

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 883 Short-acting Bronchodilator Use in Public and Private Schools

SPONSOR(S): Choice & Innovation Subcommittee, Koster

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	16 Y, 0 N, As CS	Dixon	Sleap
2) PreK-12 Appropriations Subcommittee	11 Y, 0 N	Potvin	Potvin
3) Health & Human Services Committee			

SUMMARY ANALYSIS

To provide access to life-saving interventions during a student's respiratory distress at a public or private school, the bill authorizes a public or private school to acquire and stock a supply of short-acting bronchodilators and components from a wholesale distributor or to enter into an arrangement with a wholesale distributor or manufacturer, for short-acting bronchodilators and components at fair-market, free, or reduced prices. The bill specifies the requirements for storing and maintaining the stock supply of short-acting bronchodilators and components.

The bill authorizes specified health care practitioners to prescribe short-acting bronchodilators and components in the name of a public school or private school. Additionally, the bill authorizes a licensed pharmacist to dispense short-acting bronchodilators and components to a prescription issued in the name of a public or private school.

Under the bill, a public or private school may also accept short-acting bronchodilators and components as a donation or transfer if the items meet the U.S. Food and Drug Administration regulations and are in a new, unexpired, manufactured-sealed condition.

The bill outlines criteria for individuals authorized to administer short-acting bronchodilators and components to students at public and private schools and requires schools to inform parents of the school's adopted protocol and obtain parental permission before administering short-acting bronchodilators to a student in respiratory distress emergencies.

The bill provides that school districts and private schools and their employees and agents are not liable for any injury arising from the use or non-use of a short-acting bronchodilator or components administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is experiencing a respiratory distress emergency. The bill also provides exceptions for liability.

Additionally, the bill provides immunity from civil liability to authorized healthcare practitioners who prescribe, or dispensing pharmacists who fill, a prescription for a short-acting bronchodilator and components for use by a public or private school for any act or omission to act related to the administration of a short-acting bronchodilator or components, except for an act of willful or wanton misconduct.

The bill may have an indeterminate fiscal impact on local government expenditures. See Fiscal Analysis.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Management of Childhood Asthma in Schools

Asthma is a chronic condition that involves inflammation of the airways. Individuals with asthma experience hyperresponsive airways, meaning their reactions to triggers such as colds, cigarette smoke, and exercise are faster and more intense than those with normal airways. This heightened reactivity leads to inflammation of the airway lining, tightening of surrounding muscles, airway narrowing, and increased production of mucus cells. These reactions reduce the airflow into the lungs, making breathing more challenging.¹

In Florida, approximately 1 in 8 adults and 1 in 9 children have asthma.² Nationally, asthma stands as one of the most common chronic childhood diseases, impacting the daily lives of millions of American children.³ As children with asthma attend school, their safety and the management of their condition becomes the shared responsibility of the family, their healthcare providers, and school personnel.⁴

While most schools are very cognizant of the seriousness of asthma, the distance from the classroom or playing field to the school health room can be perilously far for a child struggling to breathe.⁵ As approximately 10 percent of school children have asthma and spend a significant amount of time at school, having access to a rescue inhaler is important.⁶ Rescue inhalers, known as short-acting bronchodilators, are used for sudden, acute asthma symptoms and includes beta 2-agonists, which quickly open airways to stop asthma symptoms. Referred to as “reliever” or “rescue” medicines, they are the most effective for treating sudden, severe, or new asthma symptoms, working within 15 to 20 minutes and lasting for four to six hours.⁷

According to the American Lung Association, despite all 50 states and the District of Columbia having laws allowing students to carry and use asthma inhalers at school, it is still crucial for schools to move fast to save the life of a child during asthma emergencies. Situations may arise that can keep a child from getting the medications they need in a timely manner, such as forgetting an inhaler at home or facing financial constraints preventing the family from affording a second inhaler to keep at school.⁸

Given the unpredictable and potentially life-threatening nature of asthma exacerbations in children, timely access to rescue inhalers becomes a matter of life-saving significance. Addressing these concerns, in a 2021 policy statement on ensuring access to albuterol in schools, the American Thoracic

¹ Florida Health, *What is Asthma?*, <https://www.floridahealth.gov/diseases-and-conditions/asthma/what-is-asthma.html> (last visited Jan. 9, 2024).

² *Id.*

³ Asthma and Allergy Foundation of America, *Childhood Asthma*, <https://asthmaandallergies.org/asthma-allergies/childhood-asthma/> (last visited Jan. 8, 2024).

⁴ American Lung Association, *Improving Access to Asthma Medications in Schools* (Sept. 2014), at 1, available at <https://www.lung.org/getmedia/872c9b6a-5379-4321-8913-102d53182e29/improving-access-to-asthma.pdf.pdf>.

