

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 731 Session of 2007

INTRODUCED BY ORIE, CORMAN, RHOADES, WASHINGTON, PICCOLA, TOMLINSON, PILEGGI, FONTANA, MUSTO, LOGAN, FOLMER, KITCHEN, BOSCOLA, COSTA, EARLL, C. WILLIAMS, BAKER, BRUBAKER AND BROWNE, APRIL 9, 2007

SENATOR RHOADES, EDUCATION, AS AMENDED, APRIL 29, 2008

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," further providing for possession and
6 use of asthma inhalers.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 1414.1 of the act of March 10, 1949
10 (P.L.30, No.14), known as the Public School Code of 1949, added
11 November 30, 2004 (P.L.1471, No.187), is amended to read:

12 ~~Section 1414.1. Possession and Use of Asthma Inhalers. (a) <—~~
13 ~~Each school entity shall develop a written policy to allow for~~
14 ~~the possession and self administration by children of school age~~
15 ~~of an asthma inhaler, epinephrine auto injector and the~~
16 ~~prescribed medication to be administered thereby in a school~~
17 ~~setting. A school setting shall include, but not be limited to,~~
18 ~~the pupil's school, school sponsored transportation or any~~
19 ~~activity, event or program sponsored by or in which the pupil's~~

1 ~~school is participating.~~

2 ~~(b) The policy under this section shall require a child of~~
3 ~~school age that desires to possess and self administer an asthma~~
4 ~~inhaler or epinephrine auto injector in a school setting to~~
5 ~~demonstrate the capability for self administration and for~~
6 ~~responsible behavior in the use thereof and to notify the school~~
7 ~~nurse immediately following each use of an asthma inhaler or~~
8 ~~epinephrine auto injector. The school entity shall develop a~~
9 ~~system whereby the child may verify to the school nurse that the~~
10 ~~child is capable of self administration and has permission for~~
11 ~~carrying and taking the medication through the use of the asthma~~
12 ~~inhaler or epinephrine auto injector. The school entity shall~~
13 ~~also restrict the availability of the asthma inhaler,~~
14 ~~epinephrine auto injector and the prescribed medication~~
15 ~~contained therein from other children of school age, with~~
16 ~~immediate confiscation of [both] the asthma inhaler, epinephrine~~
17 ~~auto injector and the medication and loss of privileges if the~~
18 ~~school policies are abused or ignored.~~

19 ~~(c) The policy under this section may include the following:~~

20 ~~(1) The requirement of a written statement from the~~
21 ~~physician, certified registered nurse practitioner or physician~~
22 ~~assistant that provides the name of the drug, the dose, the~~
23 ~~times when the medication is to be taken and the diagnosis or~~
24 ~~reason the medicine is needed unless the reason should remain~~
25 ~~confidential. The physician, certified registered nurse~~
26 ~~practitioner or physician assistant shall indicate the potential~~
27 ~~of any serious reaction that may occur to the medication, as~~
28 ~~well as any necessary emergency response. The physician,~~
29 ~~certified registered nurse practitioner or physician assistant~~
30 ~~shall state whether the child is qualified and able to self-~~

1 ~~administer the medication.~~

2 ~~(2) The requirement of a written request from the parent or~~
3 ~~guardian that the school entity comply with the order of the~~
4 ~~physician, certified registered nurse practitioner or physician~~
5 ~~assistant. The parent's note shall include a statement relieving~~
6 ~~the school entity or any school employe of any responsibility~~
7 ~~for the benefits or consequences of the prescribed medication~~
8 ~~when it is parent authorized and acknowledging that the school~~
9 ~~entity bears no responsibility for ensuring that the medication~~
10 ~~is taken.~~

11 ~~(3) The ability of the school entity to reserve the right to~~
12 ~~require a statement from the physician, certified registered~~
13 ~~nurse practitioner or physician assistant for the continued use~~
14 ~~of any medication beyond a specified time period. The school~~
15 ~~entity may also require updated prescription and parental~~
16 ~~approval on an annual basis from the pupil.~~

