

## **BILL ANALYSIS**

Senate Research Center  
88R18860 AMF-D

C.S.S.B. 294  
By: Johnson  
Education  
3/30/2023  
Committee Report (Substituted)

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

Currently, respiratory distress, including asthma, medication in schools is difficult to administer because the law requires an authorized healthcare provider at the school to issue the medication to the student. Studies have shown that access to emergency albuterol, a type of asthma medication, remains low since evidence indicates that only 14 percent of children had access to quick-relief medication at school. Furthermore, there were a total of 192 asthma-related deaths among children in 2018 with delayed albuterol administration reported to be one-third of these deaths, and a third of the delays were attributed to a lack of medication. Since respiratory distress, including asthma, may be sudden, unexpected, and life-threatening, access to albuterol can be life-saving. Therefore, expanding the authorization of whom may provide respiratory distress medication can be instrumental due to the possibility of respiratory distress occurring at any time.

S.B. 294 allows school personnel and school volunteers who are authorized and trained to administer medication for respiratory distress. By expanding who can administer the medication can help prevent a serious incident from occurring because it keeps school administration prepared during an unexpected respiratory distress episode, including asthma. S.B. 294 highlights the importance of administering respiratory distress medication because it has the ability to save some students' lives.

C.S.S.B. 294 would require school districts and schools that adopt a respiratory distress policy to obtain written consent from a parent or guardian upon enrollment for returning and transfer students. Additionally, C.S.S.B. 294 clarifies that the provision regarding written consent does not preclude a school personnel member or school volunteer from administering medication in good faith regardless of whether the student's parent or guardian has provided written consent. Lastly, C.S.S.B. 294 further clarifies that a school employee may not be subject to any penalty or disciplinary action for refusing to participate in the school district or school campus respiratory distress policy.

C.S.S.B. 294 amends current law relating to the use of epinephrine auto-injectors and medication designated for treatment of respiratory distress on public and private school campuses.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 6 (Section 38.208, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter E, Chapter 38, Education Code, to read as follows:

#### **SUBCHAPTER E. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS**

SECTION 2. Amends Section 38.201, Education Code, by adding Subdivision (3-a), to define "medication for respiratory distress."

SECTION 3. Amends Section 38.202(a), Education Code, as follows:

(a) Requires the commissioner of state health services to establish an advisory committee to examine and review the administration, on a campus of a school district, an open enrollment charter school, a private school, or an institution of higher education, of:

(1) creates this subdivision from existing text; and

(2) medication for respiratory distress to a person experiencing respiratory distress. Makes nonsubstantive changes.

SECTION 4. Amends Section 38.207, Education Code, as follows:

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

(1) the storage and maintenance of epinephrine auto-injectors and medication for respiratory distress on school campuses and campuses of institutions of higher education;

(2) makes a nonsubstantive change to this subdivision;

(3) the training of school personnel and school volunteers, and of personnel and volunteers at institutions of higher education, in the administration of a medication for respiratory distress; and

(4) a plan for:

(A) makes a nonsubstantive change to this paragraph;

(B) one or more school personnel members or school volunteers trained in the administration of medication for respiratory distress to be on each school campus;

(C) makes a nonsubstantive change to this paragraph; and

(D) one or more personnel members or volunteers of an institution of higher education trained in the administration of medication for respiratory distress to be on each campus of an institution of higher education.

SECTION 5. Amends the heading to Section 38.208, Education Code, to read as follows:

Sec. 38.208. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTOINJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS.

SECTION 6. Amends Section 38.208, Education Code, by amending Subsections (a-1), (b-1), (c), (e), and (f) and adding Subsections (b-2), (b-3), (d-1), and (e-1), as follows:

(a-1) Authorizes each school district, open-enrollment charter school, and private school to adopt and implement a policy regarding the maintenance, administration, and disposal of medication for respiratory distress, rather than a policy authorizing a school nurse to maintain and administer asthma medicine, at each campus in the district or school.

