



HOUSE BILL No. 5216

November 18, 1993, Introduced by Reps. Keith and Bryant and referred to the Committee on Taxation.

A bill to amend section 1178 of Act No. 451 of the Public Acts of 1976, entitled as amended
"The school code of 1976,"
being section 380.1178 of the Michigan Compiled Laws; and to add section 1179.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1178 of Act No. 451 of the Public Acts
2 of 1976, being section 380.1178 of the Michigan Compiled Laws, is
3 amended and section 1179 is added to read as follows:

4 Sec. 1178. A school administrator, teacher, or other
5 school employee designated by the school administrator AND AUTHO-
6 RIZED UNDER SECTION 1179, who in good faith administers ORAL med-
7 ication to a pupil in the presence of another adult pursuant to
8 written permission of the pupil's parents or guardian and in
9 compliance with the instructions of a physician, WHO PERFORMS A

1 HEALTH CARE PROCEDURE FOR A PUPIL UNDER A COMPREHENSIVE HEALTH
2 CARE PLAN DEVELOPED FOR THE PUPIL UNDER SECTION 1179, OR WHO
3 ASSISTS IN A MEDICAL EMERGENCY INVOLVING A PUPIL, is not liable
4 in a criminal action or for civil damages as a result of ~~the~~
5 ~~administration~~ THOSE ACTIVITIES except for an act or omission
6 amounting to gross negligence or ~~wilful~~ WILLFUL and wanton
7 misconduct.

8 SEC. 1179. (1) IF A PUPIL WITH HEALTH CARE NEEDS IS
9 ENROLLED IN A SCHOOL OR PROGRAM IN A SCHOOL DISTRICT, ALL OF THE
10 FOLLOWING APPLY:

11 (A) A SCHOOL EMPLOYEE SHALL NOT PERFORM A HEALTH CARE PROCE-
12 DURE ON THE PUPIL UNLESS ALL OF THE FOLLOWING ARE MET:

13 (i) THE EMPLOYEE IS LICENSED OR OTHERWISE AUTHORIZED TO PER-
14 FORM THE PROCEDURE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE,
15 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101
16 TO 333.18838 OF THE MICHIGAN COMPILED LAWS.

17 (ii) THE EMPLOYEE IS AUTHORIZED TO PERFORM THE PROCEDURE
18 UNDER THE COMPREHENSIVE HEALTH CARE PLAN DEVELOPED FOR THE PUPIL
19 UNDER THIS SECTION.

20 (iii) IF THE PROCEDURE IS DELEGATED TO THE EMPLOYEE, THE
21 DELEGATION OF THE PROCEDURE TO THE EMPLOYEE IS MADE IN ACCORDANCE
22 WITH SUBSECTION (2).

23 (B) IF ORAL MEDICATION IS ADMINISTERED TO THE PUPIL, IT
24 SHALL BE ADMINISTERED ONLY BY A SCHOOL ADMINISTRATOR, A TEACHER,
25 OR A SCHOOL EMPLOYEE LICENSED UNDER ARTICLE 15 OF ACT NO. 368 OF
26 THE PUBLIC ACTS OF 1978, AND SHALL BE ADMINISTERED IN ACCORDANCE

1 WITH SECTION 1178 AND THE COMPREHENSIVE HEALTH CARE PLAN
2 DEVELOPED FOR THE PUPIL UNDER THIS SECTION.

3 (C) IF AN INVASIVE HEALTH CARE PROCEDURE IS PERFORMED ON THE
4 PUPIL, IT SHALL BE PERFORMED IN AN AREA DESIGNATED FOR THAT PUR-
5 POSE THAT MEETS GENERALLY ACCEPTED STANDARDS OF CLEANLINESS AND
6 STERILITY FOR THE PERFORMANCE OF INVASIVE HEALTH CARE PROCEDURES,
7 INCLUDING THE INVASIVE PROCEDURE PERFORMED, AND THAT PROVIDES
8 PRIVACY FOR THE PUPIL.

9 (D) THE SCHOOL DISTRICT SHALL ENSURE THAT APPROPRIATE HEALTH
10 CARE PERSONNEL ARE AVAILABLE TO PROVIDE HEALTH CARE AND SUPERVI-
11 SION OF SCHOOL PERSONNEL IN ACCORDANCE WITH SUBSECTION (2) AND
12 THE COMPREHENSIVE HEALTH CARE PLAN DEVELOPED FOR THE PUPIL UNDER
13 THIS SECTION.

