

1 **STUDENT ASTHMA RELIEF AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mark A. Wheatley**

5 Senate Sponsor: Ronald Winterton

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions governing the administration of stock albuterol by certain
10 entities to an individual.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ enacts definitions;
- 14 ▶ permits a school to make stock albuterol available to certain employees for
15 administering to certain students;
- 16 ▶ enacts provisions governing training provided by the Department of Health on the
17 use and storage of stock albuterol;
- 18 ▶ authorizes a qualified adult to obtain a prescription for stock albuterol and
19 administer stock albuterol to certain individuals;
- 20 ▶ enacts immunity provisions for a qualified stock albuterol entity;
- 21 ▶ requires the Department of Health to adopt rules establishing the storage of stock
22 albuterol by a qualified stock albuterol entity; and
- 23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **26-41-101**, as enacted by Laws of Utah 1998, Chapter 17
- 31 **26-41-102**, as last amended by Laws of Utah 2017, Chapter 106
- 32 **26-41-103**, as last amended by Laws of Utah 2015, Chapter 332
- 33 **26-41-104**, as last amended by Laws of Utah 2015, Chapter 332
- 34 **26-41-105**, as last amended by Laws of Utah 2015, Chapter 332
- 35 **26-41-106**, as last amended by Laws of Utah 2018, Chapter 415
- 36 **26-41-107**, as enacted by Laws of Utah 2015, Chapter 332

37 ENACTS:

38 **26-41-104.1**, Utah Code Annotated 1953

39 REPEALS:

40 **53G-9-503**, as renumbered and amended by Laws of Utah 2018, Chapter 3



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **26-41-101** is amended to read:

44 **CHAPTER 41. EMERGENCY RESPONSE FOR LIFE-THREATENING**
 45 **CONDITIONS**

46 **26-41-101. Title.**

47 This chapter is known as [~~the "Emergency Injection for Anaphylactic Reaction Act."~~]
 48 "Emergency Response for Life-threatening Conditions."

49 Section 2. Section **26-41-102** is amended to read:

50 **26-41-102. Definitions.**

51 As used in this chapter:

52 (1) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.

53 (a) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty
 54 breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

55 (b) Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and
 56 exercise.

57 (2) "Asthma action plan" means a written plan:

58 (a) developed with a school nurse, a student's parent or guardian, and the student's
59 health care provider to help control the student's asthma; and

60 (b) signed by the student's:

61 (i) parent or guardian; and

62 (ii) health care provider.

63 (3) "Asthma emergency" means an episode of respiratory distress that may include
64 symptoms such as wheezing, shortness of breath, coughing, chest tightness, or breathing
65 difficulty.

66 [~~(2)~~] (4) "Epinephrine auto-injector" means a portable, disposable drug delivery device
67 that contains a measured, single dose of epinephrine that is used to treat a person suffering a
68 potentially fatal anaphylactic reaction.

69 (5) "Health care provider" means an individual who is licensed as:

70 (a) a physician under Title 58, Chapter 67, Utah Medical Practice Act;

71 (b) a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

72 (c) an advanced practice registered nurse under Section 58-31b-302; or

73 (d) a physician assistant under Title 58, Chapter 70a, Physician Assistant Act.

74 [~~(3)~~] (6) "Qualified adult" means a person who:

75 (a) is 18 years of age or older; and

76 (b) (i) for purposes of administering an epinephrine auto-injector, has successfully
77 completed the training program established in Section 26-41-104[-]; and

78 (ii) for purposes of administering stock albuterol, has successfully completed the
79 training program established in Section 26-41-104.1.

80 [~~(4)~~] (7) "Qualified epinephrine auto-injector entity":

81 (a) means a facility or organization that employs, contracts with, or has a similar
82 relationship with a qualified adult who is likely to have contact with another person who may
83 experience anaphylaxis; and

84 (b) includes:

85 (i) recreation camps;

- 86 (ii) an education facility, school, or university;
- 87 (iii) a day care facility;
- 88 (iv) youth sports leagues;
- 89 (v) amusement parks;
- 90 (vi) food establishments;
- 91 (vii) places of employment; and
- 92 (viii) recreation areas.

93 (8) "Qualified stock albuterol entity" means a public or private school that employs,
 94 contracts with, or has a similar relationship with a qualified adult who is likely to have contact
 95 with another person who may experience an asthma emergency.

