

## **BILL ANALYSIS**

C.S.H.B. 3851  
By: Howard  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that public institutions of higher education are currently not equipped to provide the necessary resources in the event of a student experiencing anaphylaxis, which the parties explain is most effectively treated with epinephrine auto-injectors. C.S.H.B. 3851 seeks to ensure that institutions of higher education can respond appropriately to such an event by providing for those resources.

### **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 in SECTION 3 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of health and human services by the health and human services system. Certain recently enacted legislation provides for a phased transition of the health and human services system, including the abolishment and consolidation of certain agencies and entities. To the extent practicable, this bill analysis is written to accurately reflect rulemaking authority within the health and human services system and to update references as necessary to an agency's or entity's authority with respect to a particular health and human services program.

C.S.H.B. 3851 amends the Education Code to authorize each public institution of higher education to adopt and implement a policy regarding the maintenance, storage, administration, and disposal of epinephrine auto-injectors on the institution's campus. The bill requires such a policy to provide that personnel or volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on the institution's campus and authorizes the policy to provide that personnel or 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 event or while in transit to or from an off-campus event sponsored by the institution.

C.S.H.B. 3851 requires the executive commissioner of the Health and Human Services Commission, with advice from the advisory committee established by the commissioner of state health services for the examination and review of the administration of epinephrine auto-injectors on public school district and open-enrollment charter school campuses, to adopt rules regarding the maintenance, storage, administration, and disposal of an epinephrine

auto-injector on the campus of an institution of higher education subject to such a policy and sets out certain standards the rules must establish. The bill expands the advisory committee's duties to include examining and reviewing the administration of epinephrine auto-injectors to a person on an institution of higher education campus and requires the commissioner of state health services to ensure, in making appointments to the committee, that at least one member is an employee of a general academic teaching institution and at least one member is an employee of a public junior college or a public technical institute.

C.S.H.B. 3851 requires each institution of higher education that adopts a policy to require that the institution's campuses have personnel or volunteers authorized and trained to administer an epinephrine auto-injector present. The bill requires the supply of epinephrine auto-injectors at a campus to be stored in a secure location and be easily accessible to personnel or volunteers authorized and trained to administer an epinephrine auto-injector. The bill requires an institution of higher education, not later than the 10th business day after the date a personnel member or volunteer administers an epinephrine auto-injector in accordance with the institution's policy, to report specified information regarding the incident to the physician who prescribed the epinephrine auto-injector and the commissioner of state health services. The bill sets out personnel and volunteer training requirements for each institution of higher education that adopts such a policy and requires the institution to maintain records on the training.

C.S.H.B. 3851 authorizes a physician to prescribe epinephrine auto-injectors in the name of an institution that adopts a policy under the bill's provisions. The bill requires the physician to provide the institution with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis, expressly does not require the standing order to be patient-specific, and authorizes the epinephrine auto-injector to be administered to a person without an established physician-patient relationship. The bill sets out the required contents of such an order and the conditions under which the supervision or delegation by a physician is considered to be adequate. The bill authorizes a pharmacist to dispense an epinephrine auto-injector to the institution of higher education without requiring the name or any other identifying information relating to the user. The bill authorizes an institution of higher education to accept gifts, grants, donations, and federal funds to implement the bill's provisions relating to the maintenance, storage, administration, and disposal of epinephrine auto-injectors and requires the executive commissioner to adopt rules necessary to implement those provisions.

C.S.H.B. 3851 grants a person who in good faith takes, or fails to take, any action under the bill's provisions relating to the maintenance, storage, administration, and disposal of epinephrine auto-injectors immunity from civil or criminal liability or disciplinary action resulting from that act or failure to act and establishes that this immunity is 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 the basis for a cause of action for an act or omission under the bill's applicable provisions. The bill grants an institution of higher education or a campus of an institution of higher education immunity from suit resulting from an act, or failure to act, under the bill's applicable provisions and establishes that a cause of action does not arise from such an act or omission. The bill applies beginning with the 2018 spring semester.

#### **EFFECTIVE DATE**

September 1, 2017.

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

While C.S.H.B. 3851 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. Section 38.202, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) The commissioner of state health services shall 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, ~~[ø]~~ an open-enrollment charter school, or an institution of higher education.

(b) The advisory committee shall be composed of members appointed by the commissioner of state health services. In making appointments, the commissioner shall 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; and

(3) at least one member is an employee of an institution of higher education.

(e) In this section, "institution of higher education" has the meaning assigned by Section 61.003.

SECTION 2. Section 38.207, Education Code, is amended to read as follows:

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 and campuses of institutions of higher education;

(2) the training of ~~[school]~~ personnel and ~~[school]~~ volunteers at schools and institutions of higher education in the administration of an epinephrine auto-injector; and

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 38.202, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) The commissioner of state health services shall 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, ~~[ø]~~ an open-enrollment charter school, or an institution of higher education.

(b) The advisory committee shall be composed of members appointed by the commissioner of state health services. In making appointments, the commissioner shall 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;

(3) at least one member is an employee of a general academic teaching institution; and

(4) at least one member is an employee of a public junior college or a public technical institute.

(e) In this section, "general academic teaching institution," "institution of higher education," "public junior college," and "public technical institute" have the meanings assigned by Section 61.003.

SECTION 2. Section 38.207, Education Code, is amended to read as follows:

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 and campuses of institutions of higher education;

(2) the training of ~~school~~ personnel and ~~school~~ volunteers and of personnel and volunteers at institutions of higher education in the administration of an epinephrine auto-injector; and

(3) a plan for one or more [school] personnel members or [school] volunteers of a school or an institution of higher education trained in the administration of an epinephrine auto-injector to be on each [school] campus of a school or an institution of higher education.