14 (2) IF THE PERFORMANCE OF A SPECIFIC HEALTH CARE PROCEDURE
15 FOR A PUPIL WITH HEALTH CARE NEEDS IS DELEGATED TO A SCHOOL
16 EMPLOYEE WHO IS NOT LICENSED TO PERFORM THE PROCEDURE, ALL OF THE
17 FOLLOWING APPLY:

18 (A) THE DELEGATION SHALL BE MADE BY A REGISTERED NURSE OR
19 OTHER HEALTH CARE PROFESSIONAL WHO IS QUALIFIED TO PERFORM THE
20 HEALTH CARE PROCEDURE, TO DELEGATE THE PROCEDURE, AND TO SUPER-
21 VISE SCHOOL PERSONNEL IN THE PERFORMANCE OF THE PROCEDURE. THE
22 REGISTERED NURSE OR OTHER HEALTH CARE PROFESSIONAL SHALL BE AN
23 EMPLOYEE OF THE SCHOOL DISTRICT, AN INDEPENDENT CONTRACTOR UNDER
24 CONTRACT WITH THE SCHOOL DISTRICT, OR AN EMPLOYEE OF AN INDEPEN-
25 DENT CONTRACTOR UNDER CONTRACT WITH THE SCHOOL DISTRICT, OR SHALL
26 BE THE PUPIL'S ATTENDING PHYSICIAN.

1 (B) THE REGISTERED NURSE OR OTHER HEALTH CARE PROFESSIONAL
2 SHALL CONFIRM THE DELEGATION IN WRITING. THE WRITING SHALL STATE
3 AT LEAST ALL OF THE FOLLOWING:

4 (i) THAT THE REGISTERED NURSE OR OTHER HEALTH CARE PROFES-
5 SIONAL HAS DONE ALL OF THE FOLLOWING:

6 (A) REVIEWED THE PUPIL'S MEDICAL AND EDUCATIONAL RECORDS.

7 (B) VIEWED THE DESIGNATED AREA IN WHICH THE PROCEDURE WILL
8 BE PERFORMED AND DETERMINED THAT THE DESIGNATED AREA IS EQUIPPED
9 WITH THE COMMUNICATION SYSTEM REQUIRED UNDER THIS SECTION.

10 (C) INTERVIEWED THE PUPIL AND MADE AN INDIVIDUAL ASSESSMENT
11 AS TO THE DIFFICULTY OF PERFORMING THE PROCEDURE FOR THE PUPIL.

12 (D) INTERVIEWED THE CAREGIVER TO WHOM THE DELEGATION WILL BE
13 MADE AND DETERMINED THAT THE CAREGIVER IS TRAINED TO PERFORM THE
14 PROCEDURE.

15 (ii) THAT, IN THE PROFESSIONAL JUDGMENT OF THE REGISTERED
16 NURSE OR OTHER HEALTH CARE PROFESSIONAL, DELEGATION OF THE PROCE-
17 DURE IS APPROPRIATE FOR THE PUPIL.

18 (iii) THAT, IN THE PROFESSIONAL JUDGMENT OF THE REGISTERED
19 NURSE OR OTHER HEALTH CARE PROFESSIONAL, DELEGATION OF THE PROCE-
20 DURE IS PERMISSIBLE ACCORDING TO LAW AND THE PREVAILING STANDARD
21 OF CARE IN THE COMMUNITY, TAKING INTO ACCOUNT THE SPECIFIC SET-
22 TING IN WHICH THE PROCEDURE WILL BE PERFORMED.

23 (iv) THAT, IN THE PROFESSIONAL JUDGMENT OF THE REGISTERED
24 NURSE OR OTHER HEALTH CARE PROFESSIONAL, DELEGATION OF THE PROCE-
25 DURE WILL NOT BE HARMFUL TO EITHER THE PUPIL OR THE CAREGIVER.

1 (v) THAT THE REGISTERED NURSE OR OTHER HEALTH CARE
2 PROFESSIONAL WILL SUPERVISE THE CAREGIVER TO WHOM THE PROCEDURE
3 WILL BE DELEGATED AND THE SPECIFIC METHOD OF SUPERVISION.