17 ~~(c.1) A school district, nonpublic school, member of a~~
18 ~~school board, director or officer of a nonpublic school or~~
19 ~~employe of a school district or nonpublic school is not liable~~
20 ~~for damages in a civil action for injury, death or loss to~~
21 ~~person or property allegedly arising from a pupil being~~
22 ~~prohibited by an employe of the school or school district from~~
23 ~~using an inhaler or epinephrine auto injector because of the~~
24 ~~employe's reasonable belief formed after a reasonable and~~
25 ~~ordinary inquiry that the conditions prescribed in subsection~~
26 ~~(c) had not been satisfied. A school district, nonpublic school,~~
27 ~~member of a school board, director or officer of a nonpublic~~
28 ~~school, or employe of a school district or nonpublic school is~~
29 ~~not liable for damages in a civil action for injury, death or~~
30 ~~loss to person or property allegedly arising from a pupil being~~

1 ~~permitted by an employe of the school or school district to use~~
2 ~~an inhaler or epinephrine auto injector because of the employe's~~
3 ~~reasonable belief formed after a reasonable and ordinary inquiry~~
4 ~~that the conditions prescribed in subsection (c) had been~~
5 ~~satisfied. This subsection does not eliminate, limit or reduce~~
6 ~~any other immunity or defense that a school district, member of~~
7 ~~a school board, director or employe of a school district may~~
8 ~~have under the law of this Commonwealth.~~

9 ~~(c.2) A principal or other chief administrator who is aware~~
10 ~~that a pupil is in possession of an inhaler or epinephrine auto~~
11 ~~injector pursuant to this section shall notify each of the~~
12 ~~pupil's classroom teachers of that fact and of the provisions of~~
13 ~~this section.~~

14 ~~(d) As used in this section, "school entity" means a school~~
15 ~~district, intermediate unit or area vocational technical school.~~

16 SECTION 1414.1. POSSESSION AND USE OF ASTHMA INHALERS AND <—
17 EPINEPHRINE AUTO-INJECTORS. --(A) EACH SCHOOL ENTITY SHALL
18 DEVELOP A WRITTEN POLICY TO ALLOW FOR THE POSSESSION AND SELF-
19 ADMINISTRATION BY CHILDREN OF SCHOOL AGE OF [AN] ASTHMA
20 [INHALER] INHALERS AND EPINEPHRINE AUTO-INJECTORS, AND THE
21 PRESCRIBED MEDICATION TO BE ADMINISTERED THEREBY, IN A SCHOOL
22 SETTING. THE POLICY SHALL BE DISTRIBUTED WITH THE CODE OF
23 STUDENT CONDUCT REQUIRED UNDER 22 PA. CODE § 12.3(C) (RELATING
24 TO SCHOOL RULES) AND MADE AVAILABLE ON THE SCHOOL ENTITY'S
25 PUBLICLY ACCESSIBLE INTERNET WEBSITE, IF ANY.

26 (B) THE POLICY UNDER THIS SECTION SHALL REQUIRE A CHILD OF
27 SCHOOL AGE THAT DESIRES TO POSSESS AND SELF-ADMINISTER AN ASTHMA
28 INHALER OR EPINEPHRINE AUTO-INJECTOR IN A SCHOOL SETTING TO
29 DEMONSTRATE THE CAPABILITY FOR SELF-ADMINISTRATION AND FOR
30 RESPONSIBLE BEHAVIOR IN THE USE THEREOF AND TO NOTIFY THE SCHOOL

1 NURSE IMMEDIATELY FOLLOWING EACH USE OF AN ASTHMA INHALER OR
2 EPINEPHRINE AUTO-INJECTOR. THE SCHOOL ENTITY SHALL DEVELOP A
3 SYSTEM WHEREBY THE CHILD MAY VERIFY TO THE SCHOOL NURSE THAT THE
4 CHILD IS CAPABLE OF SELF-ADMINISTRATION AND HAS PERMISSION FOR
5 CARRYING AND TAKING THE MEDICATION THROUGH THE USE OF THE ASTHMA
6 INHALER OR EPINEPHRINE AUTO-INJECTOR. THE SCHOOL ENTITY SHALL
7 ALSO RESTRICT THE AVAILABILITY OF THE ASTHMA INHALER, THE
8 EPINEPHRINE AUTO-INJECTOR AND THE PRESCRIBED MEDICATION
9 CONTAINED THEREIN FROM OTHER CHILDREN OF SCHOOL AGE. [, WITH
10 IMMEDIATE CONFISCATION OF BOTH] THE POLICY SHALL SPECIFY
11 CONDITIONS UNDER WHICH A STUDENT MAY LOSE THE PRIVILEGE TO SELF-
12 CARRY THE ASTHMA INHALER, THE EPINEPHRINE AUTO-INJECTOR AND THE
13 MEDICATION [AND LOSS OF PRIVILEGES] IF THE SCHOOL POLICIES ARE
14 ABUSED OR IGNORED.

