

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1810 (Levine) – As Amended March 14, 2022

PROPOSED CONSENT (As Proposed to be Amended)

**SUBJECT:** PUPIL HEALTH: SEIZURE DISORDERS

**KEY ISSUE:** SHOULD THE SEIZURE SAFE SCHOOLS ACT BE ESTABLISHED, ALLOWING SCHOOLS TO DESIGNATE ONE OR MORE VOLUNTEERS TO RECEIVE TRAINING FOR THE EMERGENCY USE OF ANTI-SEIZURE MEDICATION FOR A PUPIL DIAGNOSED WITH SEIZURES, A SEIZURE DISORDER, OR EPILEPSY WHO IS SUFFERING FROM A SEIZURE; AND PROVIDING IMMUNITY FROM LIABILITY TO VOLUNTEERS UNDER SPECIFIED CIRCUMSTANCES?

**SYNOPSIS**

*In the United States, an estimated 3,400,000 people – of which 470,000 are children - have been diagnosed with epilepsy, a neurological disorder involving recurrent unprovoked seizures according to the CDC. Epilepsy is the fourth most common neurological disorder, and 1 in 26 people will develop epilepsy in their lifetime. Seizures are unpredictable and can occur at any time—including during school hours. While school nurses are trained to administer medication, school nurses may not be onsite or available when one occurs.*

*This bill seeks to encourage school personnel to be trained in the administration of emergency anti-seizure medication to a pupil who is experiencing a seizure because of a seizure disorder or epilepsy, who has been prescribed an emergency anti-seizure medication by the pupil's health care provider. It does so by providing immunity from civil liability to the school personnel. The bill is similar to other recently enacted measures that seek to encourage school personnel to volunteer to provide emergency medical care by providing them with immunity from civil liability as well, in at least some cases, criminal prosecution and professional review. The analysis points out that the bill in print grants immunity that is overly broad. The author proposes amendments to address these issues that are incorporated into the summary of the bill and explained in the analysis.*

*Sponsored by the Epilepsy Foundation, the bill was recently approved by the Assembly Education Committee by unanimous vote. It is supported by a number of regional epilepsy foundations, the California Neurology Society, National Association of Pediatric Nurse Practitioners, and a number of other businesses and health advocates. It has no opposition on file.*

**SUMMARY:** Establishes the Seizure Safe Schools Act, allowing schools to designate one or more volunteers to receive initial and annual refresher training for the emergency use of anti-seizure medication for a pupil diagnosed with seizures, a seizure disorder, or epilepsy, if the pupil is suffering from a seizure; and providing immunity from civil, criminal, and regulatory liability under specified circumstances. Specifically, **this bill:**

- 1) Establishes the Seizure Safe Schools Act.

- 2) Authorizes a school or a local educational agency (LEA), upon a request from the parent or guardian of a pupil diagnosed with seizures, a seizure disorder, or epilepsy, to designate one or more volunteers at the pupil's school to receive initial and annual refresher training regarding the emergency use of anti-seizure medication from the school nurse or other qualified person, as specified.
- 3) Prohibits any retaliation against any individual who chooses not to volunteer or who rescinds the individual's offer to volunteer, including after receiving training.
- 4) Authorizes an employee who volunteers to administer emergency anti-seizure medication to rescind their offer at any time, including after receipt of training.
- 5) Authorizes a school nurse, or if a school nurse is not available, a volunteer, who has received training, to administer emergency anti-seizure medication to a pupil who is suffering from a seizure.
- 6) Requires the Superintendent of Public Instruction (SPI) to establish minimum standards of training to recognize and respond to seizures, including training for the administration of anti-seizure medication by July 1, 2023, and to review the standards every five years or sooner.
- 7) Requires the SPI to consult with specified organizations and providers with expertise in epilepsy and administering medications, in developing these minimum standards of training, including, but not limited to the Epilepsy Foundation, California School Nurses Organization, California Medical Association, and the American Academy of Pediatrics (AAP).
- 8) Requires that the training include all of the following:
  - a) Recognition of the signs and symptoms of seizures and the appropriate steps to be taken to respond to those symptoms;
  - b) Administration, or assisting with the self-administration of, an emergency anti-seizure medication, or a medication or therapy prescribed to treat the symptoms of seizures, seizure disorders, or epilepsy, including manual vagus nerve stimulation, approved by the U.S. Food and Drug Administration (FDA) or any successor agency;
  - c) Basic emergency follow-up procedures; and
  - d) Written materials covering the information required; and requires those written materials to be retained by a school.
- 9) Requires that training established be consistent with the most recent guidelines for medication administration issued by the California Department of Education (CDE), and be provided to the volunteer at no cost to the volunteer during their regular working hours.
- 10) Requires a school or LEA, upon request from a parent or guardian, to distribute a notice at least once, but not more than two times, per school year to all staff, including all of the following information:

- a) A description of the request for volunteers to be trained to recognize and respond to seizures, including training to administer anti-seizure medication to a pupil suffering from a seizure;
  - b) A description of the training that the volunteer will receive, as specified;
  - c) The right of an employee to rescind their offer to volunteer; and
  - d) A statement that there will be no retaliation against any individual for rescinding their offer to volunteer, including after receiving training.
- 11) Notwithstanding 10), above, authorizes an additional two notices per school year to be distributed to all staff if a volunteer rescinds their offer to volunteer or is no longer able to act as a volunteer for any reason, or if the placement of a pupil changes and the pupil no longer has access to a trained volunteer.
- 12) Requires an LEA, if there are no volunteers at the pupil's school to receive the training and to be willing to administer anti-seizure medication, to notify the parent or guardian of the pupil's right to be assessed for services and accommodations guaranteed by federal law.
- 13) Specifies that this section does not preclude the negotiation by collective bargaining of additional compensation for volunteers.
- 14) Requires a school or LEA, prior to administering emergency anti-seizure medication or therapy to a pupil, to obtain a seizure action plan from the pupil's parent or guardian that includes all of the following:
- a) Authorization in writing each school year for the medication to be administered to the pupil at school;
  - b) A copy of the statement from the pupil's health care provider that includes all of the following information:
    - i) Pupil's name;
    - ii) Name and purpose of the medication;
    - iii) Prescribed dosage;
    - iv) Method of administration;
    - v) Frequency with which the medication may be administered;
    - vi) Detailed seizure symptoms that identify when the medication is necessary;
    - vii) Circumstances under which the medication may be administered;
    - viii) Any potential adverse responses and recommended mitigation measures, including when to call emergency services, including 911; and

- ix) A protocol for observing the pupil after a seizure, including the length of time the pupil should be under direct observation.
  - c) How and where the emergency anti-seizure medication will be stored at the school;
  - d) A signed notice verifying that the parent or guardian was given information, and understands that it is their right to request a 504 plan or IEP at any time; and
  - e) A signed notice verifying that a pupil's seizures may be responded to, including with the administration of anti-seizure medication prescribed to the pupil, by a non-medical professional who has received training.
- 15) Requires a school administrator, or their designee, to notify the school nurse if an employee at the school administers an emergency anti-seizure medication, or if there is no school nurse in the LEA, to notify a superintendent or administrator.
- 16) Requires the school, with written parental consent, to distribute the seizure action plan to any school personnel or volunteers responsible for the supervision or care of that pupil, and to keep the plan on file in the office of the school nurse or school administrator, in compliance with all state and federal privacy laws.
- 17) Requires that the anti-seizure medication to be provided to the school with the dispensing pharmacy's label intact.
- 18) Requires an LEA to ensure that each employee who volunteers to administer anti-seizure medication will be provided defense and indemnification by the LEA for any and all civil liability, and requires that this information be provided in writing to the volunteer and retained in their personnel file.
- 19) Specifies that notwithstanding any other law, but subject to 20), below, a trained person who administers anti-seizure medication, in good faith and not for compensation, to a pupil who appears to be experiencing a seizure in compliance with the requirements of the bill will not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the person's acts or omissions in administering the anti-seizure medication.
- 20) Specifies that 19), above, does not affect any of the following:
- a) A person's liability for an act or omission that constitutes gross negligence or willful or wanton misconduct.
  - b) A person's culpability for an act that constitutes a crime and is not specifically authorized by this section.
- 21) Clarifies that a public employee who volunteers to administer emergency anti-seizure medication is not providing emergency medical care for compensation, despite being a paid public employee.
- 22) Defines the following terms for purposes of this article:

- a) “Authorizing physician and surgeon” may include, but is not limited to, a physician and surgeon employed by or contracted with an LEA, a medical director of the local health department, or a local emergency medical services director;
- b) “Local educational agency” means a school district, county office of education (COE), or charter school;
- c) “School” means a public school maintained by a school district, COE, or charter school;
- d) “Seizure action plan” means a written, individualized health plan designed to acknowledge and prepare for the health care needs of a pupil diagnosed with seizures, a seizure disorder, or epilepsy.
- e) “Volunteer” means an employee who has volunteered to administer emergency anti-seizure medication to a pupil suffering from a seizure, has been designated by a school or LEA, and who has received training, as specified.

**EXISTING LAW:**

- 1) Provides that, “everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” (Civil Code Section 1714 (a).)
- 2) Provides that any person who has voluntarily completed a training course who administers an epinephrine auto-injector, in good faith and not for compensation, to another person who appears to be experiencing anaphylaxis at the scene of an emergency situation is not liable for any civil damages resulting from his or her acts or omissions in administering the epinephrine auto-injector, if that person has complied with the requirements and standards governing how that auto-injector is obtained and stored, and with the express or implied consent of the person, to treat anaphylaxis. (Civil Code Section 1714.23 (b)(1).)
- 3) Further provides that an authorized entity (a for-profit, nonprofit, or government entity or organization that employs at least one person or utilizes at least one volunteer or agent that has voluntarily completed a training course prescribed in law) shall not be liable for any civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct connected to the administration of an epinephrine auto-injector, in good faith and not for compensation, to another person who appears to be experiencing anaphylaxis by any one of its employees, volunteers, or agents who is a lay rescuer, if the entity has complied with all applicable requirements in law; and that the failure of an authorized entity to possess or administer an epinephrine auto-injector does not result in civil liability. (*Ibid.*)
- 4) Provides that each pupil who is required to take prescribed medication by a health care provider during the school day may be assisted by the school nurse *or other designated school personnel* if the school district receives a written statement from the physician detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and a written statement from the parent, foster parent, or guardian

of the pupil, indicating the desire that the school district assist the pupil in the matters set forth in the physician's statement. (Education Code Section 49423.)

- 5) Requires the California Department of Education (CDE) to develop and recommend to the State Board of Education (SBE), regulations regarding the administration of medications in public schools pursuant to Section 49423, and requires any regulations to be limited to addressing a situation where a pupil's parent or legal guardian has requested to have medication dispensed to the pupil, based upon written consent, and within the guidelines prescribed by the pupil's health care provider. (Education Code Section 49423.6.)
- 6) Requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered to be trained on using them; and allows those personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. (Education Code Section 49414 (a).)
- 7) Allows school districts, county offices of education, and charter schools to choose to allow non-medical school personnel to administer, or assist with the administration of, specific medications to students after receiving specified training and with parental and medical consent, if a school nurse is not available, including emergency epinephrine auto-injectors. (*Ibid.*)
- 8) Requires a school district, county office of education, or charter school to ensure that each employee who volunteers to be trained on the administration of epinephrine auto-injectors will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability. (Education Code Section 49414 (j).)
- 9) Provides that, except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. (Government Code Section 820.2.)
- 10) Specifies in the Nursing Practices Act, the scope of practice for nursing, which specifically includes the administration of medication, and prohibits any person from engaging in the practice of nursing without a license. (Business & Professions Code Sections 2725 and 2732.)
- 11) As an exception to 10), clarifies that, "The performance by a person of the duties required in the physical care of a patient or carrying out medical orders prescribed by a licensed physician, provided the person shall not in any way assume to practice as a professional, registered, graduate, or trained nurse." (Business & Professions Code Section 2727 (e).)
- 12) Provides in regulation that any pupil who is required to take, during the regular school day, prescribed medication may be assisted by a school nurse or other designated school personnel if both of the following conditions are met:
  - a) The pupil's authorized health care provider executes a written statement specifying, at a minimum, the medication the pupil is to take, the dosage, and the period of time during

which the medication is to be taken, as well as otherwise detailing (as may be necessary) the method, amount, and time schedule by which the medication is to be taken.