4 (C) THE COMMUNICATION SYSTEM USED IN SUPERVISING THE CARE
5 GIVER TO WHOM THE PROCEDURE IS DELEGATED SHALL BE CAPABLE OF PRO-
6 VIDING DIRECT AND CONTINUOUS COMMUNICATION BETWEEN THE DELEGATOR
7 AND THE CAREGIVER IN SUCH A MANNER THAT THE CAREGIVER CAN INITI-
8 ATE COMMUNICATION WITH THE DELEGATOR WITHOUT AN INTERMEDIARY
9 DOING MORE THAN INFORMING THE DELEGATOR THAT THE CAREGIVER IS
10 CALLING AND THAT THE DELEGATOR AND CAREGIVER CAN TALK DIRECTLY TO
11 EACH OTHER WITHOUT THE FURTHER ASSISTANCE OF AN INTERMEDIARY.

12 (3) SUBJECT TO SUBSECTION (5), A SCHOOL DISTRICT SHALL
13 ENSURE THAT THE HEALTH CARE NEEDS OF EACH PUPIL WITH HEALTH CARE
14 NEEDS ENROLLED IN THE DISTRICT ARE EVALUATED AT LEAST ANNUALLY BY
15 AN INDIVIDUALIZED HEALTH CARE PLANNING COMMITTEE AND ARE
16 ADDRESSED IN A COMPREHENSIVE HEALTH CARE PLAN AS DESCRIBED IN
17 SUBSECTION (4). THE DISTRICT SUPERINTENDENT SHALL APPOINT THE
18 PARTICIPANTS OF THE COMMITTEE AND SHALL INVITE THE PUPIL'S PAR-
19 ENTS OR LEGAL GUARDIAN TO BE PARTICIPANTS. THE PARTICIPANTS
20 SHALL INCLUDE AT LEAST ALL OF THE FOLLOWING:

21 (A) A REGISTERED NURSE OR OTHER HEALTH CARE PROFESSIONAL WHO
22 IS QUALIFIED TO PROVIDE HEALTH CARE FOR THE PUPIL AND SUPERVISION
23 OF SCHOOL PERSONNEL WHO PROVIDE HEALTH CARE FOR THE PUPIL. THE
24 REGISTERED NURSE OR OTHER HEALTH CARE PROFESSIONAL SHALL BE AN
25 EMPLOYEE OF THE SCHOOL DISTRICT, AN INDEPENDENT CONTRACTOR UNDER
26 CONTRACT WITH THE SCHOOL DISTRICT, OR AN EMPLOYEE OF AN

1 INDEPENDENT CONTRACTOR UNDER CONTRACT WITH THE SCHOOL DISTRICT,
2 OR SHALL BE THE PUPIL'S ATTENDING PHYSICIAN.

3 (B) ONE OR MORE OF THE PUPIL'S TEACHERS OR, IF THE PUPIL IS
4 NOT PREVIOUSLY ENROLLED IN THE SCHOOL DISTRICT, 1 OR MORE TEACH-
5 ERS APPROPRIATE FOR THE PUPIL'S AGE AND GRADE LEVEL.

6 (C) AT THE REQUEST OF THE PUPIL'S PARENT OR LEGAL GUARDIAN,
7 THE PUPIL'S ATTENDING PHYSICIAN.

8 (4) THE INDIVIDUALIZED HEALTH CARE PLANNING COMMITTEE SHALL
9 DEVELOP, PERIODICALLY REVIEW, AND REVISE AS NECESSARY A COMPRE-
10 HENSIVE HEALTH CARE PLAN FOR ENSURING THAT ALL OF THE PUPIL'S
11 HEALTH CARE NEEDS ARE MET WHILE THE PUPIL IS AT SCHOOL OR IS
12 BEING TRANSPORTED TO AND FROM SCHOOL BY THE SCHOOL DISTRICT.
13 AFTER DEVELOPMENT OR REVISION OF THE PLAN, THE COMMITTEE SHALL
14 PROVIDE A COPY OF THE PLAN TO THE DISTRICT SUPERINTENDENT AND TO
15 THE PUPIL'S PARENT OR LEGAL GUARDIAN. THE PLAN SHALL SPECIFI-
16 CALLY ADDRESS AT LEAST ALL OF THE FOLLOWING:

17 (A) FOR EACH HEALTH CARE PROCEDURE THAT MAY BE NECESSARY FOR
18 THE PUPIL, THE LEVEL OF TRAINING REQUIRED FOR AN INDIVIDUAL TO
19 PERFORM THE PROCEDURE, INCLUDING IDENTIFYING THOSE PROCEDURES
20 THAT CAN APPROPRIATELY BE PERFORMED BY THE PUPIL FOR HIMSELF OR
21 HERSELF.

