

# Education Committee JOINT FAVORABLE REPORT

**Bill No.:** HB-5341

AN ACT PROVIDING IMMUNITY FROM LIABILITY FOR SCHOOL BUS

**Title:** DRIVERS WHO MAY ADMINISTER MEDICATION TO A STUDENT.

**Vote Date:** 3/23/2018

**Vote Action:** Joint Favorable Substitute

**PH Date:** 3/8/2018

**File No.:**

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## **SPONSORS OF BILL:**

Education Committee

## **REASONS FOR BILL:**

HB 5341 allows bus drivers who are employed directly by a school to administer “medicinal preparations” including controlled drugs to any student at the school pursuant to a medical professional’s note and a parent’s note. The bus driver must be under the general supervision of a school nurse. This bill also allows bus drivers who have been approved by the school nurse and school medical advisor to administer Epi-Pens. Furthermore, HB 5341 gives civil immunity to bus drivers for ordinary negligence in administering the medical preparations, but not for gross, willful, or wanton negligence.

## **Substitute Language**

The substitute language of HB 5341 completely replaces the underlying bill. The substitute language of HB 5341 adds bus drivers who administer Epi-Pens on or near a school bus to a student experiencing a life-threatening allergic reaction to the state’s good Samaritan law, which provides immunity from civil damages for acts of ordinary negligence in connection with providing emergency medical service. The immunity does not apply to gross, willful, or wanton negligence which (1) allowed bus drivers to administer controlled drugs and Epi-Pens to any student with a doctor’s and parent’s note and (2) granted bus drivers civil immunity in administering such medication. The substitute removes the provisions pertaining to oversight by school nurses.

**EFFECTIVE DATE: July 1, 2018**

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **Dianna R. Wentzell, Commissioner, CT State Department of Education (SDE):**

Commissioner Wentzell testified on behalf of the CT State Department of Education on HB 5341. She expressed many concerns about this proposal, particularly because there's no specificity around the type of medication, it's unclear whether a bus driver would know which students have a medically diagnosed allergic condition, and bus drivers are not always employees of the school district. The Commissioner stated that the Department would like to work with the Committee to amend the language.

## **NATURE AND SOURCES OF SUPPORT:**

### **Themis Klarides, House Minority Leader, 114<sup>th</sup> Assembly District:**

Representative Klarides submitted testimony thanking the Committee for raising HB 5341, which was her proposal. She urged passage to allow the full General Assembly the opportunity to debate the issue and to pass legislation to help students and families who suffer with life-threatening food allergies.

### **Pam Miniccuci, North Haven, EMT, bus driver, & parent of 2 children with life-threatening Food Allergies:**

Pam Miniccuci submitted testimony in support of HB 5341 from her unique perspective as an EMT, parent of a child with life-threatening food allergies, and a bus driver. She believes the current protocol of just pulling over, contacting dispatch on her radio, and waiting for emergency personnel to arrive is insufficient and dangerous. She also believes it would more traumatic for the other kids on the bus to watch a child die than to watch a child's life be saved.

### **Katie Dwelly, RN, parent of a child with life-threatening food allergies:**

Katie Dwelly submitted testimony in support of HB 5341 in which she shared the story of the time her 9 year old son, who has multiple food allergies, had an anaphylactic reaction during a food challenge in his doctor's office and how the swift action of the staff there saved his life. She also explained that after that happened she got an order from her son's doctor so that he could self-carry his Epi-Pen. She also found out that his bus driver had been trained in Epi-Pen use because her own children have food allergies but the bus driver has been instructed by her employer to pull over and call 911 if such an emergency should arise and not administer the medication.

### **Sarah Muratore, CT parent of a child with life-threatening food allergies:**

Sarah Muratore submitted testimony in support of HB 5341 because her preschool aged son has multiple food allergies and although the district offered him bus transportation, she declined it because she found out that the bus drivers are not trained to administer epinephrine which made her afraid to put her child on the bus.. She urged the committee to pass this bill and shared the following facts provided by Food Allergy Research & Education (FARE):

- Food allergies are a serious and growing public health problem with no cure. Fifteen million Americans have food allergies, including nearly 6 million children. In Connecticut, up to 8 percent of children have a food allergy.