96 (9) "Stock albuterol" means a prescription inhaled medication:

- 97 (a) used to treat asthma; and
- 98 (b) that may be delivered through a device, including:
 - 99 (i) an inhaler; or
 - 100 (ii) a nebulizer with a mouthpiece or mask.

101 Section 3. Section **26-41-103** is amended to read:

102 **26-41-103. Voluntary participation.**

103 (1) This chapter does not create a duty or standard of care for:

104 (a) a person to be trained in the use and storage of epinephrine auto-injectors or stock
 105 albuterol; or

106 (b) except as provided in Subsection (5), a qualified epinephrine auto-injector entity to
 107 store epinephrine auto-injectors or a qualified stock albuterol entity to store stock albuterol on
 108 its premises.

109 (2) Except as provided in Subsections (3) and (5), a decision by a person to
 110 successfully complete a training program under Section 26-41-104 or 26-41-104.1 and to make
 111 emergency epinephrine auto-injectors or stock albuterol available under the provisions of this
 112 chapter is voluntary.

113 (3) A school, school board, or school official may not prohibit or dissuade a teacher or

114 other school employee at a primary or secondary school in the state, either public or private,
115 from:

116 (a) completing a training program under Section [26-41-104](#) or [26-41-104.1](#);

117 (b) possessing or storing an epinephrine auto-injector or stock albuterol on school
118 property if:

119 (i) the teacher or school employee is a qualified adult; and

120 (ii) the possession and storage is in accordance with the training received under Section
121 [26-41-104](#) or [26-41-104.1](#); or

122 (c) administering an epinephrine auto-injector or stock albuterol to any person, if:

123 (i) the teacher or school employee is a qualified adult; and

124 (ii) the administration is in accordance with the training received under Section
125 [26-41-104](#) or [26-41-104.1](#).

126 (4) A school, school board, or school official may encourage a teacher or other school
127 employee to volunteer to become a qualified adult.

128 (5) (a) Each primary or secondary school in the state, both public and private, shall
129 make an emergency epinephrine auto-injector available to any teacher or other school
130 employee who:

131 (i) is employed at the school; and

132 (ii) is a qualified adult.

133 (b) This section does not require a school described in Subsection (5)(a) to keep more
134 than one emergency epinephrine auto-injector on the school premises, so long as it may be
135 quickly accessed by a teacher or other school employee, who is a qualified adult, in the event of
136 an emergency.

137 (6) (a) Each primary or secondary school in the state, both public and private, may
138 make stock albuterol available to any school employee who:

139 (i) is employed at the school; and

140 (ii) is a qualified adult.

141 (b) A qualified adult may administer stock albuterol to a student who:

- 142 (i) has a diagnosis of asthma by a health care provider;
- 143 (ii) has a current asthma action plan on file with the school; and
- 144 (iii) is showing symptoms of an asthma emergency as described in the student's asthma
- 145 action plan.

146 (c) This Subsection (6) may not be interpreted to relieve a student's parent or guardian
147 of providing a student's medication or create an expectation that a school will have stock
148 albuterol available.

149 ~~[(6)]~~ (7) No school, school board, or school official shall retaliate or otherwise take
150 adverse action against a teacher or other school employee for:

- 151 (a) volunteering under Subsection (2);
- 152 (b) engaging in conduct described in Subsection (3); or
- 153 (c) failing or refusing to become a qualified adult.

154 Section 4. Section **26-41-104** is amended to read:

155 **26-41-104. Training in use and storage of epinephrine auto-injector.**

156 (1) (a) Each primary and secondary school in the state, both public and private, shall
157 make initial and annual refresher training, regarding the storage and emergency use of an
158 epinephrine auto-injector, available to any teacher or other school employee who volunteers to
159 become a qualified adult.

160 (b) The training described in Subsection (1)(a) may be provided by the school nurse, or
161 other person qualified to provide such training, designated by the school district physician, the
162 medical director of the local health department, or the local emergency medical services
163 director.