- b) The pupil's parent or legal guardian provides a written statement initiating a request to have the medication administered to the pupil or to have the pupil otherwise assisted in the administration of the medication, in accordance with the authorized health care provider's written statement. (Title 5 California Code of Regulation (CCR) 600-611.)

13) Requires a public employer to indemnify their employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. (Labor Code Section 2802.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** This bill seeks to encourage school personnel to be trained in the administration of emergency anti-seizure medication to a pupil to whom it is prescribed when the pupil is experiencing a seizure because of a seizure disorder or epilepsy. It does so by providing to the school personnel immunity from, among other things, civil liability for any injury resulting from administration of the medication. According to the author:

AB 1810 would establish the Seizure Safe Schools Act to allow schools to designate one or more volunteers to receive initial and annual refresher training for the emergency use of anti-seizure medication for a pupil diagnosed with seizures, a seizure disorder, or epilepsy, if the pupil is suffering from a seizure. California has enacted similar laws for the use of epinephrine for allergic reactions (SB 1266, Huff 2014) and naloxone for opioid overdoses (AB 1748, Mayes 2016).

. . . This bill will provide school sites with information and training necessary to aid children with Epilepsy while on campus and create a *safer environment for these children to succeed*.

According to the author, at least 11 other states have laws similar to the one proposed by this bill: South Carolina, Rhode Island, Ohio, Hawaii, Alabama, Oklahoma, Indiana, Tennessee, Texas, Illinois, and Kentucky.

***Prevalence of Epilepsy in the United States and Among School-Aged Children.*** In the United States, an estimated 3,400,000 people – of which 470,000 are children – have been diagnosed with epilepsy, a neurological disorder involving recurrent unprovoked seizures, according to the CDC. Epilepsy is the fourth most common neurological disorder in the nation; and one in 26 people will develop epilepsy during their lifetime. According to the Epilepsy Foundation, “There are approximately 59,800 children living with epilepsy and seizures in California.” The Foundation also points out that seizures are unpredictable in terms of when and where they occur:

Our organization knows that seizures are unpredictable and can occur at any time—including during school hours. While school nurses are trained to recognize and respond to seizures, a nurse may not always be on site at school or available when one occurs. It is crucial that other school employees have the opportunity to be trained properly to recognize and, if necessary, to respond to a seizure and help the child.”

Aside from those who have the disorder, many lives are affected by epilepsy. Seizures can occur at any time, including during school hours. While school nurses are trained to administer medication, school nurses may not be onsite or available when a seizure occurs and when administration of anti-seizure medication is therefore necessary. As explained below, school personnel are allowed under current law to administer medication at the direction of a medical provider with the consent of a parent or guardian, and some school districts at least offer training in the administration of anti-seizure medication to students with epilepsy. This bill would formalize and standardize that practice so that all school districts would participate. The bill also would provide *additional* (but arguably duplicative) liability protections to school personnel—so school personnel who administer prescribed anti-seizure medication as allowed under the bill would be immune from civil liability, criminal liability, and professional review, in virtually all cases.

***Past Legislative Efforts to Address the Issue of Epileptic Seizures in Schools.*** As the result of SB 161 (Huff, Chap. 560, Stats. of 2011), California enacted a pilot program that allowed school districts, county offices of education (COE), or charter schools to participate in a program to train nonmedical school employees who volunteer to administer emergency anti-seizure medication to students with epilepsy. The requirements of the program were quite specific and rigorous. Among other things, SB 161 required the following:

- A volunteer must receive training from a licensed health care professional regarding the administration of an emergency anti-seizure medication.
- Any agreement by an employee to administer an emergency anti-seizure medication must be voluntary.
- An employee of the school or charter school or an employee of the school district or COE or charter school administrator shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any staff member who does not choose to volunteer, including, but not limited to, direct contact with the employee.
- Any employee who volunteers pursuant to this section may rescind his or her offer to administer an emergency anti-seizure medication up to three days after the completion of the training.
- A school district, COE or charter school that elects to participate must ensure that each employee who volunteers will be provided defense and indemnification by the school district, COE or charter school for any and all civil liability, in accordance with, but not limited to, current law governing claims and actions against public employees. Written authorization from the parent or guardian for a nonmedical school employee to administer an emergency anti-seizure medication;
- A written statement from the student's health care practitioner that includes specified information, including (among other things) dosage, seizure symptoms, when to administer medication, adverse reactions, a protocol for observing the student after a seizure, and a requirement that the student's parent or guardian and the school nurse must be contacted by the school or charter school administrator or, if the administrator is not available, by another school staff member following a seizure to continue the observation protocol.
- Compensation of a volunteer, in accordance with that employee volunteer's pay scale pursuant to current law governing overtime pay for classified employees.

However, the statutes enacted pursuant to SB 161 were allowed to sunset on January 1, 2017 without being renewed or made permanent in state law.

***"Good Samaritans" and Related Immunities in Existing Law.*** Under traditional tort doctrines, everyone is responsible for their own willful acts, as well as for all injuries and damages caused by those actions. This presumption is codified in Civil Code Section 1714 (a):

Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

Consistent with this presumption of personal responsibility, a person has "no duty to rescue" or come to the aid of another person in need. However, once a person decides to act, he or she must do so with reasonable care or else be responsible for any "injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person." (*Ibid.*)

Critics of this rule claim that it creates a perverse disincentive; the person who callously ignores another in need will suffer no legal consequences, while the person who engages in the more socially desirable behavior of helping another will be liable if something goes wrong. As such, California, like many other states, has enacted several statutes which are intended to encourage individuals to come to the aid of their fellow human beings in certain situations – to be, that is, "good Samaritans." These statutes invariably take the form of granting immunity for any harm that the good Samaritan causes while voluntarily rendering emergency care. In addition, the Legislature has generally provided immunity only to persons who do not act for compensation (which is more consistent with the concept of the good Samaritan).

Examples of existing immunities include:

- California's general "good Samaritan" statute, which provides that any person who renders emergency medical or non-medical assistance at the scene of an emergency, and who does so "not for compensation," is not liable for harms caused by rendering such assistance unless the harm is a result of the person's "gross negligence or willful or wanton misconduct." (Health & Safety Code Section 1799.102 (b).)
- A statute that seeks to encourage persons to obtain cardiopulmonary resuscitation (CPR) training provides immunity to a trained person who renders CPR at the scene of an emergency, providing that they are not liable for damages that results from their acts or omissions, unless his or her conduct constitutes gross negligence or is provided in exchange for compensation. (Civil Code Section 1714.2.)
- Emergency, uncompensated use of AED defibrillators, epinephrine auto-injectors, and opioid antagonists, among others. (Civil Code Sections 1714.21, 1714.22, 1714.23.)
- Various professionals, including nurses, police officers, and emergency medical technicians who provide emergency services while off-duty, or in addition to regular duties, are also granted qualified immunity. (*See e.g.* Health & Safety Code Sections 1799.102 (a), 1799.103, 1799.104, 1799.106, and 1799.107, and Business & Professions Code Section 2727.5.)

At the same time, in order to discourage the overzealous interloper (who might do more harm than good), these statutes typically offer only a "qualified" immunity – that is, while the person is not liable for damages caused by ordinary negligence (the standard threshold for finding liability), he or she is still liable for damages caused by "gross negligence" or willful, wanton, or intentional misconduct. ("Gross negligence" generally requires a reckless disregard for the safety

of others.) This qualifying language is almost universally included, in one form or another, in the state's immunity statutes.

