

FIRST REGULAR SESSION

# HOUSE BILL NO. 165

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SPARKS.

0281H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 167.627, 167.630, 190.246, 196.990, and 321.621, RSMo, and to enact in lieu thereof five new sections relating to epinephrine products, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 167.627, 167.630, 190.246, 196.990, and 321.621, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 167.627, 167.630, 190.246, 196.990, and 321.621, to read as follows:

167.627. 1. For purposes of this section, the following terms shall mean:

(1) "Medication", any medicine prescribed or ordered by a physician for the treatment of asthma or anaphylaxis, including without limitation inhaled bronchodilators ~~[and]~~, auto-injectible epinephrine, **and single-use epinephrine nasal spray**;

(2) "Self-administration", a pupil's discretionary use of medication prescribed by a physician or under a written treatment plan from a physician.

2. Each board of education and its employees and agents in this state shall grant any pupil in the school authorization for the possession and self-administration of medication to treat such pupil's chronic health condition, including but not limited to asthma or anaphylaxis if:

(1) A licensed physician prescribed or ordered such medication for use by the pupil and instructed such pupil in the correct and responsible use of such medication;

(2) The pupil has demonstrated to the pupil's licensed physician or the licensed physician's designee, and the school nurse, if available, the skill level necessary to use the medication and any device necessary to administer such medication prescribed or ordered;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (3) The pupil's physician has approved and signed a written treatment plan for  
17 managing the pupil's chronic health condition, including asthma or anaphylaxis episodes and  
18 for medication for use by the pupil. Such plan shall include a statement that the pupil is  
19 capable of self-administering the medication under the treatment plan;

20 (4) The pupil's parent or guardian has completed and submitted to the school any  
21 written documentation required by the school, including the treatment plan required under  
22 subdivision (3) of this subsection and the liability statement required under subdivision (5) of  
23 this subsection; and

24 (5) The pupil's parent or guardian has signed a statement acknowledging that the  
25 school district and its employees or agents shall incur no liability as a result of any injury  
26 arising from the self-administration of medication by the pupil or the administration of such  
27 medication by school staff. Such statement shall not be construed to release the school  
28 district and its employees or agents from liability for negligence.

29 3. An authorization granted under subsection 2 of this section shall:

30 (1) Permit such pupil to possess and self-administer such pupil's medication while in  
31 school, at a school-sponsored activity, and in transit to or from school or school-sponsored  
32 activity; and

33 (2) Be effective only for the same school and school year for which it is granted.  
34 Such authorization shall be renewed by the pupil's parent or guardian each subsequent school  
35 year in accordance with this section.

36 4. Any current duplicate prescription medication, if provided by a pupil's parent or  
37 guardian or by the school, shall be kept at a pupil's school in a location at which the pupil or  
38 school staff has immediate access in the event of an asthma or anaphylaxis emergency.

39 5. The information described in subdivisions (3) and (4) of subsection 2 of this  
40 section shall be kept on file at the pupil's school in a location easily accessible in the event of  
41 an emergency.

167.630. 1. Each school board may authorize a school nurse licensed under chapter  
2 335 who is employed by the school district and for whom the board is responsible for to  
3 maintain an adequate supply of prefilled auto syringes of epinephrine with fifteen-hundredths  
4 milligram or three-tenths milligram delivery, **or single-use epinephrine nasal spray devices**,  
5 at the school. The nurse shall recommend to the school board the number of prefilled  
6 epinephrine auto syringes **or single-use epinephrine nasal spray devices** that the school  
7 should maintain.

8 2. To obtain prefilled epinephrine auto syringes **or single-use epinephrine nasal**  
9 **spray devices** for a school district, a prescription written by a licensed physician, a  
10 physician's assistant, or nurse practitioner is required. For such prescriptions, the school

11 district shall be designated as the patient, the nurse's name shall be required, and the  
12 prescription shall be filled at a licensed pharmacy.

13 3. A school nurse, contracted agent trained by a nurse, or other school employee  
14 trained by and supervised by the nurse shall have the discretion to use an epinephrine auto  
15 syringe **or single-use epinephrine nasal spray** on any student the school nurse, trained  
16 employee, or trained contracted agent believes is having a life-threatening anaphylactic  
17 reaction based on the training in recognizing an acute episode of an anaphylactic reaction.  
18 The provisions of section 167.624 concerning immunity from civil liability for trained  
19 employees administering lifesaving methods shall apply to trained employees administering a  
20 prefilled auto syringe **or single-use epinephrine nasal spray** under this section. Trained  
21 contracted agents shall have immunity from civil liability for administering a prefilled auto  
22 syringe **or single-use epinephrine nasal spray** under this section.