15 (C) THE POLICY UNDER THIS SECTION MAY INCLUDE THE FOLLOWING:

16 (1) THE REQUIREMENT OF A WRITTEN STATEMENT FROM THE
17 PHYSICIAN, CERTIFIED REGISTERED NURSE PRACTITIONER OR PHYSICIAN
18 ASSISTANT THAT PROVIDES THE NAME OF THE DRUG, THE DOSE, THE
19 TIMES WHEN THE MEDICATION IS TO BE TAKEN AND THE DIAGNOSIS OR
20 REASON THE MEDICINE IS NEEDED UNLESS THE REASON SHOULD REMAIN
21 CONFIDENTIAL. THE PHYSICIAN, CERTIFIED REGISTERED NURSE
22 PRACTITIONER OR PHYSICIAN ASSISTANT SHALL INDICATE THE POTENTIAL
23 OF ANY SERIOUS REACTION THAT MAY OCCUR TO THE MEDICATION, AS
24 WELL AS ANY NECESSARY EMERGENCY RESPONSE. THE PHYSICIAN,
25 CERTIFIED REGISTERED NURSE PRACTITIONER OR PHYSICIAN ASSISTANT
26 SHALL STATE WHETHER THE CHILD IS QUALIFIED AND ABLE TO SELF-
27 ADMINISTER THE MEDICATION.

28 (2) THE REQUIREMENT OF A WRITTEN REQUEST FROM THE PARENT OR
29 GUARDIAN THAT THE SCHOOL ENTITY COMPLY WITH THE ORDER OF THE
30 PHYSICIAN, CERTIFIED REGISTERED NURSE PRACTITIONER OR PHYSICIAN

1 ASSISTANT. THE PARENT'S NOTE SHALL INCLUDE A STATEMENT RELIEVING
2 THE SCHOOL ENTITY OR ANY SCHOOL EMPLOYE OF ANY RESPONSIBILITY
3 FOR THE BENEFITS OR CONSEQUENCES OF THE PRESCRIBED MEDICATION
4 WHEN IT IS PARENT-AUTHORIZED AND ACKNOWLEDGING THAT THE SCHOOL
5 ENTITY BEARS NO RESPONSIBILITY FOR ENSURING THAT THE MEDICATION
6 IS TAKEN.

7 (3) THE ABILITY OF THE SCHOOL ENTITY TO RESERVE THE RIGHT TO
8 REQUIRE A STATEMENT FROM THE PHYSICIAN, CERTIFIED REGISTERED
9 NURSE PRACTITIONER OR PHYSICIAN ASSISTANT FOR THE CONTINUED USE
10 OF ANY MEDICATION BEYOND A SPECIFIED TIME PERIOD. THE SCHOOL
11 ENTITY MAY ALSO REQUIRE UPDATED PRESCRIPTIONS AND PARENTAL
12 APPROVALS ON AN ANNUAL BASIS FROM THE PUPIL.

13 (4) THE SCHOOL ENTITY SHALL HAVE THE RIGHT TO PREVENT A
14 STUDENT FROM SELF-CARRYING AN EPINEPHRINE AUTO-INJECTOR IF THE
15 STUDENT IS UNDER ELEVEN (11) YEARS OF AGE.

16 (D) AS USED IN THIS SECTION, "SCHOOL ENTITY" MEANS A SCHOOL
17 DISTRICT, INTERMEDIATE UNIT OR AREA VOCATIONAL-TECHNICAL SCHOOL.

18 (E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE,
19 ESTABLISH OR EXPAND ANY CIVIL LIABILITY ON THE PART OF ANY
20 SCHOOL ENTITY OR SCHOOL EMPLOYE.

21 Section 2. This act shall take effect in 60 days.