***Liability Protections for Public Employees.*** Public employees generally cannot be held civilly liable for their discretionary acts. "Except as otherwise provided by statute a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Government Code Section 820.2.) In fact, "public employees are immune for their discretionary acts, even those which constitute breaches of actionable duty, unless a statute otherwise provides. ... This ... can only be achieved by a clear indication of legislative intent that statutory immunity is withheld or withdrawn in the particular case" [Citation deleted]. (*Conn v. Western Placer Unified School Dist.* (2010) 186 Cal.App.4th 1163, 1179.) A discretionary act is one that calls for the exercise of judgment (i.e., discretion), weighing of evidence and consideration of advantages and disadvantages of making a decision or taking action, such as a board's decision whether or not a worker is permanently disabled and therefore unable to return to work. (*Masters v. San Bernardino County Employees Retirement Assn.* (1995) 32 Cal.App.4th 30, 46-47); or a social service worker's investigation regarding the suitability of prospective adoptive parents (*Ronald S. v. County of San Diego* (1993) 16 Cal. App. 4th 887, 897).

Furthermore, an employee is generally entitled to a legal defense from their government employer, who is required to indemnify all public employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of his or her obedience to the directions of the employer, *even though unlawful*, unless the employee, at the time of obeying the directions, believed them to be unlawful." (Labor Code Section 2802.) The employee is required to "indemnify the public entity" only in instances where the employee acted outside the scope of his employment or "acted with actual fraud, corruption, or malice." (*Connelly v. State* (1970) 3 Cal.App.3d 744, 750.)

***Special Immunity Provisions for Volunteers who Provide Emergency Medical Care in Schools.*** Existing state law provides qualified immunity to school personnel who *volunteer* to be trained to administer emergency medical assistance in some circumstances. For example, as a result of AB 1748 (Mayes) Chapter 557, Statutes of 2016, school personnel may volunteer to be trained in the use of naloxone hydrochloride (naloxone) or another opioid antagonist to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an opioid overdose; and are provided immunity from liability when the medication is administered in good faith and not for compensation, to a person who appears to be experiencing an opioid overdose. If the person is a licensed health care provider, they shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for his or her acts or omissions in administering the naloxone hydrochloride or another opioid antagonist. Likewise, SB 1266 (Huff) Chapter 321, Statutes of 2014, allows school personnel who volunteer and are trained to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. In both cases, immunity does not apply in a case of gross negligence or willful and wanton misconduct of the person who renders emergency care treatment.

Existing law also requires the employers of these volunteers - a school district, county office of education, or charter school - to provide the volunteers with legal defense and indemnification. For example, Education Code Section 49414 (j) provides:

A school district, county office of education, or charter school shall ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

Education Code Section 49414.3 (i) provides similar defense and indemnity obligations related to the emergency use of naloxone hydrochloride or another opioid antagonist. These provisions are consistent with (and duplicative of) the general duty of a public employer under Labor Code Section 2802 to indemnify all public employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties."

The rationale for these special immunity and indemnity provisions for volunteers is presumably to encourage school personnel, who otherwise would have no duty to be trained or to provide emergency medical care, to do so. This is similar to the rationale in the Civil Code for providing immunity to persons who are trained to administer CPR. (See Civil Code Section 1714.2 (a).) Such immunity is intended to "encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens." (*Ibid.*)

***Case law (and statutes) allowing administration of anti-seizure medication by school personnel who are not licensed health care providers.*** While it generally is unlawful to engage in the practice of nursing without a license in California, (See Business & Professions Code Section 2727), the prohibition against unlicensed nursing does not apply in the following circumstances:

- (a) Gratuitous nursing of the sick by friends or members of the family.
- (b) Incidental care of the sick by domestic workers or by persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter.
- (c) Domestic administration of family remedies by any person.
- (d) Nursing services in case of an emergency. "Emergency," as used in this subdivision includes an epidemic, pandemic, or other public disaster.
- (e) The performance by a person of the duties required in the physical care of a patient or carrying out medical orders prescribed by a licensed physician, provided the person shall not in any way assume to practice as a professional, registered, graduate, or trained nurse. (Business & Professions Code Section 2727 (a)-(e).)

