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SFA**BILL ANALYSIS**

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Senate Bill 631 (Substitute S-1 as passed by the Senate)
Sponsor: Senator John J.H. Schwarz, M.D.
Committee: Education

Date Completed: 11-1-99

RATIONALE

Asthma is a chronic disorder characterized by a tightness in the chest, shortness of breath, and a suffocating feeling in persons who suffer from the disease. As the leading chronic illness of children in the United States, asthma reportedly is the number one cause of school absences, with many schools reporting one out of five pupils having the disease. In Michigan, asthma affects approximately 180,000 children, reaching epidemic proportions in urban areas. Physicians note that asthma is the leading cause of preventable hospitalization, and can be controlled with proper medication. To control acute attacks, children who have asthma take a variety of medications, including medicines that are administered through an inhaler device. Whether a child is permitted to carry an inhaler on school premises is left to the discretion of school district officials. While the Revised School Code exempts school administrators, teachers, and other personnel from civil and criminal liability for administering medication to a student, there is no immunity for school personnel who permit students to carry and administer their own asthma medication. Some people believe that immunity should be extended to these situations so students with asthma can use an inhaler to alleviate or prevent asthmatic symptoms when they occur at school or school-sponsored activities.

CONTENT

The bill would amend the Revised School Code to do the following:

- **Permit a pupil, under certain conditions, to possess and use an inhaler to alleviate asthmatic symptoms or prevent the onset of these symptoms at school or school-sponsored activities and programs.**
- **Require a pupil to have written permission from his or her physician or health care provider to possess and use an inhaler, and require that a principal or other chief school administrator receive a copy of the approval.**

- **Permit a school district to request a pupil's parent or legal guardian to provide an extra inhaler to school personnel.**
- **Require a principal or chief administrator to notify each of a pupil's teachers that the pupil possessed an inhaler.**
- **Exempt school personnel, as specified in the bill, from civil liability for permitting a pupil to use, or prohibiting a pupil from using, an inhaler because an employee had a reasonable belief formed after a reasonable and ordinary inquiry that the bill's conditions had, or had not, been met.**

Under the bill, a pupil of a public school or nonpublic school could possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, at school, on school-sponsored transportation, or at any activity, event, or program sponsored by the pupil's school or in which the school was participating, notwithstanding any school or school district policy to the contrary. The bill would apply to a pupil if both of the following conditions were met: the pupil had written approval to possess and use the inhaler, as described above, from his or her physician or health care provider and, if the pupil were a minor, from his or her parent or legal guardian; and, the principal or other chief administrator of the pupil's school had received a copy of each written approval for the pupil.

As part of its general powers, a school district could request a pupil's parent or legal guardian to provide an extra inhaler to designated school personnel for use in case of an emergency. A parent or legal guardian would not be required to provide an extra inhaler. A principal or other chief administrator who was aware that a pupil possessed an inhaler pursuant to the bill would have to notify each of the pupil's classroom teachers of that fact and of the bill's provisions.

A school district, nonpublic school, member of a school board, director or officer of a nonpublic

school, or employee of a school district or nonpublic school would not be liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from a pupil's being prohibited by an employee of the school or school district from using an inhaler because of the employee's reasonable belief formed after a reasonable and ordinary inquiry that the conditions prescribed in the bill had not been satisfied. A school district, nonpublic school, or school personnel also would be exempt from civil liability, as specified above, for permitting a pupil to use an inhaler because of an employee's reasonable belief formed after a reasonable and ordinary inquiry that the bill's conditions had been satisfied.

The bill specifies that these provisions would not eliminate, limit, or reduce any other immunity or defense that a school district, nonpublic school, school board member, director or officer of a nonpublic school, or employee of a school or nonpublic school may have under other State law or the Code's provisions exempting certain school personnel from civil or criminal liability for administering medication to a pupil (MCL 380.1178).

(Under the bill, "school board" would include a school board, intermediate school board, or the board of directors of a public school academy. "School district" would include a school district, intermediate school district, or public school academy.)

Proposed MCL 380.1179

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the President of the Michigan Thoracic Society, in the past, delays in the provision of appropriate medication have precipitated fatal asthma episodes in school settings. The bill would ensure that students with asthma could possess and use inhalers to prevent or relieve asthmatic symptoms, if a student's physician and parent or legal guardian provided written approval. Self-management of asthma is an accepted part of treatment protocol today for children with asthma, and their ability to possess and use inhalers is an integral part of self-management plans for these children. The quick-relief metered-dose inhalers customarily prescribed today are very safe and have few side effects. Allowing students to carry and use their asthma medication would protect these children's health, reduce school absences and disruption of class time, and make easier for the students to participate in sports and other activities.

Supporting Argument

Under the Revised School Code, a school administrator, teacher, or other designated school employee who in good faith administers medication to a student in the presence of another adult or in an emergency that threatens the life or health of the student, pursuant to written permission of a pupil's parent or guardian, or in compliance with a physician's instructions, is not liable in a civil or criminal action as a result of administering the medication, except for an act or omission that amounts to gross negligence or willful and wanton misconduct. The Code, however, does not provide immunity for school districts or their employees when students possess and use an inhaler. To assist districts in developing medication administration policies, the Michigan Department of Education in November 1996, sent to local and intermediate school districts a memorandum suggesting policies and procedures on the safe administration of medicines in school, including suggested procedures to follow when students possess and administer their own medications. While some schools have policies that allow students to carry and use their own inhalers, others do not, apparently because of concerns about employees' liability. The bill would address these concerns by limiting the liability of school personnel who permitted, or did not permit, a student to use an inhaler because an employee had a reasonable belief that the bill's permission and notification conditions had or had not been met.

Opposing Argument

The bill would permit a school district to request, but not require, a student's parent or legal guardian to provide school personnel with an extra inhaler. Students often lose items in their backpacks and pockets while going to and from school, playing outside, or moving from a classroom to other parts of the school. This is especially possible among very young children and children with learning disabilities. For children with asthma, losing an inhaler is just as unsafe as having no inhaler at all. The bill should make it mandatory that an extra inhaler be provided to the school. The cost of a visit to an emergency room or hospitalization outweighs the cost of an inhaler. Without this requirement, a child's health would not be adequately protected.

Response: An inhaler costs from \$30 to \$60, which can be especially expensive if a family is not covered by health insurance. Reportedly, Medicaid permits a patient to ask for an exception to coverage for an extra inhaler, and many families of asthmatic children who are covered by Medicaid will ask for an extra inhaler to be available at home. It is not certain whether Medicaid would provide coverage for a third inhaler if students were required to provide one to their school.

Opposing Argument

The unsafe administration of medications in school poses a risk to students. While the bill would permit

a student to possess and use an inhaler as part of his or her self-management of the disease, there is no guarantee that children, especially young children, would be able to use an inhaler properly, particularly in an emergency. Despite the immunity provided as a result of the bill, school personnel still should be trained in the correct administration of these medications and a licensed health care professional should be available to students and school staff to ensure that procedures were established for the safe administration of medications by students.

Response: Due to the very nature of asthma, when a child experiences an attack he or she must be able to use an inhaler that provides a metered dose of the medication. According to physicians, children as young as five can handle an inhaler when given proper education by their doctors. If a child cannot use an inhaler to prevent or counteract asthmatic symptoms, it could result in his or her hospitalization.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: J. Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.