SECTION 3. Chapter 51, Education Code, is amended by adding Subchapter Y-1 to read as follows:

SUBCHAPTER Y-1. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS

Sec. 51.881. 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) "Institution of higher education" has the meaning assigned by Section 61.003.

(5) "Personnel" means employees of an institution of higher education.

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

Sec. 51.882. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS. (a) Each institution of higher education may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors on the institution's campus.

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

(3) a plan for:

(A) one or more school personnel members or school volunteers trained in the administration of an epinephrine auto-injector to be on each school campus; and

(B) one or more personnel members or volunteers of an institution of higher education trained in the administration of an epinephrine auto-injector to be on each campus of an institution of higher education.

SECTION 3. Chapter 51, Education Code, is amended by adding Subchapter Y-1 to read as follows:

SUBCHAPTER Y-1. MAINTENANCE, STORAGE, ADMINISTRATION, AND DISPOSAL OF EPINEPHRINE AUTO-INJECTORS

Sec. 51.881. 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) "Campus" means an educational unit under the management and control of an institution of higher education and may include, in addition to the main campus, off-campus and secondary locations, such as branch campuses, teaching locations, and regional centers.

(4) "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.

(5) "Institution of higher education" has the meaning assigned by Section 61.003.

(6) "Personnel" means employees of an institution of higher education.

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

Sec. 51.882. MAINTENANCE, STORAGE, ADMINISTRATION, AND DISPOSAL OF EPINEPHRINE AUTO-INJECTORS. (a) Each institution of higher education may adopt and implement a policy regarding the maintenance, storage, administration, and disposal of epinephrine auto-injectors on the institution's campus.

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

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

(2) may provide that 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 event sponsored by the institution of higher education.

(c) The commissioner of state health services, in consultation with the Texas Higher Education Coordinating Board, and with advice from the advisory committee, shall adopt rules regarding the administration of an epinephrine auto-injector on the campus of an institution of higher education 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 institution of higher education to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

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

(d) Each institution of higher education that adopts a policy under Subsection (a) must require that the institution's campuses have personnel authorized and trained to administer an epinephrine auto-injector present.

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

Sec. 51.883. REPORT ON ADMINISTERING EPINEPHRINE AUTO-INJECTOR. (a) Not later than the 10th business day after the date a personnel member administers an epinephrine auto-injector in accordance with a policy adopted under Section 51.882(a), the institution of higher education shall report the information

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

(2) may provide that personnel or 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 event or while in transit to or from an off-campus event sponsored by the institution of higher education.

(c) The commissioner of state health services with advice from the advisory committee shall adopt rules regarding the maintenance, storage, administration, and disposal of an epinephrine auto-injector on the campus of an institution of higher education 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 institution of higher education to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

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

(d) Each institution of higher education that adopts a policy under Subsection (a) must require that the institution's campuses have personnel or volunteers authorized and trained to administer an epinephrine auto-injector present.

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

Sec. 51.883. REPORT ON ADMINISTERING EPINEPHRINE AUTO-INJECTOR. (a) Not later than the 10th business day after the date a personnel member or volunteer administers an epinephrine auto-injector in accordance with a policy adopted under Section 51.882(a), the institution of higher education shall

required under Subsection (b) to:

(1) the Texas Higher Education Coordinating Board;

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

(3) 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 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 Texas Higher Education Coordinating Board.

Sec. 51.884. TRAINING. (a) Each institution of higher education that adopts a policy under Section 51.882(a) is responsible for training 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 institution of higher education that adopts a policy under Section 51.882(a) shall maintain records on the training required under this section.

Sec. 51.885. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS.

report the information required under Subsection (b) to:

(1) the physician who prescribed the epinephrine auto-injector; and

(2) 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 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 state health services.

Sec. 51.884. TRAINING. (a) Each institution of higher education that adopts a policy under Section 51.882(a) is responsible for training personnel or 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 institution of higher education that adopts a policy under Section 51.882(a) shall maintain records on the training required under this section.

Sec. 51.885. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS.

Sec. 51.886. GIFTS, GRANTS, AND DONATIONS.

Sec. 51.887. RULES. Except as otherwise provided by this subchapter, the Texas Higher Education Coordinating Board and the commissioner of state health services shall jointly adopt rules necessary to implement this subchapter.

Sec. 51.888. IMMUNITY FROM LIABILITY. (a) Except in a case of reckless conduct or intentional, wilful, or wanton misconduct, a person is immune from civil or criminal liability or disciplinary action for any conduct permitted or required under this subchapter, including:

- (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;

- (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 against personnel for the use of an epinephrine auto-injector as provided by this subchapter.

Sec. 51.886. GIFTS, GRANTS, AND DONATIONS.

Sec. 51.887. RULES. Except as otherwise provided by this subchapter, the commissioner of state health services shall adopt rules necessary to implement this subchapter.

Sec. 51.888. 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 act 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 an epinephrine auto-injector;
- (4) maintaining an epinephrine auto-injector;

- (5) storing an epinephrine auto-injector;
- (6) disposing of an epinephrine auto-injector;
- (7) prescribing an epinephrine auto-injector;
- (8) dispensing an epinephrine auto-injector;
- (9) administering, or assisting in administering, an epinephrine auto-injector;
- (10) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or
- (11) 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 civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides the basis for a cause of action for an act or omission under this subchapter.

(d) An institution of higher education or a campus of an institution of higher education is 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.

(e) A cause of action does not arise from an

act or omission described by this section.

SECTION 4. This Act applies beginning with the 2017 fall semester.

SECTION 5. 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, 2017.

SECTION 4. This Act applies beginning with the 2018 spring semester.

SECTION 5. This Act takes effect September 1, 2017.