

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 962

INTRODUCER: Health Policy Committee and Senator Hooper

SUBJECT: Student Health

DATE: February 7, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>Brown</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 962 amends the Education Code to provide a framework for public and private schools to treat students with asthma or otherwise in respiratory distress. The bill authorizes:

- Trained staff to administer bronchodilators to students in respiratory distress and includes civil immunity for good-faith administration.
- Schools to acquire and safely maintain a supply of bronchodilators.
- Allopathic and osteopathic physicians, physician assistants, and advanced practice registered nurses to prescribe bronchodilators and components in the name of a public or private school.
- Licensed pharmacists to dispense bronchodilators and components pursuant to a prescription issued in the name of a public or private school.

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

II. Present Situation:

Asthma is a chronic condition that involves inflammation of the airways.¹ In Florida, approximately one in eight adults and one in nine children have asthma.² As children with

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

² *Id.*

asthma attend school, their safety and the management of their condition becomes the shared responsibility of the family, their healthcare providers, and school personnel.³

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.⁴ Rescue inhalers, known as short-acting bronchodilators, are used for sudden, acute asthma symptoms and includes short-acting 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.⁵

In a 2021 joint policy statement on ensuring access to albuterol in schools, the American Thoracic Society, the Allergy and Asthma Network Mothers of Asthmatics, the American Lung Association, and the National Association of School Nurses stated that for children with asthma, access to quick-relief medications is critical to minimizing morbidity and mortality.⁶ 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.⁷

Bronchodilator Regulation

The Federal Food, Drug, and Cosmetic Act governs the sale of drugs⁸ in the United States.⁹ When approving applications for the approval of new drugs, the Secretary of Health and Human Services indicates whether the drug is approved for over-the-counter or for prescription use.¹⁰

A short-acting beta-2 agonist contains albuterol or a derivative thereof¹¹ and is only available with a prescription.¹² A common metered-dose inhaler costs between \$20 to \$100.¹³

³ American Lung Association, *Improving Access to Asthma Medications in Schools* (Sept. 2014), available at <https://www.lung.org/getmedia/872c9b6a-5379-4321-8913-102d53182e29/improving-access-to-asthma.pdf.pdf>, at 1.

⁴ American Academy of Allergy, Asthma & Immunology, *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 Feb. 1, 2024).

⁵ Cleveland Clinic, *Bronchodilator*, <https://my.clevelandclinic.org/health/treatments/17575-bronchodilator> (last visited Feb. 1, 2024).

⁶ 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>.

⁷ *Id.*

⁸ The term ‘drug’ is broadly defined in federal law and includes any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals. 21 U.S.C. s. 321(g)(1).

⁹ 21 U.S.C. s. 355(a).

¹⁰ 21 U.S.C. s. 353(b)(1).

¹¹ Cleveland Clinic, *Bronchodilator*, <https://my.clevelandclinic.org/health/treatments/17575-bronchodilator> (last visited Feb. 1, 2024).

¹² Mayo Clinic, *Beta-2 Adrenergic Agonist (Oral Route, Injection Route)*, <https://www.mayoclinic.org/drugs-supplements/beta-2-adrenergic-agonist-oral-route-injection-route/description/drg-20069364> (last visited Feb. 1, 2024).

¹³ 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>, at 518.

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.¹⁴ One such statutory exception authorizes a public school to purchase a supply of epinephrine auto-injectors from a wholesale distributor or manufacturer.¹⁵ In addition, a manufacturer or wholesale distributor of a short-acting beta-2 agonist may sell a prescription drug to:¹⁶

- 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.

School Health

District school board personnel may assist students in the administration of certain medication and medical services.¹⁷ County health departments, district school boards, and local school health advisory committees jointly develop school health services plans, which must include provisions for meeting emergency needs at each school.¹⁸ Each school must ensure that at least two school staff members are currently certified by nationally recognized certifying agencies to provide first aid and cardiopulmonary resuscitation.¹⁹

In Florida, asthmatic students may carry a metered dose inhaler at school if both their parent and physician approve and provide written authorization to the school principal.²⁰

III. Effect of Proposed Changes:

CS/SB 962 provides a framework for public and private schools to treat students in respiratory distress.

Definitions

The bill amends ss. 1002.20 and 1002.42, F.S., to modify the rights for asthmatic student to carry devices to treat asthma at a public or private school, respectively. For consistency, the bill defines:

¹⁴ Section 499.005(14), F.S.