The "medical-orders exception" in subdivision (e) of Section 2727 has been interpreted to allow school employees who are not licensed health care providers to administer anti-seizure medication to students, as long as they have parental consent in accordance with written directions from a student's treating physician. (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 591.) In the *American Nurses* case, the nurses association challenged a regulation of the California Department of Education (CDE), specifically authorizing school personnel who were not school nurses to administer anti-seizure medication prescribed by a medical provider to students experiencing a seizure as a result of epilepsy or another seizure disorder. According to the California Supreme Court, CDE had authority to issue the regulation pursuant to Business & Professions Code Section 2727 subdivision (e), which "permits a layperson to carry out a physician's medical orders for a patient, even orders that would otherwise fall within the

definition of nursing practice, without thereby violating the rule against unauthorized practice.” (*Id.* at p. 585.)

**Conclusion.** For numerous reasons, under existing law, school personnel who administer anti-seizure medication in good faith to a student who is having a seizure would face almost zero chance of being held civilly or criminally liable for doing so, even if they caused injury (or even death) as a result.

First, they would likely be considered to be a “good Samaritan” by rendering emergency medical assistance at the scene of an emergency “not for compensation,” and therefore would not be liable for any harms caused by rendering assistance unless it was the result of their “gross negligence or willful or wanton misconduct.” (Health & Safety Code Section 1799.102 (b).)

Second, as public employees, they are “not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” (Government Code Section 820.2.) In the case of a trained (or even untrained) school employee who opted, in a medical emergency, to administer anti-seizure medication to a student for whom the medication had been prescribed, such a decision would clearly be discretionary and therefore not subject to civil liability. They would also be entitled to a legal defense from their government employer and would only be required to “indemnify the public entity” if they had “acted with actual fraud, corruption, or malice.” (*Connelly v. State, supra*, 3 Cal.App.3d at p. 750.)

Third, they would not be subject to criminal sanction for the unauthorized practice of nursing if they administered anti-seizure medication to a student that had been prescribed by a physician under Business & Professions Code Section 2727 (e).

Finally, assuming that the administration occurred during the regular school day, assisting a student to take anti-seizure medication during a seizure would be specifically authorized by CDE regulations if both of the following conditions were met:

- a) The pupil's authorized health care provider executed a written statement specifying, at a minimum, the medication the pupil is to take, the dosage, and the period of time during which the medication is to be taken, as well as otherwise detailing (as may be necessary) the method, amount, and time schedule by which the medication is to be taken.
- b) The pupil's parent or legal guardian provided a written statement initiating a request to have the medication administered to the pupil or to have the pupil otherwise assisted in the administration of the medication, in accordance with the authorized health care provider's written statement. (Title 5 California Code of Regulation (CCR) 600-611.)

Therefore, like other immunity and indemnity provisions in current law for school personnel who volunteer to administer medication to students who are experiencing medical emergencies, the immunity provisions in this bill likely are not necessary. But they may provide additional assurance and comfort to potential volunteers that volunteering would not expose them to any liability. Therefore, they may be helpful to achieve the author’s purpose for introducing this bill.

**This bill.** Sponsored by the Epilepsy Foundation, this bill seeks to establish the Seizure Safe Schools Act, allowing schools to designate one or more volunteers to receive initial and annual refresher training for the emergency use of anti-seizure medication for a pupil diagnosed with

seizures, a seizure disorder, or epilepsy, if the pupil is suffering from a seizure. It would authorize the pupil's local educational agency, upon receipt of a request from the pupil's parent or guardian, to designate one or more volunteers at the pupil's school to receive initial and annual refresher training regarding the emergency use of anti-seizure medication. Most relevant to this Committee, it also provides immunity from civil, criminal, and regulatory liability under specified circumstances, and requires that any volunteer who provides emergency medical care is provided with defense and indemnification by the local educational agency for any and all civil liability.

The bill in print provides that a person trained as required by the bill who administers emergency anti-seizure medication or medication prescribed for seizure disorder symptoms in good faith and "not for compensation," to a pupil diagnosed with seizures who appears to be experiencing a seizure "shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the person's acts or omissions in administering the emergency anti-seizure medication." (The bill clarifies that a "public employee who volunteers to administer emergency anti-seizure medication" pursuant to the bill "is not providing emergency medical care for compensation, notwithstanding the fact that the employee is a paid public employee.")