(b-1) Requires that the policy, if a policy is adopted under Subsection (a-1), provide that school personnel and school volunteers who are authorized and trained may administer medication for respiratory distress to a person reasonably believed to be experiencing respiratory distress on a school campus, or at a school-sponsored or school-related activity on or off school property. Deletes existing text requiring that the policy, if a

policy is adopted under Subsection (a-1), provide that the school nurse is authorized to administer prescription asthma medicine to a student only if the school nurse has written notification from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse is authorized to administer prescription asthma medicine to the student. Deletes existing text authorizing a school nurse to administer the prescription asthma medicine only at a school campus.

(b-2) Requires the school, if medication for respiratory distress is administered to a student whose parent or guardian has not provided notification to the school that the student has been diagnosed with asthma, to refer the student to the student's primary care provider on the day the medication for respiratory distress is administered and inform the student's parent or guardian regarding the referral. Requires that the referral include the symptoms of respiratory distress observed, the name of the medication for respiratory distress administered to the student, and any patient care instructions given to the student.

(b-3) Requires a student's parent or guardian, if the student who has received medication for respiratory distress does not have a primary care provider or the parent or guardian of the student has not engaged a primary care provider for the student, to receive information to assist the parent or guardian in selecting a primary care provider for the student.

(c) Requires the executive commissioner of the Health and Human Services Commission, in consultation with the commissioner of education, and with advice from the advisory committee as appropriate, 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) (relating to authorizing a school to adopt and implement a policy regarding the maintenance and administration of epinephrine auto-injectors and asthma medicine) and the maintenance, administration, and disposal of medication for respiratory distress, rather than the maintenance and administration of asthma medicine, at a school campus subject to a policy adopted under Subsection (a-1). Requires that the rules establish:

(1) makes no changes to this subdivision;

(2) the amount of medication for respiratory distress, rather than the amount of prescription asthma medicine, available at each campus;

(3) the process for each school district, open-enrollment charter school, and private school to check the inventory of epinephrine auto-injectors and medication for respiratory distress, rather than asthma medicine, at regular intervals for expiration and replacement;

(4) the amount of training required for school personnel and school volunteers to administer an epinephrine auto-injector or medication for respiratory distress; and

(5) the types of medication that may be administered under Subsection (b-1) to persons experiencing respiratory distress, based on a review of the best available medical evidence.

(d-1) Requires each school district, open-enrollment charter school, and private school that adopts a policy under Subsection (a-1) to require that each campus have one or more school personnel or school volunteers authorized and trained to administer medication for respiratory distress present during regular school hours.

(d-2) Prohibits a school personnel member or school volunteer from being subject to any penalty or disciplinary action for refusing to administer or receive training to administer epinephrine auto-injectors or medication for respiratory distress, as applicable, in accordance with a policy adopted under Subsection (a) or (a-1).

(e) Deletes existing text requiring that the supply of asthma medicine at each campus be stored in a secure location and be easily accessible to the school nurse.

(e-1) Requires that the supply of medication for respiratory distress at each campus be stored in a secure location and be easily accessible to authorized school personnel and school volunteers.

(f) Makes conforming changes to this subsection.

SECTION 7. Amends Subchapter E, Chapter 38, Education Code, by adding Section 38.2091, as follows:

Sec. 38.2091. REPORT ON ADMINISTERING MEDICATION FOR RESPIRATORY DISTRESS. (a) Requires the school, not later than the 10th business day after the date a school personnel member or school volunteer administers medication for respiratory distress to a person experiencing respiratory distress in accordance with a policy adopted under Section 38.208(a-1), to report the information required under Subsection (b) to:

(1) the school district, the charter holder if the school is an open-enrollment charter school, or the governing body of the school if the school is a private school;

(2) the physician or other person who prescribed the medication for respiratory distress; and

(3) the commissioner of state health services.

(b) Requires that the report under this section include:

(1) the age of the person who received the administration of the medication for respiratory distress;

(2) whether the person who received the administration of the medication for respiratory distress was a student, a school personnel member or school volunteer, or a visitor;

(3) the dosage of the medication for respiratory distress administered;

(4) the title of the person who administered the medication for respiratory distress; and

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

SECTION 8. Amends Section 38.210, Education Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires that the training in the administration of an epinephrine auto-injector include information on:

(1) recognizing the signs and symptoms of anaphylaxis;

(2) administering an epinephrine auto-injector;

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

(4) properly disposing of used or expired epinephrine auto-injectors.

