

1-1 By: Johnson, Menéndez S.B. No. 294  
 1-2 (In the Senate - Filed December 16, 2022; February 15, 2023,  
 1-3 read first time and referred to Committee on Education;  
 1-4 April 3, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 12, Nays 0; April 3, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			

1-22 COMMITTEE SUBSTITUTE FOR S.B. No. 294 By: Menéndez

1-23 A BILL TO BE ENTITLED  
 1-24 AN ACT

1-25 relating to the use of epinephrine auto-injectors and medication  
 1-26 designated for treatment of respiratory distress on public and  
 1-27 private school campuses.

1-28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-29 SECTION 1. The heading to Subchapter E, Chapter 38,  
 1-30 Education Code, is amended to read as follows:

1-31 SUBCHAPTER E. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE  
 1-32 AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS [~~ASTHMA~~  
 1-33 ~~MEDICINE~~]

1-34 SECTION 2. Section 38.201, Education Code, is amended by  
 1-35 adding Subdivision (3-a) to read as follows:

1-36 (3-a) "Medication for respiratory distress" means  
 1-37 albuterol, levalbuterol, or another medication designated by the  
 1-38 executive commissioner of the Health and Human Services Commission  
 1-39 for treatment of respiratory distress under Section 38.208(c).

1-40 SECTION 3. Section 38.202(a), Education Code, is amended to  
 1-41 read as follows:

1-42 (a) The commissioner of state health services shall  
 1-43 establish an advisory committee to examine and review the  
 1-44 administration, on a campus of a school district, an  
 1-45 open-enrollment charter school, a private school, or an institution  
 1-46 of higher education, of:

1-47 (1) epinephrine auto-injectors to a person  
 1-48 experiencing an anaphylactic reaction; and

1-49 (2) medication for respiratory distress to a person  
 1-50 experiencing respiratory distress [~~on a campus of a school~~  
 1-51 ~~district, an open-enrollment charter school, a private school, or~~  
 1-52 ~~an institution of higher education].~~

1-53 SECTION 4. Section 38.207, Education Code, is amended to  
 1-54 read as follows:

1-55 Sec. 38.207. ADVISORY COMMITTEE: DUTIES. The advisory  
 1-56 committee shall advise the commissioner of state health services  
 1-57 on:

1-58 (1) the storage and maintenance of epinephrine  
 1-59 auto-injectors and medication for respiratory distress on school  
 1-60 campuses and campuses of institutions of higher education;

2-1 (2) the training of school personnel and school  
2-2 volunteers, and of personnel and volunteers at institutions of  
2-3 higher education, in the administration of an epinephrine  
2-4 auto-injector;

2-5 (3) the training of school personnel and school  
2-6 volunteers, and of personnel and volunteers at institutions of  
2-7 higher education, in the administration of a medication for  
2-8 respiratory distress; and

2-9 (4) ~~(3)~~ a plan for:

2-10 (A) one or more school personnel members or  
2-11 school volunteers trained in the administration of an epinephrine  
2-12 auto-injector to be on each school campus; ~~and~~

2-13 (B) one or more school personnel members or  
2-14 school volunteers trained in the administration of medication for  
2-15 respiratory distress to be on each school campus;

2-16 (C) one or more personnel members or volunteers  
2-17 of an institution of higher education trained in the administration  
2-18 of an epinephrine auto-injector to be on each campus of an  
2-19 institution of higher education; and

2-20 (D) one or more personnel members or volunteers  
2-21 of an institution of higher education trained in the administration  
2-22 of medication for respiratory distress to be on each campus of an  
2-23 institution of higher education.

2-24 SECTION 5. The heading to Section 38.208, Education Code,  
2-25 is amended to read as follows:

2-26 Sec. 38.208. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE  
2-27 AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS [~~ASTHMA~~  
2-28 ~~MEDICINE~~].

2-29 SECTION 6. Section 38.208, Education Code, is amended by  
2-30 amending Subsections (a-1), (b-1), (c), (e), and (f) and adding  
2-31 Subsections (b-2), (b-3), (d-1), (d-2), and (e-1) to read as  
2-32 follows:

2-33 (a-1) Each school district, open-enrollment charter school,  
2-34 and private school may adopt and implement a policy regarding the  
2-35 maintenance, administration, and disposal of medication for  
2-36 respiratory distress ~~[authorizing a school nurse to maintain and~~  
2-37 ~~administer asthma medicine]~~ at each campus in the district or  
2-38 school.