To limit this broad grant of immunity, the bill in print provides qualifying language that the immunity "shall not apply in a case of gross negligence or willful and wanton misconduct of the person who renders emergency care treatment by the use of emergency anti-seizure medication."

**Author's amendments.** While the language above appropriately limits the bill's grant of immunity from *civil liability*, it does not limit the bill's grants of immunity from both *criminal liability*, and *professional review*. Thus, in the highly unlikely scenario that a teacher committed a sexual assault during the administration of a prescribed anti-seizure medication, the language would at least allow the teacher to argue that they were not subject to criminal prosecution for that illegal act. In a similarly unlikely scenario where a school nurse (who would be licensed and subject to professional review of the California Board of Nursing) were intoxicated at the time they administered the prescribed anti-seizure medication, the broad language of the bill would appear to mean that the nurse would not be subject to professional review.

While it is true that similar language is used in existing law (See Education Code 49414 (g)(4)), that language is not before the Committee at this time. Perhaps that language should be modified in the future to address the admittedly unlikely scenarios outlined here: where a school employee commits a crime, or violates professional standards, during the administration of emergency medication. In any case, it does not have to be a model for this bill.

The author proposes a number of amendments to address these issues, at Page 9, lines 3 – 15:

(b) (1) Notwithstanding any other law, ***but subject to paragraph (2),*** a person trained as required under subdivision (c) of Section 49468.2 who administers emergency anti-seizure medication or medication prescribed for seizure disorder symptoms *in compliance with the provisions of this article*, in good faith and not for compensation, to a pupil diagnosed with seizures, a seizure disorder, or epilepsy who appears to be experiencing a seizure shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the person's acts or omissions in administering the emergency anti-seizure medication.

(2) The protection specified in paragraph (1) ~~shall not apply in a case of gross negligence or willful and wanton misconduct of the person who renders emergency care treatment by the use of emergency anti-seizure medication~~ *does not affect any of the following:*

*(A) A person's liability for an act or omission that constitutes gross negligence or willful or wanton misconduct.*

*(B) A person's culpability for an act that constitutes a crime and is not specifically authorized by this section.*

*(C) The ability of a licensing board to take disciplinary action against a licensed health care professional for an act not specifically authorized by this section.*

**ARGUMENTS IN SUPPORT:** The California Chapters of the National Association of Pediatric Nurse Practitioners (NAPNAP) writes that it strongly supports the bill because it “aims to protect our students by allowing school staff to receive annual training for the emergency use of anti-seizure medication, which is imperative to keep students with a seizure disorder safe.”

We agree that it is important for those who are supervising a child with epilepsy have the opportunity to be trained properly on a regular basis to recognize and respond expeditiously to a student undergoing a seizure. As pediatric providers, we strongly advocate for access to safe environments and education for all children. AB 1810, which makes schools safer for children with epilepsy, is in line with our priorities.

The Seizure Action Plan (SAP) Coalition, formed to educate people with epilepsy, their caregivers, and healthcare professionals about seizure emergency rescue protocols and the importance of personalized seizure action plans, writes the following in support of the bill:

California has already enacted similar laws to protect students who have allergic reactions (SB 1266, Huff 2014) or suffer from opioid overdoses (AB 1748, Mayes 2016) while attending school. Students who have seizures should be afforded the same protections. We also strongly support the provision of AB 1810 that would help keep students who have seizures safe at school by providing for the development of “seizure action plans” for all students diagnosed with epilepsy or seizures and identify students eligible for individualized education plans (IEPs) and Section 504 accommodations.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Epilepsy Foundation (sponsor)  
 California Neurology Society  
 Epilepsy Foundation Greater Orange County  
 Epilepsy Foundation of Northern California  
 Epilepsy Foundation of San Diego County  
 Mia Kanak, Pediatric Emergency Physician  
 Momentum  
 National Association of Pediatric Nurse Practitioners (NAPNAP)  
 Neurelis, INC  
 Ritz Vocational

Seizure Action Plan Coalition  
The Coelho Center for Disability Law Policy and Innovation  
The Law Offices of Georgianna Juneo-kelman

**Opposition**

None on file

**Analysis Prepared by:** Alison Merrilees / JUD. / (916) 319-2334