⁵ *Id.*

⁶ American Academy of Allergy, *Asthma & Immunology, School stock inhaler program* (2021), <https://www.aaaai.org/tools-for-the-public/latest-research-summaries/the-journal-of-allergy-and-clinical-immunology/2021/school-inhaler> (last visited Jan. 9, 2024).

⁷ Cleveland Clinic, *Bronchodilator*, <https://my.clevelandclinic.org/health/treatments/17575-bronchodilator> (last visited Jan. 9, 2024). The inhaled forms of short-acting beta 2-agonists medications include Albuterol, Levalbuterol, or a combination of albuterol and ipratropium bromide.

⁸ American Lung Association, *Why Schools Should Stock Asthma Inhalers* (Aug. 2023), <https://www.lung.org/blog/why-schools-should-stock-inhalers> (last visited Jan. 9, 2024).

Society and others,⁹ stated that for children with asthma, access to quick-relief medications is critical to minimizing morbidity and mortality. The policy statement included an approach a state legislature could take to ensure access at school through stock albuterol policies whereby a school maintains a supply of stock albuterol that can be used by any student who experiences respiratory distress. The statement concluded that stock albuterol in schools is a safe, practical, and potentially life-saving option for children with asthma, whether asthma is diagnosed or undiagnosed, who lack access to their personal quick-relief medication.¹⁰

School Stock Albuterol Policies-Other States Efforts

Several states¹¹ have passed legislation and guidelines addressing asthma management in schools. While many state policies allow asthmatic students to carry an inhaler with them at school, some states have implemented policies which allow schools to stock quick-relief medications to respond to a student in a respiratory distress emergency.

For example, Virginia law requires each local school board to adopt and implement policies for the possession and administration of stock albuterol inhalers and valved holding chambers in every public school in the local school division.¹² Authorized personnel, such as a school nurse or employee of the school board, are responsible for administering the albuterol. In 2023, the Virginia Legislature expanded on those who could administer the albuterol inhalers to include authorized licensed athletic trainers under contract with a local school division.¹³

In 2022, the Arizona Legislature authorized school districts and charter schools to accept monetary donations or apply for grants to purchase inhalers and spacers or holding chambers. Alternatively, the school districts and charter schools may directly accept donations of these items from the product manufacturer.¹⁴

In Illinois, public and nonpublic schools are authorized to maintain a supply of asthma medication in any secure location that is accessible before, during, or after school where a person is most at risk.¹⁵ Authorized personnel, such as school nurse or trained personnel, may administer the asthma medication to any person that the individual believed in good faith was in respiratory distress.

School Health Services in Florida

School health services are an important component of the public health system and help assure that Florida's students are healthy and ready to learn. School health services are intended to minimize health barriers to learning for public school students in grades prekindergarten through twelve in all 67 Florida counties.¹⁶

⁹ The policy statement was a joint effort made by the American Thoracic Society (ATS), The Allergy and Asthma Network Mothers of Asthmatics (AANMA), American Lung Associations (ALA), and the National Association of School Nurses (NASN).

¹⁰ Anna Voleman, et al., Ensuring Access to Albuterol in Schools: From Policy to Implementation. An official ATS/AANMA/ALA/NASN Policy Statement, 204 American Journal of Respiratory and Critical Care Medicine 5 (Sept. 2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8491259/pdf/rccm.202106-1550ST.pdf>.

¹¹ Examples of states that passed legislation and guidelines addressing asthma management in schools include Arkansas, ARK. CODE. § 6-18-707(d)-(h) (2019), California, CAL. CIVIL CODE § 49414.7 (2023), 105., Indiana, IND. CODE § 16-41-43-1, 16-41-43-3.5, 20-34-4.5-0.2, and 20-34-4.5-0.6 (2017), Iowa, IOWA CODE § 280.16 (2022), Montana, MO. REV. STAT. § 167.635 (2012), New Hampshire, N.H. REV. STAT. § 200:53 (2016), New Mexico, N.M. REV. STAT. ANN. § 24-31-1 (2018), Ohio, OHIO REV. CODE ANN. § 3313.7113 (2023), Oklahoma, OKLA. STAT. tit. 70, §70-1-116.3 (2020), Texas, TEX. General-LAW MUNICIPALITY CODE ANN. § 38.001 (2007), Utah, UTAH CODE ANN. § 26-41-101 to 107 (2020).

¹² VA CODE ANN. § 22.1-274.2, Virginia Law, *Code of Virginia*, § 22.1-274.2. <https://law.lis.virginia.gov/vacode/22.1-274.2/> (last visited Jan. 15, 2023).