(a-1) Provides that each school district, open-enrollment charter school, and private school that adopts a policy under Section 38.208(a-1) is responsible for training school

personnel and school volunteers in the administration of medication for respiratory distress. Requires that the training include information on:

- (1) recognizing the signs and symptoms of respiratory distress;
- (2) administering medication for respiratory distress;
- (3) implementing emergency procedures, if necessary, after administering medication for respiratory distress; and
- (4) proper sanitization, reuse, and disposal of medication for respiratory distress.

(b) Requires that the training required under Section 38.210 (Training) be provided:

- (1) in a formal training session or through online education; and
- (2) in accordance with the policy adopted under Section 21.4515 (Annual Adoption of Professional Development Policy).

Deletes existing text requiring that training required under this section include information on recognizing the signs and symptoms of anaphylaxis, administering an epinephrine auto-injector, implementing emergency procedures, if necessary, after administering an epinephrine auto-injector, and properly disposing of used or expired epinephrine auto-injectors. Makes nonsubstantive changes.

SECTION 9. Amends the heading to Section 38.211, Education Code, to read as follows:

Sec. 38.211. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS.

SECTION 10. Amends Sections 38.211(a), (b), (c), (e), and (f), Education Code, as follows:

- (a) Makes a conforming change to this subsection.
- (b) Requires a physician or other person who prescribes epinephrine auto-injectors or medication for respiratory distress, rather than asthma medicine, under Subsection (a) to provide the school district, open-enrollment charter school, or private school with a standing order for the administration of, as applicable:
  - (1) makes no changes to this subdivision; or
  - (2) medication for respiratory distress, rather than asthma medicine, to a person reasonably believed to be experiencing respiratory distress, rather than a symptom of asthma and who has provided written notification and permission as required by Section 38.208(b-1).
- (c) Makes a conforming change to this subsection.
- (e) Requires that an order issued under this section contain:
  - (1)-(2) makes no changes to these subdivisions;
  - (3) as applicable, the quantity of epinephrine auto-injectors or the quantity and types of medications for respiratory distress, rather than asthma medicine, to be obtained and maintained under the order; and
  - (4) makes no changes to this subdivision.
- (f) Makes a conforming change to this subsection.

SECTION 11. Amends Section 38.212, Education Code, as follows:

Sec. 38.212. New heading: NOTICE TO PARENTS; WRITTEN CONSENT. (a) Requires the district or school, if a school district, open-enrollment charter school, or private school implements a policy under this subchapter, to:

(1) provide written notice of the policy to a parent or guardian of each student enrolled in the district or school; and

(2) obtain written consent from a parent or guardian of each student on the student's enrollment in the district or school to administer an epinephrine auto-injector or medication for respiratory distress, as applicable, to the student in accordance with the policy.

(b) Requires that the notice required under Subsection (a)(1), rather than this section, be provided before a policy is implemented by the district or school under this subchapter and before the start of each school year.

(c) Provides that Subsection (a)(2) does not prohibit a school personnel member or school volunteer from administering in good faith an epinephrine auto-injector to a student reasonably believed to be experiencing anaphylaxis or medication for respiratory distress to a student reasonably believed to be experiencing respiratory distress, as applicable, in accordance with a policy implemented under this subchapter, regardless of whether the student's parent or guardian has provided written consent under Subsection (a)(2).

SECTION 12. Amends Section 38.215(a), Education Code, as follows:

(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)-(4) makes conforming changes to these subdivisions;

(5) dispensing:

(A) makes no changes to this paragraph;

(B) medication for respiratory distress, rather than asthma medicine provided that permission has been granted as provided by Section 38.208(b-1);

(6) makes a conforming change to this subdivision; or

(7)-(8) makes no changes to these subdivisions.

SECTION 13. Effective date: upon passage or September 1, 2023.