- Connecticut is among the top five states for food anaphylactic food reactions and food allergy diagnosis insurance claims.
- An allergic reaction can escalate to anaphylaxis within minutes and, if left untreated, may cause death. Food allergy is the most common cause of anaphylaxis, but insect stings, medications and latex are other triggers
- Epinephrine is the first-line treatment for anaphylaxis. It is safe and simple to administer.
- Only 30 percent of reporting districts require bus drivers to have training in anaphylaxis and administering epinephrine.
- Current State Department of Education (CSDE) guidelines for students with food allergies were written in 2006, updated in 2012, and are out of date with current medical and legal standards of care. As an example, CSDE guidelines do not acknowledge food allergies may be considered a disability under the ADA and Section 504 of the Rehabilitation Act of 1973.

**Kathryn & Eric Sherman, Ridgefield, CT, parents of a child with a life-threatening food allergy:**

Mr. & Mrs. Sherman submitted testimony in support of HB 5341. They urged the committee to pass the bill and think it is the bus driver’s job to help keep the kids on their bus safe.

**NATURE AND SOURCES OF OPPOSITION:**

**Donna Kosiorowski, RN, MS, NCSN, Shelton, Association of School Nurses of CT (ASNC):**

Donna Kosiorowski, Sarah Ferguson, and Emily Sansavaro spoke at the hearing on behalf of ASNC in strong opposition to the provision in HB 5341 that requires school nurses to train bus drivers to administer Epi-pens and other medications and delegate that task to them. In her written testimony, Donna Kosiorowski explained that the National Council of State Boards of Nursing (NCSBN) has identified “Five Rights of Delegation” that provide a resource to assist registered nurses in making delegation decisions. Those guidelines include: the right task, right circumstance, right person, right direction/communication and the right supervision. Delegating to an individual with no formal medical training, who is focused on driving a moving vehicle full of children, that you can’t directly supervise does not fit within these guidelines. Her testimony also cited a 1995 declaratory ruling made by the Connecticut Board of Examiners for Nursing (CBEN) that clearly stated that when making decisions about delegation, a nurse shall consider, “the proximity and availability of the nurse responsible for delegation assistance.” (CNEN, 1995, 7)

**Joan Cagginello, MS, BSN, RN, Milford:**

Joan Cagginello, who has over 40 years of nursing experience, 25 of which have been spent in School Health Services, submitted testimony in strong opposition of HB 5341 because as the bill reads school bus drivers have been added to the list of “qualified school personnel”. She believes that as written, for both logistical and for safety reasons, this cannot be done. Her four main points are that:

- In many CT communities school bus services are contracted services and neither the company nor the bus drivers are school/Board of Education employees. Therefore, it would be impossible for a school nurse to delegate medication administration to them.

- Section 10-212a requires supervision by the school nurse; this is impossible as the busses consistently run before & after school hours, including weekend trips/events and out of state trips/events, when the school nurse is unavailable.
- Section 10-212a requires periodic review with Qualified Personnel ~ with the frequent changes in School Bus Drivers this would be a logistical challenge to ensure periodic reviews of medication administration knowledge & competency.
- Finally, it is the sole responsibility of the School Bus Driver to drive the school bus and ensure the safety of the up to 30+ children that may be on their bus each day. How would a bus driver who has no medical training, safely and competently administer medication to a child while supervising the others? Safety would be seriously compromised.

**Connecticut School Transportation Association (COSTA):**

COSTA submitted testimony expressing concerns about the practicality of this bill and the additional responsibility it places on school bus drivers. They explained how the school bus drivers already have a very tough job that requires a great deal of training and since they are focused on the road with their backs to the children it is not practical to expect that they can be watching for signs of anaphylaxis. They went on to explain that the drivers are not medical personnel, and that these training mandates would come at a cost to the towns and bus companies. They also added their concern that the increased mandates and responsibilities being placed on bus drivers is adding to the bus driver shortage in the state as it is scaring away quality applicants.

