

**First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 05-0323.01 Jerry Barry

SENATE BILL 05-156

SENATE SPONSORSHIP

Sandoval

HOUSE SPONSORSHIP

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Senate Committees

Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO SCHOOLCHILDREN'S ASTHMA AND**
102 **ANAPHYLAXIS HEALTH MANAGEMENT ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes a student with asthma or severe allergies to possess and self-administer prescribed medications during school, while at school-sponsored activities, or while in transit to or from school or school-sponsored activities, if there is an approved treatment plan. Requires a public school to approve a treatment plan that meets specified conditions. If there is an approved treatment plan, eliminates a school's, school district's, volunteer's, or employee's civil liability except in cases of willful or wanton conduct. Authorizes the state board of education to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

promulgate rules covering treatment plans. Authorizes the department of public health and environment to audit school records to determine asthma and severe allergic reaction rates within schools.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Asthma is a chronic condition, requiring lifetime, ongoing
5 medical intervention, and, if intervention is delayed or unavailable,
6 symptoms can escalate and result in increased severity of the disease,
7 hospitalization, or death;

8 (b) In 2001, over twenty million Americans, including six million
9 children, had asthma. In 2000, there were one million eight hundred
10 thousand asthma-related visits to emergency rooms of which, two
11 hundred fourteen thousand involved children under the age of eighteen
12 years.

13 (c) According to the federal centers for disease control and
14 prevention ("CDC"), asthma is a common cause of missed school days
15 accounting for approximately fourteen million lost school days annually,
16 and, according to the New England Journal of Medicine, working parents
17 of children with asthma lose an estimated one billion dollars per year in
18 productivity;

19 (d) Colorado has the second highest prevalence of asthma of any
20 state with an estimated seven-and-one-tenths percent of the population
21 believed to have the disease, and Colorado children of one to fifteen years
22 of age appear to be affected the most;

23 (e) Colorado is one of thirty-three states, plus Washington D.C.
24 and Puerto Rico, funded by the CDC to facilitate the formation and

1 growth of asthma coalitions and gather asthma data for use by physicians,
2 researchers, and public health officials in the fight against asthma in
3 Colorado;

4 (f) Anaphylaxis, or anaphylactic shock, is a systemic allergic
5 reaction that can cause death within minutes;

6 (g) Exposure to the affecting allergen, which may be a food, drug,
7 or insect sting, can trigger anaphylaxis and requires prompt medical
8 intervention with an injection of epinephrine; and

9 (h) Anaphylaxis occurs in some asthma patients who are at a
10 higher risk of poor health outcomes if they experience anaphylaxis, and,
11 according to the American academy of allergy, asthma, and immunology,
12 people who have experienced symptoms of anaphylaxis are at risk for
13 subsequent reactions and should carry an epinephrine auto-injector, if
14 prescribed, with them at all times.

15 (2) The general assembly further finds that:

16 (a) The refusal of schools to permit students to carry asthma
17 inhalers and auto-injectable epinephrine has resulted in some tragic
18 occurrences, some resulting in death and spawning litigation;

19 (b) At least thirty states have legislation protecting the rights of
20 children to carry and self-administer asthma metered-dose inhalers, and
21 at least eighteen of these states have expanded this protection to include
22 epinephrine auto-injectors;

23 (c) Schools that restrict or deny the rights of children to carry
24 inhalers or auto-injectable epinephrine put students with asthma and
25 severe allergic reactions, including anaphylaxis, at risk of death and also
26 put other students at risk of witnessing a potentially life-threatening
27 asthma attack;

1 (d) School districts' medication policies must be developed with
2 the safety of all students in mind, but should allow for the correct and
3 immediate use of asthma inhalers and auto-injectable epinephrine to
4 avoid serious respiratory complications and improve health care
5 outcomes;

6 (e) Students with asthma are covered under title II of the
7 "Americans with Disabilities Act of 1990", section 504 of the
8 "Rehabilitation Act of 1973", and the "Individuals with Disabilities
9 Education Act"; and

10 (f) In October of 2004, the Congress enacted the "Asthmatic
11 Schoolchildren's Treatment and Health Management Act of 2004" that
12 gives preferences in making certain public health services administration
13 grants and other asthma-related grants to states that allow students to
14 self-administer medication to treat asthma and anaphylaxis.

15 (3) Finally, the general assembly finds that authorizing an audit
16 of school records on asthma and anaphylaxis will benefit the general
17 public health by defining the extent of asthma among school children and
18 by determining the effect of this act on the well being of children with
19 asthma and severe allergies in schools.