2-39 (b-1) If a policy is adopted under Subsection (a-1), the  
2-40 policy must provide that school personnel and school volunteers who  
2-41 are authorized and trained ~~[the school nurse]~~ may administer  
2-42 medication for respiratory distress ~~[prescription asthma medicine]~~  
2-43 to a person reasonably believed to be experiencing respiratory  
2-44 distress on ~~[student only if the school nurse has written~~  
2-45 ~~notification from a parent or guardian of the student that the~~  
2-46 ~~student has been diagnosed as having asthma and stating that the~~  
2-47 ~~school nurse may administer prescription asthma medicine to the~~  
2-48 ~~student. A school nurse may administer the prescription asthma~~  
2-49 ~~medicine only at]~~ a school campus, or at a school-sponsored or  
2-50 school-related activity on or off school property.

2-51 (b-2) If medication for respiratory distress is  
2-52 administered to a student whose parent or guardian has not provided  
2-53 notification to the school that the student has been diagnosed with  
2-54 asthma, the school must refer the student to the student's primary  
2-55 care provider on the day the medication for respiratory distress is  
2-56 administered and inform the student's parent or guardian regarding  
2-57 the referral. The referral must include:

2-58 (1) the symptoms of respiratory distress observed;

2-59 (2) the name of the medication for respiratory  
2-60 distress administered to the student; and

2-61 (3) any patient care instructions given to the  
2-62 student.

2-63 (b-3) If a student who has received medication for  
2-64 respiratory distress does not have a primary care provider or the  
2-65 parent or guardian of the student has not engaged a primary care  
2-66 provider for the student, the student's parent or guardian must  
2-67 receive information to assist the parent or guardian in selecting a  
2-68 primary care provider for the student.

2-69 (c) The executive commissioner of the Health and Human

3-1 Services Commission, in consultation with the commissioner of  
3-2 education, and with advice from the advisory committee as  
3-3 appropriate, shall adopt rules regarding the maintenance,  
3-4 administration, and disposal of an epinephrine auto-injector at a  
3-5 school campus subject to a policy adopted under Subsection (a) and  
3-6 the maintenance, ~~and~~ administration, and disposal of medication  
3-7 for respiratory distress ~~[asthma medicine]~~ at a school campus  
3-8 subject to a policy adopted under Subsection (a-1). The rules must  
3-9 establish:

3-10 (1) the number of epinephrine auto-injectors  
3-11 available at each campus;

3-12 (2) the amount of medication for respiratory distress  
3-13 ~~[prescription asthma medicine]~~ available at each campus;

3-14 (3) the process for each school district,  
3-15 open-enrollment charter school, and private school to check the  
3-16 inventory of epinephrine auto-injectors and medication for  
3-17 respiratory distress ~~[asthma medicine]~~ at regular intervals for  
3-18 expiration and replacement; ~~and~~

3-19 (4) the amount of training required for school  
3-20 personnel and school volunteers to administer:

3-21 (A) an epinephrine auto-injector; or

3-22 (B) medication for respiratory distress; and

3-23 (5) the types of medication that may be administered  
3-24 under Subsection (b-1) to persons experiencing respiratory  
3-25 distress, based on a review of the best available medical evidence.

3-26 (d-1) Each school district, open-enrollment charter school,  
3-27 and private school that adopts a policy under Subsection (a-1) must  
3-28 require that each campus have one or more school personnel or school  
3-29 volunteers authorized and trained to administer medication for  
3-30 respiratory distress present during regular school hours.

3-31 (d-2) A school personnel member or school volunteer may not  
3-32 be subject to any penalty or disciplinary action for refusing to  
3-33 administer or receive training to administer epinephrine  
3-34 auto-injectors or medication for respiratory distress, as  
3-35 applicable, in accordance with a policy adopted under Subsection  
3-36 (a) or (a-1).

3-37 (e) The supply of epinephrine auto-injectors at each campus  
3-38 must be stored in a secure location and be easily accessible to  
3-39 school personnel and school volunteers authorized and trained to  
3-40 administer an epinephrine auto-injector. ~~[The supply of asthma  
3-41 medicine at each campus must be stored in a secure location and be  
3-42 easily accessible to the school nurse.]~~

3-43 (e-1) The supply of medication for respiratory distress at  
3-44 each campus must be stored in a secure location and be easily  
3-45 accessible to authorized school personnel and school volunteers.