190.246. 1. As used in this section, the following terms shall mean:

2 (1) "Eligible person, firm, organization or other entity", an ambulance service or  
3 emergency medical response agency, an emergency medical responder, or an emergency  
4 medical technician who is employed by, or an enrolled member, person, firm, organization or  
5 entity designated by, rule of the department of health and senior services in consultation with  
6 other appropriate agencies. All such eligible persons, firms, organizations or other entities  
7 shall be subject to the rules promulgated by the director of the department of health and senior  
8 services;

9 (2) "Emergency health care provider":

10 (a) A physician licensed pursuant to chapter 334 with knowledge and experience in  
11 the delivery of emergency care; or

12 (b) A hospital licensed pursuant to chapter 197 that provides emergency care.

13 2. Possession and use of epinephrine auto-injector devices **and single-use**  
14 **epinephrine nasal spray devices** shall be limited as follows:

15 (1) No person shall use an epinephrine auto-injector device **or single-use**  
16 **epinephrine nasal spray device** unless such person has successfully completed a training  
17 course in the use of epinephrine auto-injector devices **or single-use epinephrine nasal spray**  
18 **devices, as appropriate**, approved by the director of the department of health and senior  
19 services. Nothing in this section shall prohibit the use of an epinephrine auto-injector device  
20 **or single-use epinephrine nasal spray device**:

21 (a) By a health care professional licensed or certified by this state who is acting  
22 within the scope of his or her practice; or

23 (b) By a person acting pursuant to a lawful prescription;

24 (2) Every person, firm, organization and entity authorized to possess and use  
25 epinephrine auto-injector devices **or single-use epinephrine nasal spray devices** pursuant to

26 this section shall use, maintain and dispose of such devices in accordance with the rules of the  
27 department; **and**

28 (3) Every use of an epinephrine auto-injector device **or single-use epinephrine nasal**  
29 **spray device** pursuant to this section shall immediately be reported to the emergency health  
30 care provider.

31 3. (1) Use of an epinephrine auto-injector device **or single-use epinephrine nasal**  
32 **spray device** pursuant to this section shall be considered first aid or emergency treatment for  
33 the purpose of any law relating to liability.

34 (2) Purchase, acquisition, possession or use of an epinephrine auto-injector device **or**  
35 **single-use epinephrine nasal spray device** pursuant to this section shall not constitute the  
36 unlawful practice of medicine or the unlawful practice of a profession.

37 (3) Any person otherwise authorized to sell or provide an epinephrine auto-injector  
38 device **or single-use epinephrine nasal spray device** may sell or provide it to a person  
39 authorized to possess it pursuant to this section.

40 4. Any person, firm, organization or entity that violates the provisions of this section  
41 is guilty of a class B misdemeanor.

196.990. 1. As used in this section, the following terms shall mean:

2 (1) "Administer", the direct application of an epinephrine auto-injector to the body of  
3 an individual **or the spraying of an epinephrine nasal spray into the nostril of an**  
4 **individual;**

5 (2) "Authorized entity", any entity or organization at or in connection with which  
6 allergens capable of causing anaphylaxis may be present including, but not limited to,  
7 qualified first responders, as such term is defined in section 321.621, restaurants, recreation  
8 camps, youth sports leagues, amusement parks, and sports arenas. "Authorized entity" shall  
9 not include any public school or public charter school;

10 (3) **"Authorized epinephrine product", an epinephrine auto-injector or**  
11 **epinephrine nasal spray;**

12 (4) "Epinephrine auto-injector", a single-use device used for the automatic injection  
13 of a premeasured dose of epinephrine into the human body;

14 ~~[(4)]~~ (5) **"Epinephrine nasal spray", a single-use nasal spray device used for the**  
15 **administration of a single dose of epinephrine into the human body through a nostril;**

16 (6) "Physician", a physician licensed in this state under chapter 334;

17 ~~[(5)]~~ (7) "Provide", the supply of one or more **authorized** epinephrine ~~[auto-~~  
18 ~~injectors]~~ **products** to an individual;

19 ~~[(6)]~~ (8) "Self-administration", a person's discretionary use of an **authorized**  
20 epinephrine ~~[auto-injector]~~ **product.**

21           2. A physician may prescribe **authorized** epinephrine [~~auto-injectors~~] **products** in  
22 the name of an authorized entity for use in accordance with this section, and pharmacists,  
23 physicians, and other persons authorized to dispense prescription medications may dispense  
24 **authorized** epinephrine [~~auto-injectors~~] **products** under a prescription issued in the name of  
25 an authorized entity.

