

112TH CONGRESS  
1ST SESSION

# S. 1884

To provide States with incentives to require elementary schools and secondary schools to maintain, and permit school personnel to administer, epinephrine at schools.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2011

Mr. DURBIN (for himself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide States with incentives to require elementary schools and secondary schools to maintain, and permit school personnel to administer, epinephrine at schools.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “School Access to Emer-  
5 gency Epinephrine Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) According to research funded by the Food  
9 Allergy Initiative and conducted by Northwestern

1 University and Children’s Memorial Hospital, nearly  
2 6,000,000 children in the United States have food  
3 allergies.

4 (2) Anaphylaxis, or anaphylactic shock, is a  
5 systemic allergic reaction that can kill within min-  
6 utes.

7 (3) More than 15 percent of school-aged chil-  
8 dren with food allergies have had an allergic reaction  
9 in school.

10 (4) Teenagers and young adults with food aller-  
11 gies are at the highest risk of fatal food-induced an-  
12 aphyllaxis.

13 (5) Individuals with food allergies who also have  
14 asthma may be at increased risk for severe or fatal  
15 food allergy reactions.

16 (6) Studies have shown that 25 percent of epi-  
17 nephrine administrations in schools involve individ-  
18 uals with a previously unknown allergy.

19 (7) The National Institute of Allergy and Infec-  
20 tious Diseases (“NIAID”) has reported that delays  
21 in the administration of epinephrine to patients in  
22 anaphylaxis can result in rapid decline and death.  
23 NIAID recommends that epinephrine be given  
24 promptly to treat anaphylaxis.

1           (8) Physicians can provide standing orders to  
 2           furnish a school with epinephrine for injection, and  
 3           several States have passed laws to authorize this  
 4           practice.

5           (9) The American Academy of Allergy, Asthma,  
 6           and Immunology recommends that epinephrine  
 7           injectors should be included in all emergency medical  
 8           treatment kits in schools.

9           (10) The American Academy of Pediatrics rec-  
 10          ommends that an anaphylaxis kit should be kept  
 11          with medications in each school and made available  
 12          to trained staff for administration in an emergency.

13          (11) According to the Food Allergy and Ana-  
 14          phylaxis Network, there are no contraindications to  
 15          the use of epinephrine for a life-threatening reaction.

16 **SEC. 3. PREFERENCE FOR STATES REGARDING ADMINIS-**  
 17 **TRATION OF EPINEPHRINE BY SCHOOL PER-**  
 18 **SONNEL.**

19          Section 399L of the Public Health Service Act (42  
 20          U.S.C. 280g(d)) is amended—

21               (1) in subsection (a), by redesignating the sec-  
 22               ond paragraph (2) and paragraph (3) as paragraphs  
 23               (3) and (4), respectively; and

24               (2) by striking subsection (d) and inserting the  
 25               following:

1       “(d) PREFERENCE FOR STATES REGARDING MEDI-  
2   CATION TO TREAT ASTHMA AND ANAPHYLAXIS.—

3               “(1) PREFERENCE.—The Secretary, in making  
4       any grant under this section or any other grant that  
5       is asthma-related (as determined by the Secretary)  
6       to a State, shall give preference to any State that  
7       satisfies each of the following requirements:

8               “(A) SELF-ADMINISTRATION OF MEDICA-  
9       TION.—

10              “(i) IN GENERAL.—The State shall  
11       require that each public elementary school  
12       and secondary school in that State will  
13       grant to any student in the school an au-  
14       thorization for the self-administration of  
15       medication to treat that student’s asthma  
16       or anaphylaxis, if—

17              “(I) a health care practitioner  
18       prescribed the medication for use by  
19       the student during school hours and  
20       instructed the student in the correct  
21       and responsible use of the medication;

22              “(II) the student has dem-  
23       onstrated to the health care practi-  
24       tioner (or such practitioner’s des-  
25       ignee) and the school nurse (if avail-

1           able) the skill level necessary to use  
2           the medication and any device that is  
3           necessary to administer such medica-  
4           tion as prescribed;

5           “(III) the health care practi-  
6           tioner formulates a written treatment  
7           plan for managing asthma or anaphy-  
8           laxis episodes of the student and for  
9           medication use by the student during  
10          school hours; and

11          “(IV) the student’s parent or  
12          guardian has completed and sub-  
13          mitted to the school any written docu-  
14          mentation required by the school, in-  
15          cluding the treatment plan formulated  
16          under subclause (III) and other docu-  
17          ments related to liability.

