

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 883 Short-acting Bronchodilator Use in Public and Private Schools
SPONSOR(S): Health & Human Services Committee and Choice & Innovation Subcommittee, Koster and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 962

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 883 passed the House on February 28, 2024, as amended, and subsequently passed the Senate on March 1, 2024.

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.

Additionally, 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 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.

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 or components to a student in respiratory distress emergencies.

The bill authorizes a private school asthmatic student, similar to a public school student, to carry a short-acting bronchodilator and components while in school, if a parent and physician provided approval to the principal.

The bill establishes immunity from civil and criminal liability for schools, trained school personnel, and health care practitioners who act in accordance with the provisions of the bill.

The bill has no fiscal impact on state government and may have an insignificant, indeterminate, negative fiscal impact on school districts. See Fiscal Comments.

The bill was approved by the Governor on April 2, 2024, ch. 2024-53, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 and make 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 4 to 6 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 Department of Health, *What is Asthma*, <https://www.floridahealth.gov/diseases-and-conditions/asthma/what-is-asthma.html> (last visited Mar. 4, 2024).

² *Id.*

³ Asthma and Allergy Foundation of America, *Childhood Asthma*, <https://asthmaandallergies.org/asthma-allergies/childhood-asthma/> (last visited Mar. 4, 2024).

⁴ American Lung Association, *Improving Access to Asthma Medications in Schools* (2014), 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 Mar. 4, 2024).

⁷ Cleveland Clinic, *Bronchodilator*, <https://my.clevelandclinic.org/health/treatments/17575-bronchodilator> (last visited February 5, 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* (2023), <https://www.lung.org/blog/why-schools-should-stock-inhalers> (last visited Mar. 4, 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

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 Volerman, 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 Mar. 4, 2024).

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>.

health barriers to learning for public school students in grades prekindergarten through twelve in all 67 Florida counties.¹⁶

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 expressly 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

¹⁶ Florida Department of Education, *School Health Services*, <https://www.fldoe.org/schools/k-12-public-schools/sss/sch-health-serv.stml> (last visited Mar. 4, 2024). Service are provided in accordance with a local school health services plan under s. 381.0056(4)(a), F.S.

¹⁷ Section 1002.20(3)(h), F.S.

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

¹⁹ Rule 6A-6.0251, F.A.C.; *see also* r. 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.*

Prescribing and Dispensing Short-acting Bronchodilators

Short-acting bronchodilators must be prescribed to a patient.²⁶ In Florida, a duly licensed practitioner such as a physician²⁷ or an osteopathic physician²⁸ may prescribe medications,²⁹ and physician assistants³⁰ and advanced practice registered nurses³¹ are authorized to prescribe medications in certain circumstances. A pharmacist may then dispense³² the short-acting bronchodilators and components according to the prescriber's directions. A pharmacist may not alter a prescriber's directions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, except as expressly permitted by law.³³

Wholesale Distribution of Short-acting Bronchodilators

Subject to statutory exceptions, it is illegal for a drug manufacturer or wholesale distributor in Florida to distribute a prescription drug to a person without a prescription.³⁴ One such statutory exception authorizes a public school to purchase a supply of epinephrine auto-injectors from a wholesale distributor or manufacturer.³⁵ In addition, a manufacturer or wholesale distributor of a short-acting beta-2 agonist may sell a prescription drug to:³⁶

- A licensed pharmacist or any person under the licensed pharmacist's supervision while acting within the scope of the licensed pharmacist's practice;
- A licensed practitioner authorized by law to prescribe prescription drugs or any person under the licensed practitioner's supervision while acting within the scope of the licensed practitioner's practice;
- A qualified person who uses prescription drugs for lawful research, teaching, or testing, and not for resale;
- A licensed hospital or other institution that procures such drugs for lawful administration or dispensing by practitioners;
- An officer or employee of a federal, state, or local government; or
- A person that holds a valid permit issued by the Department of Business and Professional Regulation, which authorizes that person to possess prescription drugs.

Florida's Good Samaritan Act

The Good Samaritan Act (the Act) provides civil immunity to any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment in direct response to an emergency situation.³⁷ Under the Act, a person may not be held liable for any civil damages resulting from such care or treatment, or failure to act in providing further medical treatment where the person acted as a reasonable person would.³⁸

²⁶ Florida Health, *Asthma Medication*, <https://www.floridahealth.gov/diseases-and-conditions/asthma/asthma-management/asthma-medication.html> (last visited Mar. 5, 2024). *see also*, 21.U.S.C § 829.