164 (2) A person who provides training under Subsection (1) or (6) shall include in the
165 training:

- 166 (a) techniques for recognizing symptoms of anaphylaxis;
- 167 (b) standards and procedures for the storage and emergency use of epinephrine
- 168 auto-injectors;
- 169 (c) emergency follow-up procedures, including calling the emergency 911 number and

170 contacting, if possible, the student's parent and physician; and
171 (d) written materials covering the information required under this Subsection (2).
172 (3) A qualified adult shall retain for reference the written materials prepared in
173 accordance with Subsection (2)(d).
174 (4) A public school shall permit a student to possess an epinephrine auto-injector or
175 possess and self-administer an epinephrine auto-injector if:
176 (a) the student's parent or guardian signs a statement:
177 (i) authorizing the student to possess or possess and self-administer an epinephrine
178 auto-injector; and
179 (ii) acknowledging that the student is responsible for, and capable of, possessing or
180 possessing and self-administering an epinephrine auto-injector; and
181 (b) the student's health care provider provides a written statement that states that:
182 (i) it is medically appropriate for the student to possess or possess and self-administer
183 an epinephrine auto-injector; and
184 (ii) the student should be in possession of the epinephrine auto-injector at all times.
185 (5) The [~~Utah Department of Health~~] department, in cooperation with the state
186 superintendent of public instruction, shall design forms to be used by public and private
187 schools for the parental and health care providers statements described in Subsection (4).
188 (6) (a) The department:
189 (i) shall approve educational programs conducted by other persons, to train:
190 (A) people under Subsection (6)(b) of this section, regarding the proper use and storage
191 of emergency epinephrine auto-injectors; and
192 (B) a qualified epinephrine auto-injector entity regarding the proper storage and
193 emergency use of epinephrine auto-injectors; and
194 (ii) may, as funding is available, conduct educational programs to train people
195 regarding the use of and storage of emergency epinephrine auto-injectors.
196 (b) A person who volunteers to receive training as a qualified adult to administer an
197 epinephrine auto-injector under the provisions of this Subsection (6) shall demonstrate a need

198 for the training to the department, which may be based upon occupational, volunteer, or family
199 circumstances, and shall include:

- 200 (i) camp counselors;
- 201 (ii) scout leaders;
- 202 (iii) forest rangers;
- 203 (iv) tour guides; and
- 204 (v) other persons who have or reasonably expect to have contact with at least one other
205 person as a result of the person's occupational or volunteer status.

206 Section 5. Section **26-41-104.1** is enacted to read:

207 **26-41-104.1. Training in use and storage of stock albuterol.**

208 (1) (a) Each primary and secondary school in the state, both public and private, shall
209 make initial and annual refresher training regarding the storage and emergency use of stock
210 albuterol available to a teacher or school employee who volunteers to become a qualified adult.

211 (b) The training described in Subsection (1)(a) shall be provided by the department.

212 (2) A person who provides training under Subsection (1) or (6) shall include in the
213 training:

214 (a) techniques for recognizing symptoms of an asthma emergency;

215 (b) standards and procedures for the storage and emergency use of stock albuterol;

216 (c) emergency follow-up procedures, and contacting, if possible, the student's parent;

217 and

218 (d) written materials covering the information required under this Subsection (2).

219 (3) A qualified adult shall retain for reference the written materials prepared in
220 accordance with Subsection (2)(d).

221 (4) (a) A public or private school shall permit a student to possess and self-administer
222 asthma medication if:

223 (i) the student's parent or guardian signs a statement:

224 (A) authorizing the student to self-administer asthma medication; and

225 (B) acknowledging that the student is responsible for, and capable of,

226 self-administering the asthma medication; and

227 (ii) the student's health care provider provides a written statement that states:

228 (A) it is medically appropriate for the student to self-administer asthma medication and
229 be in possession of asthma medication at all times; and

230 (B) the name of the asthma medication prescribed or authorized for the student's use.

231 (b) Section 53G-8-205 does not apply to the possession and self-administration of
232 asthma medication in accordance with this section.

233 (5) The department, in cooperation with the state superintendent of public instruction,
234 shall design forms to be used by public and private schools for the parental and health care
235 provider statements described in Subsection (4).

236 (6) The department:

237 (a) shall approve educational programs conducted by other persons to train:

238 (i) people under Subsection (6)(b), regarding the proper use and storage of stock
239 albuterol; and

240 (ii) a qualified stock albuterol entity regarding the proper storage and emergency use of
241 stock albuterol; and

242 (b) may conduct educational programs to train people regarding the use of and storage
243 of stock albuterol.

244 Section 6. Section **26-41-105** is amended to read:

245 **26-41-105. Authority to obtain and use an epinephrine auto-injector or stock**
246 **albuterol.**

247 (1) A qualified adult who is a teacher or other school employee at a public or private
248 primary or secondary school in the state, or a school nurse, may obtain from the school district
249 physician, the medical director of the local health department, or the local emergency medical
250 services director a prescription for epinephrine auto-injectors or stock albuterol.