18          “(ii) SCOPE.—An authorization grant-  
19          ed under clause (i) shall allow the student  
20          involved to possess and use the student’s  
21          medication—

22               “(I) while in school;

23               “(II) while at a school-sponsored  
24          activity, such as a sporting event; and

1 “(III) in transit to or from school  
2 or school-sponsored activities.

3 “(iii) DURATION OF AUTHORIZA-  
4 TION.—An authorization granted under  
5 clause (i)—

6 “(I) shall be effective only for the  
7 same school and school year for which  
8 it is granted; and

9 “(II) must be renewed by the  
10 parent or guardian each subsequent  
11 school year in accordance with this  
12 subsection.

13 “(iv) BACKUP MEDICATION.—The  
14 State shall require that backup medication,  
15 if provided by a student’s parent or guard-  
16 ian, be kept at a student’s school in a loca-  
17 tion to which the student has prompt ac-  
18 cess in the event of an asthma or anaphy-  
19 laxis emergency.

20 “(v) MAINTENANCE OF INFORMA-  
21 TION.—The State shall require that infor-  
22 mation described in clauses (i)(III) and  
23 (i)(IV) be kept on file at the student’s  
24 school in a location easily accessible in the

1 event of an asthma or anaphylaxis emer-  
 2 gency.

3 “(vi) RULE OF CONSTRUCTION.—  
 4 Nothing in this subparagraph creates a  
 5 cause of action or in any other way in-  
 6 creases or diminishes the liability of any  
 7 person under any other law.

8 “(B) SCHOOL PERSONNEL ADMINISTRA-  
 9 TION OF EPINEPHRINE.—

10 “(i) IN GENERAL.—The State shall  
 11 require that each public elementary school  
 12 and secondary school in the State—

13 “(I) permit authorized personnel  
 14 to administer epinephrine to any stu-  
 15 dent believed in good faith to be hav-  
 16 ing an anaphylactic reaction; and

17 “(II) maintain in a secure and  
 18 easily accessible location a supply of  
 19 epinephrine that—

20 “(aa) are prescribed under a  
 21 standing protocol from a licensed  
 22 physician; and

23 “(bb) are accessible to au-  
 24 thorized personnel for adminis-

1                   tration to a student having an  
2                   anaphylactic reaction.

3                   “(ii) LIABILITY AND STATE LAW.—

4                   “(I) GOOD SAMARITAN LAW.—

5                   The State shall have a State law en-  
6                   suring that elementary school and sec-  
7                   ondary school employees and agents,  
8                   including a physician providing a pre-  
9                   scription for school epinephrine, will  
10                  incur no liability related to the admin-  
11                  istration of epinephrine to any student  
12                  believed in good faith to be having an  
13                  anaphylactic reaction, except in the  
14                  case of willful or wanton conduct.

15                  “(II) STATE LAW.—Nothing in  
16                  this subparagraph shall be construed  
17                  to preempt State law, including any  
18                  State law regarding whether students  
19                  with allergy or asthma may possess  
20                  and self-administer medication.

21                  “(2) DEFINITIONS.—For purposes of this sub-  
22                  section:

23                  “(A) The terms ‘elementary school’ and  
24                  ‘secondary school’ have the meaning given to



1           those terms in section 9101 of the Elementary  
2           and Secondary Education Act of 1965.

3           “(B) The term ‘health care practitioner’  
4           means a person authorized under law to pre-  
5           scribe drugs subject to section 503(b) of the  
6           Federal Food, Drug, and Cosmetic Act.

7           “(C) The term ‘medication’ means a drug  
8           as that term is defined in section 201 of the  
9           Federal Food, Drug, and Cosmetic Act and in-  
10          cludes inhaled bronchodilators and epinephrine.

11          “(D) The term ‘self-administration’ means  
12          a student’s discretionary use of his or her pre-  
13          scribed asthma or anaphylaxis medication, pur-  
14          suant to a prescription or written direction  
15          from a health care practitioner.

16          “(E) The term ‘authorized personnel’  
17          means the school nurse or, if the school nurse  
18          is absent, an individual who has been des-  
19          ignated by the school nurse and has received  
20          training in the administration of epinephrine.”.

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