

1 COMMITTEE SUBSTITUTE

2 FOR

3 H. B. 2648

4  
5 (By Delegates Pasdon, Stansbury, Ellington, Statler,  
6 Kurcaba, Householder, Fleischauer and Rohrbach)

7  
8 (Originating in the Committee on the Judiciary.)

**FISCAL  
NOTE**

9 (February 18, 2015)

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
11 designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all relating to availability  
12 and use of epinephrine auto-injectors; providing definitions; providing for legislative rules;  
13 providing for training; providing prescriptive authority to health care practitioners in certain  
14 circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in  
15 certain circumstances; providing for the storage and emergency use of epinephrine auto-  
16 injectors; providing that in certain circumstances the use of epinephrine auto-injectors is not  
17 the practice of medicine; providing that in certain circumstances one authorized to prescribe,  
18 possess or train regarding epinephrine auto-injectors is not liable for civil damages; and  
19 further providing that certain individuals who administer an epinephrine auto-injector to a  
20 person is immune from liability for civil action unless the act or omission was grossly  
21 negligent or willful misconduct .

22 *Be it enacted by the Legislature of West Virginia:*

23 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

1 article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all to read as follows:

2 **ARTICLE 46. EPINEPHRINE AUTO-INJECTOR AVAILABILITY AND USE.**

3 **§16-46-1. Definitions.**

4 As used in this article the term:

5 (1) "Administer" means to directly apply an epinephrine auto-injector to the body of an  
6 individual.

7 (2) "Authorized entity" means an entity or organization where allergens capable of causing  
8 a severe allergic reaction may be present.

9 (3) "Authorized health care practitioner" means an allopathic physician licensed to practice  
10 pursuant to the provisions of article three, chapter thirty of this code and an osteopathic physician  
11 licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code.

12 (4) "Department" means the Department of Health and Human Resources.

13 (5) "Epinephrine auto-injector" means a single-use device used for the automatic injection  
14 of a premeasured dose of epinephrine into the human body.

15 (6) "Self-administration" means an individual's discretionary administration of an epinephrine  
16 auto-injector on herself or himself.

17 **§16-46-2. Authority.**

18 The department may:

19 (1) Propose legislative rules for legislative approval in accordance with the provisions of  
20 article three, chapter twenty-nine-a of this code, necessary to administer this article; and

21 (2) Conduct and approve education training programs;

22 **§16-46-3. Educational training programs.**

1 Educational training programs shall be conducted by a nationally recognized organization  
2 experienced in training laypersons in emergency health treatment or an entity or individual approved  
3 by the department. The curriculum shall include at a minimum:

4 (1) Recognition of the symptoms of allergic reactions to food, insect stings and other  
5 allergens; and

6 (2) The proper administration of an a subcutaneous injection of epinephrine auto-injector.

7 **§16-46-4. Prescriptive authority for epinephrine auto-injectors; emergency administration.**

8 (a) An authorized health care practitioner may prescribe to an authorized entity an  
9 epinephrine auto-injector. A pharmacist may dispense an epinephrine auto-injectors pursuant to a  
10 prescription issued in the name of an authorized entity.

11 (b) An authorized entity may acquire and stock a supply of epinephrine auto-injectors  
12 pursuant to a prescription issued in accordance with this section. The epinephrine auto-injectors  
13 shall be stored in accordance with the epinephrine auto-injector's instructions. An authorized entity  
14 shall designate employees or agents who are trained pursuant to section three of this article to be  
15 responsible for the storage, maintenance and general oversight of epinephrine auto-injectors.

16 (c) An individual trained pursuant to section three of this article may, on the premises of or  
17 in connection with the authorized entity, use epinephrine auto-injectors to:

18 (1) Provide an epinephrine auto-injector to a person who the trained individual in good faith  
19 believes is experiencing a severe allergic reaction for that person's immediate self-administration,  
20 regardless of whether the person has a prescription for an epinephrine auto-injector or has previously  
21 been diagnosed with an allergy; or

22 (2) Administer an epinephrine auto-injector to a person who the trained individual in good

1 faith believes is experiencing a severe allergic reaction, regardless of whether the person has a  
2 prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

3 **§16-46-5. Not practice of medicine; limits on liability.**

4 (a) The administration of an epinephrine auto-injector in accordance with this article is not  
5 the practice of medicine.

6 (b) An authorized health care practitioner who prescribes epinephrine auto-injectors to an  
7 authorized entity; an authorized entity that possesses and makes available epinephrine auto-injectors;  
8 and, an entity or person that conducts the training under section three of this article are not liable for  
9 civil damages that result from the administration or self-administration of an epinephrine auto-  
10 injector, the failure to administer an epinephrine auto-injector, or any other act or omission  
11 committed, in good faith, pursuant to this article.

12 (c) An individual employed by an authorized entity who administers an epinephrine auto-  
13 injection to a person as provided in this article is immune from liability for any civil action arising  
14 out of an act or omission resulting from the administration of the epinephrine auto-injection unless  
15 the act or omission was the result of the individual's gross negligence or willful misconduct.