26           3. An authorized entity may acquire and stock a supply of **authorized** epinephrine  
27 [~~auto-injectors~~] **products** under a prescription issued in accordance with this section. Such  
28 **authorized** epinephrine [~~auto-injectors~~] **products** shall be stored in a location readily  
29 accessible in an emergency and in accordance with the **authorized** epinephrine [~~auto-~~  
30 ~~injector's~~] **product's** instructions for use and any additional requirements established by the  
31 department of health and senior services by rule. An authorized entity shall designate  
32 employees or agents who have completed the training required under this section to be  
33 responsible for the storage, maintenance, and general oversight of **authorized** epinephrine  
34 [~~auto-injectors~~] **products** acquired by the authorized entity.

35           4. An authorized entity that acquires a supply of **authorized** epinephrine [~~auto-~~  
36 ~~injectors~~] **products** under a prescription issued in accordance with this section shall ensure  
37 that:

38           (1) Expected [~~epinephrine auto-injector~~] users **of authorized epinephrine products**  
39 receive training in recognizing symptoms of severe allergic reactions including anaphylaxis  
40 and the use of epinephrine auto-injectors **or epinephrine nasal sprays, as appropriate**  
41 **based on the supply**, from a nationally recognized organization experienced in training  
42 laypersons in emergency health treatment or another entity or person approved by the  
43 department of health and senior services;

44           (2) All **authorized** epinephrine [~~auto-injectors~~] **products** are maintained and stored  
45 according to the **authorized** epinephrine [~~auto-injector's~~] **product's** instructions for use;

46           (3) Any person who provides or administers an **authorized** epinephrine [~~auto-~~  
47 ~~injector~~] **product** to an individual who the person believes in good faith is experiencing  
48 anaphylaxis activates the emergency medical services system as soon as possible; and

49           (4) A proper review of all situations in which an **authorized** epinephrine [~~auto-~~  
50 ~~injector~~] **product** is used to render emergency care is conducted.

51           5. Any authorized entity that acquires a supply of **authorized** epinephrine [~~auto-~~  
52 ~~injectors~~] **products** under a prescription issued in accordance with this section shall notify the  
53 emergency communications district or the ambulance dispatch center of the primary provider  
54 of emergency medical services where the **authorized** epinephrine [~~auto-injectors~~] **products**  
55 are to be located within the entity's facility.

56           6. No person shall provide or administer an **authorized** epinephrine [~~auto-injector~~]  
57 **product** to any individual who is under eighteen years of age without the verbal consent of a

58 parent or guardian who is present at the time when provision or administration of the  
59 **authorized** epinephrine [~~auto-injector~~] **product** is needed. Provided, however, that a person  
60 may provide or administer an **authorized** epinephrine [~~auto-injector~~] **product** to such an  
61 individual without the consent of a parent or guardian if the parent or guardian is not  
62 physically present and the person reasonably believes the individual shall be in imminent  
63 danger without the provision or administration of the **authorized** epinephrine [~~auto-injector~~]  
64 **product**.

65 7. The following persons and entities shall not be liable for any injuries or related  
66 damages that result from the administration or self-administration of an **authorized**  
67 epinephrine [~~auto-injector~~] **product** in accordance with this section that may constitute  
68 ordinary negligence:

69 (1) An authorized entity that possesses and makes available **authorized** epinephrine  
70 [~~auto-injectors~~] **products** and its employees, agents, and other trained persons;

71 (2) Any person who uses an **authorized** epinephrine [~~auto-injector~~] **product** made  
72 available under this section;

73 (3) A physician that prescribes **authorized** epinephrine [~~auto-injectors~~] **products** to  
74 an authorized entity; or

75 (4) Any person or entity that conducts the training described in this section.  
76

77 Such immunity does not apply to acts or omissions constituting a reckless disregard for the  
78 safety of others or willful or wanton conduct. The administration of an **authorized**  
79 epinephrine [~~auto-injector~~] **product** in accordance with this section shall not be considered  
80 the practice of medicine. The immunity from liability provided under this subsection is in  
81 addition to and not in lieu of that provided under section 537.037. An authorized entity  
82 located in this state shall not be liable for any injuries or related damages that result from the  
83 provision or administration of an **authorized** epinephrine [~~auto-injector~~] **product** by its  
84 employees or agents outside of this state if the entity or its employee or agent is not liable for  
85 such injuries or related damages under the laws of the state in which such provision or  
86 administration occurred. No trained person who is in compliance with this section and who in  
87 good faith and exercising reasonable care fails to administer an **authorized** epinephrine  
88 [~~auto-injector~~] **product** shall be liable for such failure.

89 8. All basic life support ambulances and stretcher vans operated in the state shall be  
90 equipped with **authorized** epinephrine [~~auto-injectors~~] **products** and be staffed by at least  
91 one individual trained in the use of **authorized** epinephrine [~~auto-injectors~~] **products**.