20 **SECTION 2.** Article 1 of title 22, Colorado Revised Statutes, is
21 amended BY THE ADDITION OF A NEW SECTION to read:

22 **22-1-119.5. Asthma and anaphylaxis health management -**
23 **self-administered medication.** (1) THIS SECTION SHALL BE KNOWN AND
24 MAY BE CITED AS THE "COLORADO SCHOOLCHILDREN'S ASTHMA AND
25 ANAPHYLAXIS HEALTH MANAGEMENT ACT".

26 (2) (a) A STUDENT WITH ASTHMA OR SEVERE ALLERGIES MAY
27 POSSESS AND SELF-ADMINISTER MEDICATION TO TREAT THE STUDENT'S

1 ASTHMA OR ANAPHYLAXIS IF THE STUDENT HAS A TREATMENT PLAN
2 APPROVED PURSUANT TO THIS SUBSECTION (2).

3 (b) A PUBLIC SCHOOL SHALL, AND A NONPUBLIC SCHOOL IS
4 ENCOURAGED TO, APPROVE A TREATMENT PLAN FOR A STUDENT ENROLLED
5 IN THE SCHOOL TO POSSESS AND SELF-ADMINISTER MEDICATION FOR
6 ASTHMA OR ANAPHYLAXIS IF ALL OF THE FOLLOWING CONDITIONS ARE
7 MET:

8 (I) A HEALTH CARE PRACTITIONER HAS PRESCRIBED MEDICATION
9 FOR USE BY THE STUDENT DURING SCHOOL HOURS, AT SCHOOL-SPONSORED
10 ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM SCHOOL OR
11 SCHOOL-SPONSORED ACTIVITIES AND HAS INSTRUCTED THE STUDENT IN
12 THE CORRECT AND RESPONSIBLE USE OF THE MEDICATION.

13 (II) THE STUDENT DEMONSTRATES TO THE HEALTH CARE
14 PRACTITIONER OR THE HEALTH CARE PRACTITIONER'S DESIGNEE AND THE
15 SCHOOL NURSE THE SKILL LEVEL NECESSARY TO USE THE MEDICATION AND
16 ANY DEVICE THAT IS NECESSARY TO ADMINISTER THE MEDICATION AS
17 PRESCRIBED.

18 (III) THE SCHOOL NURSE AND THE HEALTH CARE PRACTITIONER
19 COLLABORATE TO FORMULATE A WRITTEN TREATMENT PLAN FOR
20 MANAGING ASTHMA OR ANAPHYLAXIS EPISODES OF THE STUDENT AND FOR
21 MEDICATION USE BY THE STUDENT DURING SCHOOL HOURS, AT
22 SCHOOL-SPONSORED ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM
23 SCHOOL OR SCHOOL-SPONSORED ACTIVITIES.

24 (IV) THE STUDENT'S PARENT OR LEGAL GUARDIAN COMPLETES AND
25 SUBMITS TO THE PUBLIC OR NONPUBLIC SCHOOL THE DOCUMENTATION
26 REQUIRED BY RULE OF THE STATE BOARD OF EDUCATION, INCLUDING BUT
27 NOT LIMITED TO:

1 (A) A WRITTEN MEDICAL AUTHORIZATION THAT INCLUDES THE
2 SIGNATURE OF THE HEALTH CARE PRACTITIONER FOR THE MEDICATION
3 PRESCRIBED; THE NAME, PURPOSE, PRESCRIBED DOSAGE, FREQUENCY, AND
4 LENGTH OF TIME BETWEEN DOSAGES OF THE MEDICATIONS TO BE
5 SELF-ADMINISTERED; AND CONFIRMATION FROM THE HEALTH CARE
6 PRACTITIONER THAT THE STUDENT HAS BEEN INSTRUCTED AND IS CAPABLE
7 OF SELF-ADMINISTRATION OF THE PRESCRIBED MEDICATIONS;

8 (B) A WRITTEN STATEMENT FROM THE STUDENT'S PARENT OR
9 LEGAL GUARDIAN RELEASING THE SCHOOL, SCHOOL DISTRICT, ANY
10 ASSOCIATED ENTITY, AND EMPLOYEES AND VOLUNTEERS OF THE SCHOOL,
11 SCHOOL DISTRICT, AND ASSOCIATED ENTITY FROM LIABILITY; AND

12 (C) A WRITTEN CONTRACT BETWEEN THE SCHOOL NURSE, THE
13 STUDENT, AND THE STUDENT'S PARENT OR LEGAL GUARDIAN ASSIGNING
14 LEVELS OF RESPONSIBILITY TO THE PARENT OR LEGAL GUARDIAN,
15 STUDENT, AND SCHOOL EMPLOYEES.