22 (B) THE TRAINING NECESSARY TO ENABLE SCHOOL PERSONNEL WHO
23 ARE NOT HEALTH CARE PROFESSIONALS TO PERFORM PROCEDURES DETER-
24 MINED TO BE APPROPRIATE FOR THEM UNDER SUBDIVISION (A).

25 (C) ANY HEALTH CARE EQUIPMENT NECESSARY TO MAINTAIN THE
26 PUPIL'S HEALTH STATUS AND THE APPROPRIATE INDIVIDUAL OR

1 INDIVIDUALS TO OPERATE AND MAINTAIN THAT EQUIPMENT, WITH SPECIFIC
2 DELINEATION OF RESPONSIBILITY.

3 (D) DEVELOPMENT AND DISSEMINATION OF HEALTH CARE PROTOCOLS
4 FOR MEDICAL EMERGENCIES THAT MAY ARISE FOR THE PUPIL.

5 (E) COORDINATING THE HEALTH CARE AND HEALTH CARE PROCEDURES
6 IN A MANNER THAT MAXIMIZES PAYMENT FOR THE CARE AND PROCEDURES BY
7 PRIVATE HEALTH INSURANCE PROVIDERS, HEALTH MAINTENANCE ORGANI-
8 ZATIONS, FEDERALLY REIMBURSED PROGRAM SOURCES, OR OTHER FINAN-
9 CIALY RESPONSIBLE THIRD PARTIES.

10 (F) ANY OTHER HEALTH CARE ISSUES THE COMMITTEE CONSIDERS TO
11 BE NECESSARY TO ENSURE THE HEALTH AND SAFETY OF THE PUPIL.

12 (5) IF A PUPIL WITH HEALTH CARE NEEDS IS ELIGIBLE FOR SPE-
13 CIAL EDUCATION PROGRAMS AND SERVICES, THE INDIVIDUALIZED EDUCA-
14 TIONAL PLANNING COMMITTEE ESTABLISHED FOR THE PUPIL UNDER STATE
15 BOARD RULES PROMULGATED PURSUANT TO SECTIONS 1701 TO 1703 SHALL
16 PERFORM THE DUTIES SPECIFIED UNDER THIS SECTION FOR THE INDIVIDU-
17 ALIZED HEALTH CARE PLANNING COMMITTEE, AND THE DISTRICT SUPERIN-
18 TENDENT SHALL MAKE ANY ADDITIONS TO THE COMPOSITION OF THE INDI-
19 VIDUALIZED EDUCATIONAL PLANNING COMMITTEE AS REQUIRED UNDER SUB-
20 SECTION (2) AND AS OTHERWISE NECESSARY TO ALLOW THAT COMMITTEE TO
21 RESPONSIBLY PERFORM THESE DUTIES. A COMPREHENSIVE HEALTH CARE
22 PLAN DEVELOPED BY AN INDIVIDUALIZED EDUCATIONAL PLANNING COMMIT-
23 TEE UNDER THIS SUBSECTION IS SUBJECT TO THE APPEALS AND HEARINGS
24 PROCEDURES UNDER THE STATE BOARD RULES CONCERNING SPECIAL EDUCA-
25 TION PROGRAMS AND SERVICES RATHER THAN THE APPEALS PROCEDURES
26 UNDER THIS SECTION.

1 (6) NOT LATER THAN 7 DAYS AFTER RECEIPT OF A COMPREHENSIVE
2 HEALTH CARE PLAN REQUIRED UNDER SUBSECTION (4) THAT IS NOT
3 SUBJECT TO SUBSECTION (5), THE DISTRICT SUPERINTENDENT OF A
4 SCHOOL DISTRICT EITHER SHALL APPEAL ALL OR PART OF THE PLAN TO
5 THE BOARD OF THE INTERMEDIATE SCHOOL DISTRICT IN WHICH THE PUPIL
6 RESIDES AND NOTIFY THE PUPIL'S PARENTS OR LEGAL GUARDIAN OF THE
7 APPEAL OR SHALL NOTIFY THE PUPIL'S PARENT OR LEGAL GUARDIAN THAT
8 THE SCHOOL DISTRICT WILL IMPLEMENT THE PLAN UNLESS THE PARENT OR
9 LEGAL GUARDIAN APPEALS ALL OR PART OF THE PLAN IN WRITING TO THE
10 BOARD OF THE INTERMEDIATE SCHOOL DISTRICT IN WHICH THE PUPIL
11 RESIDES WITHIN 7 DAYS AFTER RECEIPT OF THE NOTICE OF
12 IMPLEMENTATION.