¹⁵ Section 1002.20(3)(i), F.S.

¹⁶ Section 499.03(1), F.S.

¹⁷ Section 1006.062, F.S.

¹⁸ Sections 381.0056(4)(a)12. and 1006.062(6), F.S.

¹⁹ Rule 64F-6.004, F.A.C.

²⁰ Section 1002.20(3)(h), F.S.

- “Administer” to mean to give or directly apply a short-acting bronchodilator to a student.
- “Asthma” to mean a chronic lung disease that inflames and narrows the airways and can manifest wheezing, chest tightness, shortness of breath, and coughing.
- “Authorized health care practitioner” to mean an allopathic physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464.
- “Components” to mean devices used as part of clinically recommended use of short-acting bronchodilators, including spacers, valved holding chambers, or nebulizers.
- “Respiratory distress” to mean difficulty breathing by an individual, which can be caused by several medical factors, including chronic diseases such as asthma.
- “Short-acting bronchodilator” to mean any beta-2 agonist, such as albuterol, which is used for the quick relief of asthma symptoms and is recommended by the National Heart, Lung, and Blood Institute’s National Asthma Education and Prevention Program Guidelines for the Treatment of Asthma. Such 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 bronchodilator recommended by the Guidelines for the Treatment of Asthma.

Bronchodilator Supply

The bill facilitates the provision and use of short-acting bronchodilators in public and private schools. The bill authorizes:

- Allopathic or osteopathic physicians, physician assistants, and advanced practice registered nurses to prescribe short-acting bronchodilators and components in the name of a public or private school for use in accordance with ss. 1002.20 or 1002.42, F.S., respectively.
- Licensed pharmacists to dispense short-acting bronchodilators and components pursuant to a prescription issued in the name of a public or private school for use in accordance with ss. 1002.20 or 1002.42, F.S., respectively.
- A school nurse or a trained school personnel member to administer short-acting bronchodilators or components to students only if the personnel member has successfully completed training and believes in good faith that the student is experiencing respiratory distress or asthma-related distress, regardless of whether the student has a prescription for a short-acting bronchodilator or has previously been diagnosed with asthma.

The bill provides a pathway for schools to purchase and maintain a supply of bronchodilators. The bill authorizes schools to:

- Acquire and stock a supply of short-acting bronchodilators and components from a wholesale distributor or enter into an arrangement with a wholesale distributor or manufacturer, for short-acting bronchodilators and components at no charge, a fair market price, or a reduced price for use in the event a student experiences an anaphylactic reaction or respiratory distress.

- 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.
- Supply short-acting bronchodilators and components for use by a trained school personnel member or a student authorized to self-administer a short-acting bronchodilator or components.

The bill provides safeguards for the use of bronchodilators in schools. The bill requires:

- The short-acting bronchodilators and components to be maintained in a secure location on a school's premises.
- The participating school district or school to adopt a protocol developed by a licensed allopathic or osteopathic 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 or components. The school district and the protocol must provide guidance for administering short-acting bronchodilators in instances of respiratory distress for a student with a known diagnosis of asthma and, if approved by the school district, for students with no known diagnosis of asthma.
- The school district or school to provide written notice of the district's or school's adopted protocol to each parent or guardian.
- The school to receive prior permission from the parent or guardian to administer a short-acting bronchodilator or components to a student.

Bronchodilator Administration

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

- Unless the trained school personnel member's or nurse's action is willful and wanton;
- Notwithstanding that the parent or guardian of the student to whom the short-acting bronchodilator is administered 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 guardian or by the student's physician, physician assistant, or advanced practice registered nurse.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20 and 1002.42.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 6, 2024:

The committee substitute:

- Modifies the underlying bill’s definition of “authorized health care practitioner” to include APRNs, instead of registered nurses, so that APRNs, not registered nurses, are authorized under the bill to issue prescriptions for bronchodilators;
- Modifies the underlying bill’s definition of “short-acting bronchodilator” to require recommendation by the National Heart, Lung, and Blood Institute’s National Asthma Education and Prevention Program Guidelines for the Treatment of Asthma, as opposed to recommendation by the Institute itself;
- Specifies that the physician protocol required to be adopted by public or private school under the bill must be developed by an allopathic or osteopathic physician; and
- Provides that a school district and its protocol must provide guidance for administering short-acting bronchodilators in instances of respiratory distress for a student with no known diagnosis of asthma, if such administration is approved by the school district.

- B. **Amendments:**

None.