

HOUSE BILL NO. 396

INTRODUCED BY A. BECKER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO
5 CARRY AND SELF-ADMINISTER PRESCRIBED ASTHMA MEDICATION; PROVIDING DEFINITIONS;
6 REQUIRING DOCUMENTATION; PROVIDING FOR NOTICE TO THE PARENTS OR GUARDIANS THAT THE
7 SCHOOL DISTRICT MAY NOT INCUR LIABILITY FOR ANY INJURY ARISING OUT OF THE
8 SELF-ADMINISTRATION OF MEDICATION UNLESS THE ACT OR OMISSION IS THE RESULT OF GROSS
9 NEGLIGENCE, WILLFUL AND WANTON CONDUCT, OR AN INTENTIONAL TORT; PROVIDING AN
10 EXEMPTION FOR YOUTH CORRECTIONAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Self-administration of asthma medication.** (1) As used in this section,
15 the following definitions apply:

16 (a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also
17 known as anaphylactic shock.

18 (b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical
19 intervention.

20 (c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and
21 autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician
22 assistant-certified who has been authorized to prescribe asthma medications as provided in 37-20-404, or an
23 advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

24 (d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the
25 pupil.

26 (2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil
27 with asthma if the parents or guardians of the pupil provide to the school:

28 (a) written authorization, ACKNOWLEDGING AND AGREEING TO THE LIABILITY PROVISIONS IN SUBSECTION (4),
29 for the self-administration of medication;

30 (b) a written statement from the pupil's physician, physician assistant-certified, or advanced practice

1 registered nurse containing the following information:

2 (i) the name and purpose of the medication;

3 (ii) the prescribed dosage; and

4 (iii) the time or times at which or the special circumstances under which the medication is to be
5 administered;

6 ~~(C) A WRITTEN AND SIGNED STATEMENT FROM THE PUPIL'S PARENT OR GUARDIAN AUTHORIZING~~
7 ~~SELF-ADMINISTRATION OF MEDICATION UNDER CONDITIONS SPECIFIED IN THE STATEMENT FROM THE PUPIL'S PHYSICIAN,~~
8 ~~PHYSICIAN ASSISTANT-CERTIFIED, OR ADVANCED PRACTICE REGISTERED NURSE AND ACKNOWLEDGING THE LIABILITY~~
9 ~~PROVISIONS IN SUBSECTION (4);~~

10 ~~(e)(D)(C)~~ documentation that the pupil has demonstrated to the health care practitioner and the school
11 nurse, if available, the skill level necessary to administer the medication as prescribed; and

12 ~~(d)(E)(D)~~ documentation that the pupil's physician, physician assistant-certified, or advanced practice
13 registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the
14 pupil and for medication use by the pupil during school hours.

15 (3) The information provided by the parents or guardians must be kept on file in the office of the school
16 nurse or, in the absence of a school nurse, the school's administrator.

17 (4) The school district or nonpublic school and its employees and agents are not liable as a result of
18 any injury arising from the self-administration of medication by the pupil unless an act or omission is the result
19 of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must
20 be given a written notice and sign a statement acknowledging that the school district or nonpublic school may
21 not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that
22 the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its
23 employees and agents against any claims, except a claim based on an act or omission that is the result of gross
24 negligence, willful and wanton conduct, or an intentional tort.

25 (5) The permission for self-administration of medication is effective for the school year for which it is
26 granted and must be renewed each subsequent school year or, if the medication dosage, frequency of
27 administration, or other conditions change, upon fulfillment of the requirements of this section.

28 (6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's
29 medication:

30 (a) while in school;

- 1 (b) while at a school-sponsored activity;
- 2 (c) while under the supervision of school personnel;
- 3 (d) before or after normal school activities, such as while in before-school or after-school care on
- 4 school-operated property; or
- 5 (e) while in transit to or from school or school-sponsored activities.

6 (7) IF PROVIDED BY THE PARENT OR GUARDIAN AND IN ACCORDANCE WITH DOCUMENTS PROVIDED BY THE PUPIL'S
 7 PHYSICIAN, PHYSICIAN ASSISTANT-CERTIFIED, OR ADVANCED PRACTICE REGISTERED NURSE, BACKUP MEDICATION WILL
 8 MUST BE KEPT AT A STUDENT'S PUPIL'S SCHOOL IN A PREDETERMINED LOCATION OR LOCATIONS TO WHICH THE STUDENT
 9 PUPIL HAS IMMEDIATE ACCESS IN THE EVENT OF AN ASTHMA OR ANAPHYLAXIS EMERGENCY.

10 (8) YOUTH CORRECTIONAL FACILITIES ARE EXEMPT FROM THIS SECTION AND MAY NOT SHALL ADOPT POLICIES
 11 RELATED TO ACCESS AND USE OF ASTHMA MEDICATIONS.

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 13 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
 14 integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [section 1].

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 16 **NEW SECTION. Section 3. Two-thirds vote required.** Because [section 1] limits governmental
 17 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each
 18 house of the legislature for passage.

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 20 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2005.

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