13 (7) IF EITHER A DISTRICT SUPERINTENDENT OR A PUPIL'S PARENT
14 OR LEGAL GUARDIAN APPEALS ALL OR PART OF A COMPREHENSIVE HEALTH
15 CARE PLAN TO THE BOARD OF AN INTERMEDIATE SCHOOL DISTRICT UNDER
16 SUBSECTION (6), THE BOARD SHALL PROMPTLY ARRANGE OR CONDUCT AN
17 IMPARTIAL HEARING THAT AFFORDS DUE PROCESS TO ALL PARTIES. AFTER
18 THE HEARING, THE BOARD SHALL NOTIFY THE PARTIES OF ITS FINDINGS
19 AND DECISION AND OF THE RIGHT TO BRING A CIVIL ACTION UNDER SUB-
20 SECTION (8). A DECISION UNDER THIS SUBSECTION IS FINAL UNLESS IT
21 IS APPEALED IN A CIVIL ACTION UNDER SUBSECTION (8). THE DECISION
22 SHALL DO 1 OF THE FOLLOWING:

23 (A) AFFIRM THE COMPREHENSIVE HEALTH CARE PLAN IN ITS
24 ENTIRETY.

25 (B) MODIFY 1 OR MORE OF THE PROVISIONS OF THE COMPREHENSIVE
26 HEALTH CARE PLAN THAT ARE AT ISSUE IN THE APPEAL.

1 (C) REJECT THE COMPREHENSIVE HEALTH CARE PLAN IN ITS
2 ENTIRETY AND DIRECT THAT A NEW COMPREHENSIVE HEALTH CARE PLAN BE
3 DEVELOPED UNDER THIS SECTION.

4 (8) A PARTY AGGRIEVED BY THE FINDINGS AND DECISION MADE
5 AFTER A HEARING UNDER SUBSECTION (7) MAY BRING A CIVIL ACTION IN
6 A COURT OF COMPETENT JURISDICTION WITH RESPECT TO ANY ISSUE
7 ADDRESSED IN THE HEARING WITHOUT REGARD TO THE AMOUNT IN
8 CONTROVERSY.

9 (9) THE STATE BOARD SHALL PROMULGATE RULES AS NECESSARY TO
10 ASSIST IN THE IMPLEMENTATION OF THIS SECTION. HOWEVER, A SCHOOL
11 DISTRICT SHALL NOT DELAY IMPLEMENTATION OF THIS SECTION PENDING
12 PROMULGATION OF THE RULES.

13 (10) AS USED IN THIS SECTION:

14 (A) "HEALTH CARE PROFESSIONAL" MEANS AN INDIVIDUAL LICENSED
15 UNDER ARTICLE 15 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978.

16 (B) "PUPIL WITH HEALTH CARE NEEDS" MEANS THAT THE PUPIL'S
17 PHYSICIAN HAS CERTIFIED TO THE SCHOOL DISTRICT THAT THE PUPIL HAS
18 1 OR MORE MEDICAL CONDITIONS THAT MAY PERIODICALLY BE
19 LIFE-THREATENING AND THAT REQUIRE ONGOING HEALTH CARE SERVICES
20 FROM TRAINED HEALTH CARE PERSONNEL, SPECIAL HEALTH CARE EQUIP-
21 MENT, OR TECHNOLOGICAL INTERVENTIONS, OR A COMBINATION OF THOSE
22 AND THAT THE PUPIL IS NOT ABLE TO TAKE CARE OF ALL OF HIS OR HER
23 HEALTH CARE NEEDS BY HIMSELF OR HERSELF.

24 (C) "SCHOOL DISTRICT" INCLUDES A SCHOOL DISTRICT, LOCAL ACT
25 SCHOOL DISTRICT, AND INTERMEDIATE SCHOOL DISTRICT.

1 (D) "SUPERVISION" MEANS THAT TERM AS DEFINED IN SECTION
2 16109 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION
3 333.16109 OF THE MICHIGAN COMPILED LAWS.