for school personnel in the administration of an epinephrine auto-injector; and
- A requirement at each campus for having one or more trained school personnel on campus during all operating hours.

S.B. 66 renames the Act, "The Cameron Espinosa Act" in honor of Cameron Espinosa, an eighth grader at Paul R. Haas Middle School in Corpus Christi, who died after having a severe allergic reaction to ant bites he sustained during a middle school football game.

S.B. 66 replaces "school employee" with "school personnel" throughout.

S.B. 66 amends current law relating to the use of epinephrine auto-injectors on public school and open-enrollment charter school campuses and at or in transit to or from off-campus school events.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of state health services and the commissioner of education in SECTION 2 (Sections 38.208 and 38.214, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires that this Act be known as the Cameron Espinosa Act.

SECTION 2. Amends Chapter 38, Education Code, by adding Subchapter E, as follows:

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

Sec. 38.201. DEFINITIONS. Defines "advisory committee," "anaphylaxis," "epinephrine auto-injector," "physician" and "school personnel" in this subchapter.

Sec. 38.202. ADVISORY COMMITTEE: ESTABLISHMENT AND COMPOSITION. (a) Requires the commissioner of state health services (commissioner) 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.

(b) Requires the advisory committee to be composed of members appointed by the commissioner. Requires the commissioner, in making appointments, to ensure that:

(1) a majority of the members are physicians with expertise in treating anaphylaxis, including physicians who specialize in the fields of pediatrics, allergies, asthma, and immunology; and

(2) at least one member is a registered nurse employed by a school district or open-enrollment charter school as a school nurse.

(c) Provides that a member of the advisory committee serves at the pleasure of the commissioner.

(d) Provides that a vacancy of the advisory committee is filled by the commissioner in the same manner as other appointments to the advisory committee.

Sec. 38.203. ADVISORY COMMITTEE: PRESIDING OFFICER. Requires the advisory committee to elect a presiding officer.

Sec. 38.204. ADVISORY COMMITTEE: COMPENSATION AND EXPENSES. Provides that members of the advisory committee serve without compensation but are entitled to reimbursement for travel expenses.

Sec. 38.205. ADVISORY COMMITTEE: APPLICABILITY OF OTHER LAW. Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory committee.

Sec. 38.206. ADVISORY COMMITTEE: OPEN MEETINGS. Provides that meetings of the advisory committee are subject to Chapter 551 (Open Meetings), Government Code.

Sec. 38.207. ADVISORY COMMITTEE: DUTIES. Requires the advisory committee to advise the commissioner 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) 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.

(b) Provides that, 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) 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 subject to a policy adopted under Subsection (a). Requires that the rules 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) Requires each school district and open-enrollment charter school that adopts a policy under Subsection (a) 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.

(e) Requires that the supply of epinephrine auto-injectors at each campus 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) Requires the school, 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), to 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) Requires that the report required under this section 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) Provides that 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) Requires that training required under this section:

- (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) Requires each school district and open-enrollment charter school to maintain records on the training required under this section.

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

(b) Requires a physician or other person who prescribes epinephrine auto-injectors under Subsection (a) 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.

(c) Provides that 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 a previously established physician-patient relationship.

(d) Provides that, 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) Requires that an order issued under this section 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) Authorizes a pharmacist to 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. Requires the district or school, 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, to provide written notice to a parent or guardian of each student enrolled in the district or school. Requires that the notice required under this section 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. Authorizes a school district or open-enrollment charter school to accept gifts, grants, donations, and federal and local funds to implement this subchapter.

Sec. 38.214. RULES. Requires the commissioner of education and the commissioner of state health services, except as otherwise provided by this subchapter, to jointly adopt rules necessary to implement this subchapter.

Sec. 38.215. IMMUNITY FROM LIABILITY. (a) Provides that 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 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) Provides that the immunities and protections provided by this subchapter are in addition to other immunities or limitations of liability provided by law.

(c) Provides that, 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) Provides that a cause of action does not arise from an act or omission described by this section.

(e) Provides that 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) Provides that 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 3. Amends Section 38.0151, Education Code, by adding Subsection (f), to provide that 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 4. Provides that this Act applies beginning with the 2015-2016 school year.

SECTION 5. Effective date: upon passage or September 1, 2015.