251 (2) A qualified adult may obtain from a physician, pharmacist, or any other person or
252 entity authorized to prescribe or dispense prescription drugs, a prescription for an epinephrine
253 auto-injector or stock albuterol.

254 (3) A qualified adult:

255 (a) may immediately administer an epinephrine auto-injector to a person exhibiting
256 potentially life-threatening symptoms of anaphylaxis when a physician is not immediately
257 available; and

258 (b) shall initiate emergency medical services or other appropriate medical follow-up in
259 accordance with the training materials retained under Section 26-41-104 after administering an
260 epinephrine auto-injector.

261 (4) If a school nurse is not immediately available, a qualified adult:

262 (a) may immediately administer stock albuterol to an individual who:

263 (i) has a diagnosis of asthma by a health care provider;

264 (ii) has a current asthma action plan on file with the school; and

265 (iii) is showing symptoms of an asthma emergency as described in the student's asthma
266 action plan; and

267 (b) shall initiate appropriate medical follow-up in accordance with the training
268 materials retained under Section 26-41-104.1 after administering stock albuterol.

269 ~~[(4)]~~ (5) (a) A qualified entity that complies with Subsection ~~[(4)]~~ (5)(b) or (c), may
270 obtain from a physician, pharmacist, or any other person ~~[or entity]~~ authorized to prescribe or
271 dispense prescription drugs, a prescription for a supply of epinephrine auto-injectors or stock
272 albuterol, respectively, for:

273 (i) storing:

274 (A) the epinephrine auto-injectors on the qualified epinephrine auto-injector entity's
275 premises; and

276 (B) stock albuterol on the qualified stock albuterol entity's premises; and

277 (ii) use by a qualified adult in accordance with Subsection (3) or (4).

278 (b) A qualified epinephrine auto-injector entity shall:

279 (i) designate an individual to complete an initial and annual refresher training program
280 regarding the proper storage and emergency use of an epinephrine auto-injector available to a
281 qualified adult; and

282 (ii) store epinephrine auto-injectors in accordance with the standards established by the
283 department in Section [26-41-107](#).

284 (c) A qualified stock albuterol entity shall:

285 (i) designate an individual to complete an initial and annual refresher training program
286 regarding the proper storage and emergency use of stock albuterol available to a qualified
287 adult; and

288 (ii) store stock albuterol in accordance with the standards established by the department
289 in Section [26-41-107](#).

290 Section 7. Section **26-41-106** is amended to read:

291 **26-41-106. Immunity from liability.**

292 (1) The following, if acting in good faith, are not liable in any civil or criminal action
293 for any act taken or not taken under the authority of this chapter with respect to an anaphylactic
294 reaction or asthma emergency:

295 (a) a qualified adult;

296 (b) a physician, pharmacist, or any other person or entity authorized to prescribe or
297 dispense prescription drugs;

298 (c) a person who conducts training described in Section [26-41-104](#)~~[-and]~~ or
299 [26-41-104.1](#);

300 (d) a qualified epinephrine auto-injector entity~~[-];~~ and

301 a qualified stock albuterol entity.

302 (2) Section [53G-9-502](#) does not apply to the administration of an epinephrine
303 auto-injector or stock albuterol in accordance with this chapter.

304 (3) This section does not eliminate, limit, or reduce any other immunity from liability
305 or defense against liability that may be available under state law.

306 Section 8. Section **26-41-107** is amended to read:

307 **26-41-107. Administrative rulemaking authority.**

308 The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah
309 Administrative Rulemaking Act, to:

310 (1) establish and approve training programs in accordance with [~~Section~~] Sections
311 26-41-104 and 26-41-104.1;

312 (2) establish a procedure for determining who is eligible for training as a qualified
313 adult under Subsection 26-41-104(6)(b)(v); and

314 (3) establish standards for storage of:

315 (a) emergency auto-injectors by a qualified epinephrine auto-injector entity under
316 Section 26-41-104[-]; and

317 (b) stock albuterol by a qualified stock albuterol entity under Section 26-41-104.1.

318 **Section 9. Repealer.**

319 This bill repeals:

320 Section **53G-9-503, Self-administration of asthma medication.**

321 **Section 10. Effective date.**

322 This bill takes effect July 1, 2020.