16 (c) A TREATMENT PLAN SHALL BE EFFECTIVE ONLY FOR THE
17 SCHOOL YEAR IN WHICH IT IS APPROVED. THE PUBLIC SCHOOL SHALL
18 APPROVE A NEW TREATMENT PLAN FOR EACH SCHOOL YEAR SO LONG AS
19 THE PLAN MEETS THE CONDITIONS SPECIFIED IN PARAGRAPH (b) OF THIS
20 SUBSECTION (2). THE PARENT OR LEGAL GUARDIAN SHALL SUBMIT A NEW
21 TREATMENT PLAN ANNUALLY OR MORE OFTEN IF CHANGES OCCUR TO THE
22 STUDENT'S HEALTH OR PRESCRIBED TREATMENT.

23 (3) A STUDENT WITH A TREATMENT PLAN APPROVED PURSUANT TO
24 SUBSECTION (2) OF THIS SECTION MAY POSSESS AND SELF-ADMINISTER HIS
25 OR HER MEDICATION WHILE IN SCHOOL, WHILE AT SCHOOL-SPONSORED
26 ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM SCHOOL OR
27 SCHOOL-SPONSORED ACTIVITIES.

1 (4) WITH THE APPROVAL OF THE PARENT OR LEGAL GUARDIAN OF
2 A STUDENT WITH A TREATMENT PLAN APPROVED PURSUANT TO SUBSECTION
3 (2) OF THIS SECTION, A SCHOOL MAY MAINTAIN ADDITIONAL ASTHMA OR
4 ANAPHYLAXIS MEDICATION TO BE KEPT AT THE SCHOOL IN A LOCATION TO
5 WHICH THE STUDENT HAS IMMEDIATE ACCESS IN THE EVENT OF AN ASTHMA
6 OR ANAPHYLAXIS EMERGENCY.

7 (5) IMMEDIATELY AFTER USING AN EPINEPHRINE AUTO-INJECTOR
8 DURING SCHOOL HOURS, A STUDENT SHALL REPORT TO THE SCHOOL NURSE,
9 TO THE DESIGNEE OF THE SCHOOL NURSE, OR TO SOME ADULT AT THE
10 SCHOOL TO ENABLE THE SCHOOL NURSE, NURSE'S DESIGNEE, OR OTHER
11 ADULT TO PROVIDE THE APPROPRIATE FOLLOW-UP CARE, WHICH SHALL
12 INCLUDE MAKING A 911 EMERGENCY CALL.

13 (6) IF THE PROVISIONS OF THIS SECTION ARE MET, A SCHOOL,
14 SCHOOL DISTRICT, SCHOOL DISTRICT DIRECTOR, OR SCHOOL OR SCHOOL
15 DISTRICT EMPLOYEE OR A VOLUNTEER NOT OTHERWISE PROVIDED FOR
16 UNDER SECTION 13-21-108, C.R.S., SHALL NOT BE LIABLE IN A SUIT FOR
17 DAMAGES AS A RESULT OF AN ACT OR OMISSION RELATED TO A STUDENT'S
18 OWN USE OF THE STUDENT'S EPINEPHRINE AUTO-INJECTOR OR ANY OTHER
19 MEDICATION CONTAINED IN AN APPROVED TREATMENT PLAN UNLESS THE
20 DAMAGES WERE CAUSED BY WILLFUL OR WANTON CONDUCT OR
21 DISREGARD OF THE CRITERIA OF THE TREATMENT PLAN.

22 (7) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO CREATE
23 A CAUSE OF ACTION OR INCREASE OR DIMINISH THE LIABILITY OF ANY
24 PERSON.

25 (8) THE STATE BOARD OF EDUCATION, WITH ASSISTANCE FROM THE
26 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, SHALL PROMULGATE
27 RULES FOR TREATMENT PLANS FOR THE SELF-ADMINISTRATION OF

1 MEDICATIONS PURSUANT TO THIS SECTION.

2 (9) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IS
3 AUTHORIZED TO AUDIT SCHOOL RECORDS FOR THE DETERMINATION OF
4 ASTHMA AND SEVERE ALLERGY RATES WITHIN THE SCHOOLS AND TO
5 DETERMINE THE PROPORTION OF THOSE STUDENTS WITH ASTHMA AND
6 SEVERE ALLERGIES IN THE SCHOOLS THAT HAVE TREATMENT PLANS
7 ALLOWING FOR SELF-ADMINISTRATION OF ASTHMA AND SEVERE ALLERGY
8 MEDICATIONS. THE AUDIT SHALL DEFINE THE EXTENT OF ASTHMA AND
9 SEVERE ALLERGIES AMONG STUDENTS AND DETERMINE THE EFFECT OF THIS
10 SECTION ON THE WELL-BEING OF CHILDREN WITH ASTHMA AND SEVERE
11 ALLERGIES IN SCHOOLS. THE AUDIT SHALL BE CONDUCTED IN
12 CONFORMANCE WITH THE REQUIREMENTS OF THE "FAMILY EDUCATIONAL
13 RIGHTS AND PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g.

14 **SECTION 3. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.