**Aaron Crook, BA, RN, Coordinator of Nursing Services, Ridgefield Public Schools:**

Aaron Crook submitted testimony in opposition of HB 5341 because he believes that bus drivers do not have the knowledge base and training to understand and safely administer medication to children. He also provided a comprehensive list of important logistical and procedural concerns as detailed below:

- How will medication be stored safely without children having access to it?
- How will medication be stored in a temperature-controlled environment through the various seasons?
- Will medication be kept overnight with the driver or at the school bus company?
- How will controlled substances be accounted for?
- How will a school bus driver with no medical training be able to determine if a student requires medication or not?
- Will a school bus driver be using a stethoscope to listen to lung sounds of students suspected of having an asthmatic episode?
- Will school bus drivers administer rectal valium to a student experiencing an acute seizure on the school bus?
- If the school bus driver is called to administer an emergency medication, who will be responsible for the other students' safety during this time?
- If the school bus driver makes a medication error and either fails to administer a medication or administers a medication inappropriately, what will the consequences be?
- If a school bus driver is reluctant or does not understand their responsibilities, will they be compelled to administer medication against their wishes?

**Connecticut Trial Lawyers Association (CTLA):**

CTLA submitted testimony in opposition of HB 5341 because the bill aims to exempt bus drivers from civil liability. They do not believe this change is necessary since the bus driver's actions would be considered reasonable, so it would not create liability against them in the first place. They also believe that this bill would create an unreasonable expansion of this section of statutes immunity laws which have been reserved for a very few trained individuals, and noted that since most bus drivers are not district employees, they really shouldn't be added to this section of the statutes. CTLA also said that they are supportive of bus drivers taking any and all action necessary to save children, and that there is nothing in the law preventing them from doing so.

**Lisa Davenport, RN, BSN, District Health Coordinator, Bethel Public Schools:**

Lisa Davenport, who has been a registered nurse for 32 years and has spent 12 of those years in school health services, also submitted testimony in opposition of HB 5341. She cited that the Nurse Practice Act states that medication delegation is, "The Transfer of responsibility of performing a nursing task to unlicensed assistive personnel while retaining the accountability of doing the task." She went on to explain that in her district the bus drivers are not district employees, so she doesn't think it is right for them to be added to the list of "qualified school personnel" and believes that them not being district employees will make the training, evaluation of competence, and supervision included in the bill impossible.

**Suzanne Levasseur, APRN, CPNP, MSN, NCSN, Sandy Hook:**

Suzanne Levasseur has worked in school health for the past 20 years and she also submitted testimony in opposition of HB 5341. In her testimony she echoed many of the sentiments of her colleagues by explaining that bus drivers are not typically school district employees and citing the various challenges involved with assessing, training, and supervising these drivers as well as the day to day challenges of safely storing and transporting the medication. She also referenced that the Nurse Practice Act states that when tasks are delegated to assistive personnel, that the school nurses retain accountability for that task.

**Allyson McLaughlin, RN, Fairfield:**

Allyson McLaughlin, a school nurse in Fairfield, also submitted testimony in opposition of HB 5341 citing many of the same logistical concerns as the other nurses. She also made the point that because the bill makes the school nurses responsible for the training, competence assessment, and supervision of these bus drivers; Connecticut school nurses are in effect being asked to put their license and livelihood on the line.

**Jennifer Moore, RN, Fairfield:**

Jennifer Moore submitted testimony expressing her opposition of HB 5341. As a school nurse, she is not comfortable with the idea of delegating the responsibility of administering medication to an individual with no medical training, whose competence she would be required to assess, who may not actually be an employee of the district. She also has logistical concerns about how the drugs will be stored, administered and passed back and forth.

**Breege O'Reilly, RN, Norwalk Public Schools:**

Breege O'Reilly submitted testimony that included many of the concerns shared by her fellow school nurses regarding the fact that in her district the bus drivers are not district employees and that she is not comfortable with the idea of having to assess the competence of the bus drivers and delegate the responsibility of administering medication to an individual that they cannot directly supervise.

**Reported by: Amy L. Orschel**

**Date: April 4, 2018**