

**H. B. 2648**

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

[Introduced February 6, 2015; referred to the  
Committee on Health and Human Resources then the Judiciary.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all relating to allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency treatment during anaphylactic reactions.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all to read as follows:

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

**§16-46-1. Definitions.**

As used in this article the term:

"Administer" means to directly apply an epinephrine auto-injector to the body of an individual.

"Authorized entity" means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited

1 to, hotels, restaurants, recreation camps, youth sports leagues, parks and resorts and sports arenas.

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

5 "Department" means the Department of Health and Human Resources.

6 "Epinephrine auto-injector" means a single-use device used for the automatic injection of a  
7 premeasured dose of epinephrine into the human body.

8 "Self-administration" means an individual's discretionary administration of an epinephrine  
9 auto-injector on herself or himself.

10 **§16-46-2. Purpose; authority.**

11 (a) The purpose of this article is to provide a way for lifesaving treatment to be made  
12 available for persons who have severe allergic adverse reactions when a physician is not immediately  
13 available by making epinephrine auto-injectors available.

14 (b) The department may:

15 (1) Adopt interpretive and procedural rules and propose legislative rules for legislative  
16 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code,  
17 necessary to administer this article;

18 (2) Conduct educational training programs as described in section three of this article, and  
19 approve programs conducted by other persons or governmental agencies;

20 (3) Issue and renew certificates of training to persons who have complied with this article and  
21 the department's rules;

22 (4) Impose and collect reasonable fees necessary to administer this article.

1 **§16-46-3. Educational training programs; certificates.**

2 (a) Educational training programs conducted under this article must be conducted by a  
3 nationally recognized organization experienced in training laypersons in emergency health treatment  
4 or an entity or individual approved by the department licensed to practice medicine in this state. The  
5 curriculum must include at a minimum:

6 (1) Recognition of the symptoms of systemic reactions to food, insect stings and other  
7 allergens; and

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

9 (b) A certificate of training may be given to a person who:

10 (1) Is at least eighteen years of age;

11 (2) Has, or reasonably expects to have, responsibility for or contact with at least one other  
12 person who has severe adverse reactions to insect stings as a result of his or her occupational or  
13 volunteer status, including, but not limited to, a camp counselor, scout leader, school teacher, forest  
14 ranger, tour guide or chaperone;

15 (3) Has successfully completed an educational training program as described in subsection  
16 (a) of this section; and

17 (4) Pays the application fee imposed, if any.

18 (c) A certificate issued pursuant to this section authorizes the holder thereof to receive, upon  
19 presentment of the certificate, from any physician licensed in this state or from the department, a  
20 prescription for premeasured doses of epinephrine auto-injectors from an authorized health care  
21 practitioner or the department and the necessary paraphernalia for administration. The certificate  
22 also authorizes the holder to possess and administer, in an emergency situation when a physician is

1 not immediately available, to possess and administer a prescribed epinephrine auto-injector to a  
2 person experiencing suffering a severe allergic adverse reaction to an insect sting.

3 **§16-46-4. Prescriptive authority for epinephrine auto-injectors; emergency administration.**

4 (a) An allopathic physician licensed to practice pursuant to the provisions of article three,  
5 chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions  
6 of article fourteen, chapter thirty of this code may prescribe within the course of his or her  
7 professional practice standing orders and protocols for use when necessary by an authorized entity  
8 designated by the department which wishes to maintain epinephrine auto-injector. Pharmacists may  
9 dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized  
10 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 must be stored in accordance with the epinephrine auto-injector's instructions for use and with any  
14 additional requirements that may be established by the department. An authorized entity shall  
15 designate employees or agents who hold a certificate issued pursuant to section three of this article  
16 to be responsible for the storage, maintenance, and general oversight of epinephrine auto-injectors  
17 acquired by the authorized entity.

18 (c) An individual who holds a certificate issued pursuant to section three of this article may,  
19 on the premises of or in connection with the authorized entity, use epinephrine auto-injectors  
20 prescribed pursuant to subsection (a) of this section to:

21 (1) Provide an epinephrine auto-injector to a person who the certified individual in good faith  
22 believes is experiencing a severe allergic reaction for that person's immediate self-administration,

1 regardless of whether the person has a prescription for an epinephrine auto-injector or has previously  
2 been diagnosed with an allergy; and

3 (2) Administer an epinephrine auto-injector to a person who the certified individual in good  
4 faith believes is experiencing a severe allergic reaction, regardless of whether the person has a  
5 prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

6 (d) An authorized entity that acquires a stock supply of epinephrine auto-injectors pursuant  
7 to a prescription issued by an authorized health care practitioner in accordance with this section may  
8 make the auto-injectors available to individuals other than certified individuals identified in  
9 subsection (c) of this section who may administer the auto-injector to a person believed in good faith  
10 to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked,  
11 secure container and are made available only upon remote authorization by an authorized health care  
12 practitioner after consultation with the authorized health care practitioner by audio, televideo, or  
13 other similar means of electronic communication. Consultation with an authorized health care  
14 practitioner for this purpose is not considered the practice of telemedicine or otherwise construed  
15 as violating any law or rule regulating the authorized health care practitioner's professional practice.  
16 **§16-46-5. Not practice of medicine; limits on liability.**

17 (a) The administration of an epinephrine auto-injector in accordance with this section is not  
18 the practice of medicine.

19 (b) Any authorized health care practitioner who prescribes epinephrine auto-injectors to an  
20 authorized entity or to an individual that holds a certificate issued pursuant to section three of this  
21 article; any authorized entity that possesses and makes available epinephrine auto-injectors; any  
22 individual who holds a certificate issued pursuant to section three of this article; any noncertified

1 individual under subsection (d), section four of this article; and any person that conducts the training  
2 under section three of this article is not liable for civil damages that result from the administration  
3 or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-  
4 injector, or any other act or omission committed, in good faith, pursuant to this section or section  
5 three of this article.

6 (c) An authorized entity doing business in this state is not liable for injuries or related  
7 damages that result from the provision or administration of an epinephrine auto-injector by its  
8 employees or agents outside this state if the entity or its employees or agents would not have been  
9 liable for such injuries or related damages had the provision or administration occurred within this  
10 state, or would not have been liable under the law of the state in which such provision or  
11 administration occurred.

12 (d) An individual employed by an authorized entity who administers an epinephrine auto-  
13 injection to a person as provided in this section 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.

16 (e) This section does not eliminate, limit, or reduce any other immunity or defense that may  
17 be available under state law, including the immunity provided under section fifteen, article seven  
18 chapter fifty-five of this code.

NOTE: The purpose of this bill is to allow authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency treatment during anaphylactic reactions.

This article is new; therefore, it has been completely underscored.