S. 1884

To provide States with incentives to require elementary schools and secondary schools to maintain, and permit school personnel to administer, epinephrine at schools.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2011

Mr. DURBIN (for himself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide States with incentives to require elementary schools and secondary schools to maintain, and permit school personnel to administer, epinephrine at schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “School Access to Emergency Epinephrine Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to research funded by the Food Allergy Initiative and conducted by Northwestern
University and Children’s Memorial Hospital, nearly
6,000,000 children in the United States have food
allergies.

(2) Anaphylaxis, or anaphylactic shock, is a
systemic allergic reaction that can kill within min-
utes.

(3) More than 15 percent of school-aged chil-
dren with food allergies have had an allergic reaction
in school.

(4) Teenagers and young adults with food aller-
gies are at the highest risk of fatal food-induced an-
aphylaxis.

(5) Individuals with food allergies who also have
asthma may be at increased risk for severe or fatal
food allergy reactions.

(6) Studies have shown that 25 percent of epi-
nephrine administrations in schools involve individ-
uals with a previously unknown allergy.

(7) The National Institute of Allergy and Infec-
tious Diseases (“NIAID”) has reported that delays
in the administration of epinephrine to patients in
anaphylaxis can result in rapid decline and death.
NIAID recommends that epinephrine be given
promptly to treat anaphylaxis.
(8) Physicians can provide standing orders to furnish a school with epinephrine for injection, and several States have passed laws to authorize this practice.

(9) The American Academy of Allergy, Asthma, and Immunology recommends that epinephrine injectors should be included in all emergency medical treatment kits in schools.

(10) The American Academy of Pediatrics recommends that an anaphylaxis kit should be kept with medications in each school and made available to trained staff for administration in an emergency.

(11) According to the Food Allergy and Anaphylaxis Network, there are no contraindications to the use of epinephrine for a life-threatening reaction.

SEC. 3. PREFERENCE FOR STATES REGARDING ADMINISTRATION OF EPINEPHRINE BY SCHOOL PERSONNEL.

Section 399L of the Public Health Service Act (42 U.S.C. 280g(d)) is amended—

(1) in subsection (a), by redesignating the second paragraph (2) and paragraph (3) as paragraphs (3) and (4), respectively; and

(2) by striking subsection (d) and inserting the following:

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“(d) Preference for States Regarding Medication to Treat Asthma and Anaphylaxis.—

“(1) Preference.—The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies each of the following requirements:

“(A) Self-administration of medication.—

“(i) In general.—The State shall require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student’s asthma or anaphylaxis, if—

“(I) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

“(II) the student has demonstrated to the health care practitioner (or such practitioner’s designee) and the school nurse (if avail-
able) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

“(III) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

“(IV) the student’s parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under subclause (III) and other documents related to liability.

“(ii) SCOPE.—An authorization granted under clause (i) shall allow the student involved to possess and use the student’s medication—

“(I) while in school;

“(II) while at a school-sponsored activity, such as a sporting event; and
“(III) in transit to or from school or school-sponsored activities.

“(iii) DURATION OF AUTHORIZATION.—An authorization granted under clause (i)—

“(I) shall be effective only for the same school and school year for which it is granted; and

“(II) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

“(iv) BACKUP MEDICATION.—The State shall require that backup medication, if provided by a student’s parent or guardian, be kept at a student’s school in a location to which the student has prompt access in the event of an asthma or anaphylaxis emergency.

“(v) MAINTENANCE OF INFORMATION.—The State shall require that information described in clauses (i)(III) and (i)(IV) be kept on file at the student’s school in a location easily accessible in the
event of an asthma or anaphylaxis emer-
gency.

“(vi) Rule of construction.—

Nothing in this subparagraph creates a
cause of action or in any other way in-
creases or diminishes the liability of any
person under any other law.

“(B) School personnel administra-
tion of epinephrine.—

“(i) In general.—The State shall
require that each public elementary school
and secondary school in the State—

“(I) permit authorized personnel
to administer epinephrine to any stu-
dent believed in good faith to be hav-
ing an anaphylactic reaction; and

“(II) maintain in a secure and
easily accessible location a supply of
epinephrine that—

“(aa) are prescribed under a
standing protocol from a licensed
physician; and

“(bb) are accessible to au-
thorized personnel for adminis-
tration to a student having an
anaphylactic reaction.

“(ii) LIABILITY AND STATE LAW.—

“(I) GOOD SAMARITAN LAW.—
The State shall have a State law en-
suring that elementary school and sec-
ondary school employees and agents,
including a physician providing a pre-
scription for school epinephrine, will
incur no liability related to the admin-
istration of epinephrine to any student
believed in good faith to be having an
anaphylactic reaction, except in the
case of willful or wanton conduct.

“(II) STATE LAW.—Nothing in
this subparagraph shall be construed
to preempt State law, including any
State law regarding whether students
with allergy or asthma may possess
and self-administer medication.

“(2) DEFINITIONS.—For purposes of this sub-
section:

“(A) The terms ‘elementary school’ and
‘secondary school’ have the meaning given to
those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

“(B) The term ‘health care practitioner’ means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

“(C) The term ‘medication’ means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and epinephrine.

“(D) The term ‘self-administration’ means a student’s discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.

“(E) The term ‘authorized personnel’ means the school nurse or, if the school nurse is absent, an individual who has been designated by the school nurse and has received training in the administration of epinephrine.”.