¹³ VA CODE ANN. § 8.01-225 (2023)

¹⁴ ARIZ. REV. STAT. § 15-158 and § 22.1-274.2 (2022)

¹⁵ Ill. COMP. STAT. 5/22-30 and 27A-5 (2017), see also Illinois Public Act, *SB3015 Enrolled*, available at <https://www.ilga.gov/legislation/publicacts/100/PDF/100-0726.pdf>.

¹⁶ Florida Department of Education, School Health Services, <https://www.fldoe.org/schools/k-12-public-schools/sss/sch-health-serv.stml> (last visited Jan. 10, 2024). Service are provided in accordance with a local school health services plan under s.

381.0056(4)(a), F.S.

Asthma

In accordance with Florida law, asthmatic students attending public school may carry a metered dose inhaler with them while in school, provided they have obtained approval from both their parent and physician. The school principal must be provided a copy of the parent's and physician's approval.¹⁷ Current law does not authorize an asthmatic student attending a private school to carry a metered dose inhaler with them while at school.

Epinephrine Use and Supply

Florida law also addresses the use of epinephrine auto-injectors for public and private K-12 students, at risk of life-threatening allergic reactions, known as anaphylaxis.

A public school student may carry and self-administer an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities if the school has been provided with parental and physician authorization.¹⁸ For each public school student authorized to carry an epinephrine auto-injector, the school nurse must develop an annual child-specific action plan for an anticipated health emergency in the school setting.¹⁹

Additionally, both K-12 public and private schools in Florida may purchase and maintain a supply of epinephrine auto-injectors in a secure, locked location on school premises for use if a student has an anaphylactic reaction.²⁰ A participating school district or private school is required to adopt a protocol developed by a licensed physician for administration of the epinephrine by school personnel.²¹ The epinephrine auto-injectors may be administered by school personnel or self-administered by the student.²²

K-12 public and private schools, their employees, agents, and physicians who provide the standing protocol are exempted from liability for any injury arising from the use of an epinephrine auto-injector if the epinephrine auto-injector is administered by trained school personnel who follows the protocol and reasonably believes that the student is having an anaphylactic reaction.²³ Florida law provides that the liability protections apply:²⁴

- even if the student's parent has not been provided notice or has not signed a statement acknowledging that the school district is not liable; and
- regardless of whether authorization has been given by the student's parent or the student's physician.

However, the liability protections do not apply if the trained school personnel's action is willful and wanton.²⁵

Effect of Proposed Changes

To provide access to life-saving interventions during respiratory distress at a public or private school, the bill authorizes a public or private school to acquire and stock a supply of short-acting bronchodilators and components from a wholesale distributor²⁶ or to enter into an arrangement with a

¹⁷ Section 1002.20(3)(h), F.S.

¹⁸ Section 1002.20(3)(i)1., F.S.; *see also* rule 6A-6.0251, F.A.C.

¹⁹ Rule 6A-6.0251, F.A.C.; *see also* rule 64F-6.004, F.A.C.

²⁰ Sections 1002.20(3)(i)2., F.S. and 1002.42(17)(a), F.S.

²¹ *Id.*

²² *Id.*

²³ Sections 1002.20(3)(i)3., F.S. and 1002.42(17)(b), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 499.003(49), F.S. Wholesale distributor means a person, other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution.

wholesale distributor or manufacturer,²⁷ for short-acting bronchodilators and components at fair-market, free, or reduced prices.

The bill authorizes specified health care practitioners to prescribe short-acting bronchodilators and components in the name of a public school or private school. Additionally, the bill authorizes a licensed pharmacist to dispense short-acting bronchodilators and components to a prescription issued in the name of a public or private school.

Under the bill, a public or private school may also accept short-acting bronchodilators and components as a donation or transfer if they are new, unexpired, manufacturer-sealed, not subject to recall, unadulterated, and in compliance with relevant regulations adopted by the United States Food and Drug Administration.

A public or private school which elects to acquire and stock a supply of short-acting bronchodilators and components must maintain the supply in a secure location on the school's premises. Additionally, the participating school district or private school must adopt a protocol developed by a licensed physician for administration of short-acting bronchodilators or components by school personnel who are trained to recognize symptoms of respiratory distress and to administer a short-acting bronchodilator and components. The bill provides that the supply of short-acting bronchodilators and components may be provided to and used by a trained school personnel member or a student authorized to self-administer a short-acting bronchodilator and components.

Under the bill the school district, public school, or private school, must provide written notice to the parent of each student enrolled in the school district, public school, or private school, of the school's adopted protocol and must receive prior permission from a student's parent to administer a short-acting bronchodilator or components in a respiratory distress emergency.

