

COMMITTEE SUBSTITUTE

for

**H. B. 2648**

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(BY DELEGATE(S) PASDON, STANSBURY,  
ELLINGTON, STATLER, KURCABA, HOUSEHOLDER,  
FLEISCHAUER AND ROHRBACH)

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(Originating in the Committee on the Judiciary.)  
(February 18, 2015)

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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 availability and use of epinephrine auto-injectors; providing definitions; providing for legislative rules; providing for training; providing prescriptive authority to health care practitioners in certain circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in certain circumstances; providing for the storage and emergency use of epinephrine auto-injectors; providing that in

certain circumstances the use of epinephrine auto-injectors is not the practice of medicine; providing that in certain circumstances one authorized to prescribe, possess or train regarding epinephrine auto-injectors are not liable for civil damages; and further providing that certain individuals who administer an epinephrine auto-injector to a person is immune from liability for civil action unless the act or omission was grossly negligent or willful misconduct.

*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.**

1       As used in this article the term:

2       (1) “Administer” means to directly apply an epinephrine  
3       auto-injector to the body of an individual.

4       (2) “Authorized entity” means an entity or organization  
5       where allergens capable of causing a severe allergic reaction  
6       may be present.

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

12       (4) “Department” means the Department of Health and  
13     Human Resources.

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

17       (6) “Self-administration” means an individual’s discretion-  
18     ary administration of an epinephrine auto-injector on herself or  
19     himself.

**§16-46-2. Authority.**

1       The department may:

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

5       (2) Conduct and approve education training programs;

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

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

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

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

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

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

5       (b) An authorized entity may acquire and stock a supply of  
6       epinephrine auto-injectors pursuant to a prescription issued in  
7       accordance with this section. The epinephrine auto-injectors  
8       shall be stored in accordance with the epinephrine auto-injector's  
9       instructions. An authorized entity shall designate employees or

10 agents who are trained pursuant to section three of this article to  
11 be responsible for the storage, maintenance and general  
12 oversight of epinephrine auto-injectors.

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

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

22 (2) Administer an epinephrine auto-injector to a person who  
23 the trained individual in good faith believes is experiencing a  
24 severe allergic reaction, regardless of whether the person has a  
25 prescription for an epinephrine auto-injector or has previously  
26 been diagnosed with an allergy.

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

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

3       **(b) An authorized health care practitioner who prescribes**  
4   **epinephrine auto-injectors to an authorized entity; an authorized**  
5   **entity that possesses and makes available epinephrine auto-**  
6   **injectors; and, an entity or person that conducts the training**  
7   **under section three of this article are not liable for civil damages**  
8   **that result from the administration or self-administration of an**  
9   **epinephrine auto-injector, the failure to administer an**  
10   **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**  
13   **administers an epinephrine auto-injection to a person as provided**  
14   **in this article is immune from liability for any civil action arising**  
15   **out of an act or omission resulting from the administration of the**  
16   **epinephrine auto-injection unless the act or omission was the**  
17   **result of the individual's gross negligence or willful misconduct.**



