

LIABILITY FOR ADMINISTERING EPINEPHRINE OR OPIOID ANTAGONISTS

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**Senate Bills 417 (S-2) and 843 as referred to second
House committee**

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Peter J. Lucido

**Senate Bills 418 (S-1) and 844 (S-1) as referred to second House committee
Sponsor: Sen. Michael MacDonald**

1st House Committee: Health Policy

2nd House Committee: Ways and Means

Senate Committee: Health Policy and Human Services

Complete to 12-14-20

SUMMARY:

The four bills would limit liability for law enforcement, firefighters, and school employees who administer an epinephrine auto-injector in good faith. Liability would also be limited for school employees for good-faith administration of opioid antagonists.

Senate Bill 418 would create a new act, the Law Enforcement and Firefighter Access to Epinephrine Act. It would allow a law enforcement agency or organized fire department that is prescribed auto-injectable epinephrine (“eligible entity”) to purchase and possess it and distribute it to law enforcement officers or firefighters who have been trained in its use. If such a professional has completed that training, he or she could administer that auto-injectable epinephrine to an individual he or she believes is experiencing anaphylaxis, regardless of whether the individual has a prescription for epinephrine or has been previously diagnosed with an allergy.

Under the bill, the eligible entity that purchased, stored, or provided auto-injectable epinephrine for that purpose would be immune from civil liability for injuries, death, or damages arising out of its administration, as long as the conduct did not amount to gross negligence that was the proximate cause of injury, death, or damage. Likewise, an authorized law enforcement officer or firefighter would be immune from civil liability for injuries, death, or damages arising out of the administration or failure to administer it, as long as the conduct did not constitute willful or wanton misconduct that was the proximate cause of injury, death, or damage.

Eligible entities and law enforcement officers or firefighters who purchase, possess, distribute, administer, or fail to administer auto-injectable epinephrine would not be subject to criminal prosecution for those acts.

Additionally, the bill would not eliminate, limit, or reduce any other immunity or defense that may be available under Michigan law.

Senate Bill 417 would amend the Public Health Code to allow a law enforcement officer or firefighter of an entity authorized by the proposed Law Enforcement and Firefighter Access to Epinephrine Act to possess and administer auto-injectable epinephrine dispensed under the code.

MCL 333.17744a and 333.17744d

Senate Bill 843 would amend the Revised School Code to exempt school employees from criminal and civil liability if they administer an epinephrine auto-injector to an individual. Currently, that exemption applies to a school administrator, teacher, or other school employee designated by the school administrator and when it occurs pursuant to written permission of the student's parent or guardian. Under the bill, it would apply to any school employee who acted in good faith, as long as the employee did not commit an act or omission amounting to willful or wanton misconduct.

The bill would not eliminate, limit, or reduce any other immunity or defense that a person described under the bill would have under Michigan law.

MCL 380.1178

Senate Bill 844 would amend the Administration of Opioid Antagonists Act, created in 2019,¹ to extend an agency's and employee's or agent's immunity from civil liability to include death, in addition to injury or damage. It would also extend an agency's and employee's or agent's immunity from civil liability and criminal prosecution to instances in which the person failed to administer an opioid antagonist. The employee's or agent's immunity would exist as long as the conduct did not amount to willful or wanton misconduct that was the proximate cause of the injury, death, or damages.

The bill would not eliminate, limit, or reduce any other immunity or defense that a person described under the bill would have under Michigan law.

MCL 15.677

Tie-bars

Senate Bills 417 and 418 are tie-barred together, which means that neither could take effect unless both were enacted.

BACKGROUND:

According to testimony before the Senate Health Policy and Human Services committee on March 12, 2020, Senate Bills 843 and 844 were introduced to bestow the same protection from criminal liability on school personnel who would administer epinephrine and opioid antagonists to save another's life as that contemplated in Senate Bills 417 and 418 for certain law enforcement officers and firefighters.

¹¹ House Fiscal Agency analysis of 2019 PA 39 (HB 4367) and complementary acts:
<http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4367-85DB02C3.pdf>

FISCAL IMPACT:

Senate Bill 417 would not have an appreciable fiscal impact on any unit of state or local government.

Senate Bill 418 would have an indeterminate net fiscal impact on state and local units that fund law enforcement agencies and fire departments. Costs incurred under the bill would include procurement costs for auto-injectable epinephrine and training costs. However, these costs would only be incurred if eligible entities choose to procure and administer auto-injectable epinephrine. The cost of purchasing the products would depend on factors including the product selected, number of doses procured, insurance coverage, and manufacturer offers. For reference, the market price of the popular product “EpiPen” is over \$300 per dose (without any manufacturer offers, rebates, or insurance coverage). The bill would require law enforcement officers and firefighters to complete training before administering epinephrine, and the cost of this training would also vary.

Senate Bill 843 would have no fiscal impact on any unit of state or local government.

Senate Bill 844 would not have an appreciable fiscal impact on any unit of state or local government.

POSITIONS:

The Michigan Association of Health Plans indicated support for SBs 418, 843, and 844. (12-2-20)

Team Wellness indicated support for SB 844. (12-2-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.