The bill specifies that school nurse or trained school personnel at a participating public or private school must only administer short-acting bronchodilators and components to students if they have successfully completed training and believe in good faith that the student is experiencing severe respiratory distress.

The bill provides that a school district and its employees and agents, as well as a private school and its employees and agents, acting in good faith are not liable for any injury arising from the use or non-use of a short-acting bronchodilator or components administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is experiencing respiratory distress:

- Unless the trained school personnel's action is willful and wanton.
- Notwithstanding that the parents of the student to whom the short-acting bronchodilator is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable.
- Regardless of whether authorization has been given by the student's parents or by the student's physician, physician assistant, or advanced practice registered nurse.

The bill provides that any authorized healthcare practitioner who prescribes, or a dispensing pharmacist who fills, a prescription for a short-acting bronchodilator and components for use by a public or private school is immune from civil liability for any act or omission to act related to the administration of a short-acting bronchodilator or components, except for an act of willful or wanton misconduct.

The bill updates the terminology for the type of device an asthmatic public school student may carry from a metered-dose inhaler to a short-acting bronchodilator and component and authorizes an asthmatic private school student, similar to a public school student, to carry a short-acting

²⁷ Section 499.003(29), F.S. Manufacturer means a person who holds a New Drug Application, an Abbreviated New Drug Application, a Biologics License Application, or a New Animal Drug Application approved under the federal act or license issued under s. 351 of the Public Health Service Act, 42 U.S.C. s. 262, for such drug or biologics, or if such drug or biologics are not the subject of an approved application or license, the person who manufactured the drug or biologics, a co-licensed partner or affiliates, and those manufacturing devices or cosmetics.

bronchodilator and components while in school. The private school student's parent and physician must provide their approval to the private school's principal.

The bill defines the following terms:

- "Administer" to mean to give or to directly apply a short-acting bronchodilator or components to a student.
- "Asthma" to mean a chronic lung disease that inflames and narrows the airways, which can manifest as wheezing, chest tightness, shortness of breath, and coughing.
- "Authorized health care practitioner" to mean a physician, a physician assistant or a registered nurse, each licensed as defined under the law.
- "Components" to mean devices used as part of clinically recommended use of short-acting bronchodilators, which may include spacers, valved holding chambers, or nebulizers.
- "Respiratory distress" to refer to an individual experiencing difficulty breathing, which can be caused by a multitude of medical factors, including chronic diseases such as asthma.
- "Short-acting bronchodilator" to mean a beta-2 agonist, such as albuterol, used for the quick relief of asthma symptoms and recommended by the National Heart, Lung, and Blood Institute's National Asthma Education and Prevention Program Guidelines for the Treatment of Asthma. These bronchodilators may include an orally inhaled medication that contains a premeasured single dose of albuterol or albuterol sulfate delivered by a nebulizer or by a pressured metered-dose inhaler used to treat respiratory distress, including, but not limited to, wheezing, shortness of breath, and difficulty breathing, or another dosage of a short-acting bronchodilator recommended in the Guidelines for the Treatment of Asthma.

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.20, F.S.; providing definitions; authorizing certain public school students to carry a short-acting bronchodilator and components; providing for public schools to receive prescribed short-acting bronchodilators and components in the school's name; authorizing public schools to acquire and stock a supply of short-acting bronchodilators and components through specified means; providing for the adoption of specified protocols relating to such short-acting bronchodilators and components; providing school district, public school, and parental requirements for the administration of such short-acting bronchodilators and components; providing construction.

Section 2: Amends s. 1002.42, F.S.; providing definitions; authorizing certain private school students to carry a short-acting bronchodilator and components; providing for private schools to receive prescribed short-acting bronchodilators and components in the school's name; authorizing private schools to acquire and stock a supply of short-acting bronchodilators and components through specified means; providing for the adoption of specified protocols relating to such short-acting bronchodilators and components; providing private school and parental requirements for the administration of such short-acting bronchodilators and components; providing construction.

Section 3: Establishes an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Participating schools may incur costs when acquiring a stock supply of short-acting bronchodilators and components. Additional expenses may arise for training personnel to administer the bronchodilators and their components unless an association offers free training which a school may use.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Choice & Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorizes a private school, similar to a public school, to accept short-acting bronchodilators and components as a donation or transfer if they are new, unexpired, manufacturer-sealed, not subject to recall, unadulterated, and in compliance with relevant regulations adopted by the United States Food and Drug Administration.

The analysis is drafted to the committee substitute adopted by the Choice & Innovation Subcommittee.