

## **BILL ANALYSIS**

S.B. 66  
By: Hinojosa  
Public Education  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Anaphylaxis is a severe allergic reaction that is rapid and unpredictable in onset and includes a wide range of potentially life-threatening symptoms. Food allergies are among the most common medical conditions affecting children in the United States that cause anaphylaxis. Current estimates are that one in 13 children has food allergies and about 40 percent of those affected children have had a severe allergic reaction. More alarmingly, some 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.

Interested parties have expressed concern that public schools are not currently required to have the necessary epinephrine auto-injectors available to treat individuals suffering from anaphylaxis who may have an undiagnosed food allergy and are without a prescribed epinephrine auto-injector. S.B. 66 seeks to address this issue.

### **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 executive commissioner of the Health and Human Services Commission and the commissioner of education in SECTION 2 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

S.B. 66 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 on a person experiencing an anaphylactic reaction on a campus of a school district or an

open-enrollment charter school or at or in transit to or from an off-campus school event and the maintenance and disposal of epinephrine auto-injectors by a school district or an open-enrollment charter school. The bill provides for the composition, operation, and specific duties of the advisory committee.

S.B. 66 requires each school district and open-enrollment charter school to adopt and implement a policy requiring the maintenance, administration, and disposal of epinephrine auto-injectors at each campus in the district or school. The bill requires such a policy to 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 or at an off-campus school event. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC), 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 or while students are at an off-campus school event or in transit to or from an off-campus school event and the bill sets out required components of those rules. The bill requires each school district and open-enrollment charter school to have a plan requiring 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. The bill sets out requirements for the storage of and access to the supply of epinephrine auto-injectors and for a school's report on the administration of epinephrine auto-injectors.

S.B. 66 makes each school district and open-enrollment charter school responsible for training school personnel in the administration of an epinephrine auto-injector and sets out requirements for the training. The bill authorizes school personnel who have received the training to take an epinephrine auto-injector from the secure storage location and administer the epinephrine auto-injector in accordance with the bill's provisions.

S.B. 66 authorizes a physician to prescribe epinephrine auto-injectors in the name of a school district or open-enrollment charter school and requires the physician 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 expressly does not require that the standing order 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 sets out the required contents of the order. The bill 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.

S.B. 66 requires a school district or open-enrollment charter school to comply with the bill's provisions only if sufficient funds are available and 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. The bill exempts a district or school from complying with the bill's provisions if the district or school cannot maintain an inventory of epinephrine auto-injectors because of a manufacturer's recall or any other unanticipated loss or reduction.

S.B. 66 requires a school district or open-enrollment charter school, before each school year, to provide written notice to a parent or guardian of each student enrolled in the district or school stating whether the district or school will implement a policy under the bill's provisions for the maintenance, administration, and disposal of epinephrine auto-injectors. The bill requires a district or school, if the district or school will implement such a policy, to provide the required notice before implementing the policy.

S.B. 66 requires the commissioner of education and the executive commissioner of HHSC to

jointly adopt rules necessary to implement the bill's provisions.

S.B. 66 grants a person who in good faith takes, or fails to take, any action under the bill's provisions immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act. The bill establishes that such immunities and protections are in addition to other immunity or limitations of liability provided by law. The bill expressly 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 or liability. The bill establishes that a cause of action does not arise from an act or omission for which a person is immune from liability under the bill and requires the continuation of the immunities and protections provided by the bill in full force and effect, regardless of whether a school district or open-enrollment charter school is excused from complying with the bill's provisions.

S.B. 66 exempts a school district or open-enrollment charter school that provides for the maintenance, administration, and disposal of epinephrine auto-injectors under the bill's provisions from compliance with statutory provisions relating to a district or school policy for the care of certain students at risk for anaphylaxis.

S.B. 66 applies beginning with the 2015–2016 school year.

**EFFECTIVE DATE**

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