²⁷ Section 458.003, F.S.

²⁸ Section 459.003, F.S.

²⁹ Section 465.003(23), F.S.

³⁰ Physician assistants may prescribe drugs as delegated by a supervising physician. *see ss.* 459.022(4)(e) and 458.347(4)(e), F.S.

³¹ APRNs may prescribe drugs within the framework of a physician's supervisory protocol, or without such protocol if they are registered for autonomous practice. *see ss.* 464.003(2) and 464.012(3), F.S.

³² Dispensing a drug includes the assessment of the prescription for potential adverse effects and counseling the patient regarding the drug; *see*, section 465.003(13), F.S.

³³ Section 465.003(22), F.S.

³⁴ Section 499.005(14), F.S.

³⁵ Section 1002.20(3)(i), F.S.

³⁶ Section 499.03(1), F.S.

³⁷ Section 768.13(2)(a) and (b), F.S., in this context, an emergency situation includes those arising out of a public health emergency declared pursuant to s. 381.00315, a state of emergency which has been declared pursuant to s. 252.36 or at the scene of an emergency outside of a medical facility.

³⁸ Section 768.13(2)(a), F.S.

Effect of the Bill

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 distributor³⁹ or to enter into an arrangement with a wholesale distributor or manufacturer,⁴⁰ for short-acting bronchodilators and components at fair-market, free, or reduced prices. The short-acting bronchodilators and components must be maintained in a secure location on a school's premises.

The bill also authorizes public and private schools 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 bill further authorizes that the supply of short-acting bronchodilators and components may be provided to and used by a trained public or private school personnel member or a student authorized to self-administer a short-acting bronchodilator and components.

The bill authorizes licensed physicians,⁴¹ physician assistants,⁴² and advanced practice registered nurse practitioners⁴³ to prescribe short-acting bronchodilators and components in the name of a public school or private school. The bill also authorizes a licensed pharmacist to dispense short-acting bronchodilators and components pursuant to a prescription issued in the name of a public or private school.

The participating public or private school must adopt a protocol developed by a licensed physician⁴⁴ 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 or components. Each school or school district that adopts such a protocol must provide written notice of the protocol to the parent of each student enrolled in the school.

The bill requires a public school district and the protocol or the private school's protocol to provide guidance for administering short-acting bronchodilators or components in instances of respiratory distress for a student with a known diagnosis of asthma and if approved by the school district or private school, for students with no known diagnosis of asthma.

The bill provides that a school nurse or school personnel, in either a public or private school, may only administer short-acting bronchodilator and components to students if they have successfully completed training and believe in good faith that the student is experiencing respiratory distress, regardless of whether the student has a prescription for a short-acting bronchodilator and components or has previously been diagnosed with asthma.

Under the bill, school nurses and other appropriately trained school personnel who administer, or attempts to administer, a short-acting bronchodilator or components in compliance with the provisions

³⁹ 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.

⁴⁰ 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.

⁴¹ Licensed under Chs. 458 or 459, F.S.

⁴² *Id.*

⁴³ Licensed under Ch. 464, F.S.

⁴⁴ Such physician must be either a physician licensed under Ch. 458, F.S., or an osteopathic physician licensed under Ch. 459, F.S.

of the bill and the Good Samaritan Act,⁴⁵ as well as the school district or private school that employs such individual, are immune from civil or criminal liability resulting from such administration.

The bill grants immunity from civil and criminal liability for any authorized healthcare practitioner who prescribes, or pharmacist who fills, a prescription for a short-acting bronchodilator and components to a school under the provisions of this bill, and acts in good faith and exercises reasonable care, similarly the bill grants immunity from licensure discipline on the same basis.

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 components and authorizes an asthmatic private school student, similar to a public school student, to carry a short-acting 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 an advanced practice 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 compressor device 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.

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:

⁴⁵ Section 768.13, F.S.

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Schools that choose to act under the authority granted by the bill may incur costs associated with implementing the provisions of the bill. Schools that choose to exercise this authority may incur costs related to acquiring and storing a supply of short-acting bronchodilators and components, providing written notice to parents, and training personnel to administer the bronchodilators and their components.