92 9. The provisions of this section shall apply in all counties within the state and any  
93 city not within a county.

94 10. Nothing in this section shall be construed as superseding the provisions of section  
95 167.630.

321.621. 1. For the purposes of this section, "qualified first responder" shall mean  
2 any state and local law enforcement agency staff, fire department personnel, fire district  
3 personnel, or licensed emergency medical technician who is acting under the directives and  
4 established protocols of a medical director who comes in contact with a person suffering from  
5 an anaphylactic reaction and who has received training in recognizing and responding to  
6 anaphylactic reactions and the administration of epinephrine auto-injector devices **or single-**  
7 **use epinephrine nasal spray devices** to a person suffering from an apparent anaphylactic  
8 reaction. "Qualified first responder agencies" shall mean any state or local law enforcement  
9 agency, fire department, or ambulance service that provides documented training to its staff  
10 related to the administration of epinephrine auto-injector devices **or single-use epinephrine**  
11 **nasal spray devices** in an apparent anaphylactic reaction.

12 2. The director of the department of health and senior services, if a licensed  
13 physician, may issue a statewide standing order for epinephrine auto-injector devices **or**  
14 **single-use epinephrine nasal spray devices** for adult patients to fire protection districts in  
15 nonmetropolitan areas in Missouri as such areas are determined according to the United  
16 States Census Bureau's American Community Survey, based on the most recent of five-year  
17 period estimate data in which the final year of the estimate ends in either zero or five. If the  
18 director of the department of health and senior services is not a licensed physician, the  
19 department of health and senior services may employ or contract with a licensed physician  
20 who may issue such a statewide order with the express consent of the director.

21 3. Possession and use of epinephrine auto-injector devices **and single-use**  
22 **epinephrine nasal spray devices** for adult patients shall be limited as follows:

23 (1) No person shall use an epinephrine auto-injector device **or single-use**  
24 **epinephrine nasal spray device** pursuant to this section unless such person has  
25 successfully completed a training course in the use of epinephrine auto-injector devices **or**  
26 **single-use epinephrine nasal spray devices, as appropriate**, for adult patients approved by  
27 the director of the department of health and senior services. Nothing in this section shall  
28 prohibit the use of an epinephrine auto-injector device **or single-use epinephrine nasal**  
29 **spray device**:

30 (a) By a health care professional licensed or certified by this state who is acting  
31 within the scope of his or her practice; or

32 (b) By a person acting pursuant to a lawful prescription;

33 (2) Every person, firm, organization and entity authorized to possess and use  
34 epinephrine auto-injector devices **or single-use epinephrine nasal spray devices** for adult

35 patients pursuant to this section shall use, maintain and dispose of such devices for adult  
36 patients in accordance with the rules of the department; **and**

37 (3) Every use of an epinephrine auto-injector device **or single-use epinephrine nasal**  
38 **spray device** pursuant to this section shall immediately be reported to the emergency health  
39 care provider as defined in section 190.246.

40 4. (1) Use of an epinephrine auto-injector device **or single-use epinephrine nasal**  
41 **spray device** pursuant to this section shall be considered first aid or emergency treatment for  
42 the purpose of any law relating to liability.

43 (2) Purchase, acquisition, possession or use of an epinephrine auto-injector device **or**  
44 **single-use epinephrine nasal spray device** pursuant to this section shall not constitute the  
45 unlawful practice of medicine or the unlawful practice of a profession.

46 (3) Any person otherwise authorized to sell or provide an epinephrine auto-injector  
47 device **or single-use epinephrine nasal spray device** may sell or provide it to a person  
48 authorized to possess it pursuant to this section.

49 5. (1) There is hereby created in the state treasury the "Epinephrine [~~Auto-injector~~]  
50 Devices for Fire Personnel Fund", which shall consist of [~~money collected under this section~~]  
51 **moneys appropriated to the fund**. The state treasurer shall be custodian of the fund. In  
52 accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements.  
53 The moneys in the fund as set forth in this section shall be subject to appropriation by the  
54 general assembly for the particular purpose for which collected. The fund shall be a  
55 dedicated fund and money in the fund shall be used solely by the department of health and  
56 senior services for the purposes of providing epinephrine auto-injector devices **and single-**  
57 **use epinephrine nasal spray devices** for adult patients to qualified first responder agencies  
58 as used in this section.

59 (2) Notwithstanding the provisions of section 33.080 to the contrary, any moneys  
60 remaining in the fund at the end of the biennium shall not revert to the credit of the general  
61 revenue fund.

62 (3) The state treasurer shall invest moneys in the fund in the same manner as other  
63 funds are invested. Any interest and moneys earned on such investments shall be credited to  
64 the fund.

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