3-46 (f) The policy described by Subsection (a-1) may not require  
3-47 a school district, open-enrollment charter school, or private  
3-48 school to purchase medication for respiratory distress  
3-49 ~~[prescription asthma medicine]~~ or require any other expenditure  
3-50 related to the maintenance or administration of medication for  
3-51 respiratory distress ~~[asthma medicine]~~ that would result in a  
3-52 negative fiscal impact on the district or school.

3-53 SECTION 7. Subchapter E, Chapter 38, Education Code, is  
3-54 amended by adding Section 38.2091 to read as follows:

3-55 Sec. 38.2091. REPORT ON ADMINISTERING MEDICATION FOR  
3-56 RESPIRATORY DISTRESS. (a) Not later than the 10th business day  
3-57 after the date a school personnel member or school volunteer  
3-58 administers medication for respiratory distress to a person  
3-59 experiencing respiratory distress in accordance with a policy  
3-60 adopted under Section 38.208(a-1), the school shall report the  
3-61 information required under Subsection (b) to:

3-62 (1) the school district, the charter holder if the  
3-63 school is an open-enrollment charter school, or the governing body  
3-64 of the school if the school is a private school;

3-65 (2) the physician or other person who prescribed the  
3-66 medication for respiratory distress; and

3-67 (3) the commissioner of state health services.

3-68 (b) The report required under this section must include:

3-69 (1) the age of the person who received the

- 4-1 administration of the medication for respiratory distress;
- 4-2 (2) whether the person who received the administration
- 4-3 of the medication for respiratory distress was a student, a school
- 4-4 personnel member or school volunteer, or a visitor;
- 4-5 (3) the dosage of the medication for respiratory
- 4-6 distress administered;
- 4-7 (4) the title of the person who administered the
- 4-8 medication for respiratory distress; and
- 4-9 (5) any other information required by the commissioner
- 4-10 of education.

4-11 SECTION 8. Section 38.210, Education Code, is amended by  
 4-12 amending Subsections (a) and (b) and adding Subsection (a-1) to  
 4-13 read as follows:

4-14 (a) Each school district, open-enrollment charter school,  
 4-15 and private school that adopts a policy under Section 38.208(a) is  
 4-16 responsible for training school personnel and school volunteers in  
 4-17 the administration of an epinephrine auto-injector. The training  
 4-18 must include information on:

- 4-19 (1) recognizing the signs and symptoms of anaphylaxis;
- 4-20 (2) administering an epinephrine auto-injector;
- 4-21 (3) implementing emergency procedures, if necessary,
- 4-22 after administering an epinephrine auto-injector; and
- 4-23 (4) properly disposing of used or expired epinephrine
- 4-24 auto-injectors.

4-25 (a-1) Each school district, open-enrollment charter school,  
 4-26 and private school that adopts a policy under Section 38.208(a-1)  
 4-27 is responsible for training school personnel and school volunteers  
 4-28 in the administration of medication for respiratory distress. The  
 4-29 training must include information on:

- 4-30 (1) recognizing the signs and symptoms of respiratory
- 4-31 distress;
- 4-32 (2) administering medication for respiratory
- 4-33 distress;
- 4-34 (3) implementing emergency procedures, if necessary,
- 4-35 after administering medication for respiratory distress; and
- 4-36 (4) proper sanitization, reuse, and disposal of
- 4-37 medication for respiratory distress.

4-38 (b) Training required under this section must be provided:

- 4-39 (1) ~~[include information on:~~
- 4-40 ~~[(A) recognizing the signs and symptoms of~~
- 4-41 ~~anaphylaxis;~~
- 4-42 ~~[(B) administering an epinephrine auto-injector;~~
- 4-43 ~~[(C) implementing emergency procedures, if~~
- 4-44 ~~necessary, after administering an epinephrine auto-injector; and~~
- 4-45 ~~[(D) properly disposing of used or expired~~
- 4-46 ~~epinephrine auto-injectors;~~
- 4-47 ~~[(2) be provided]~~ in a formal training session or
- 4-48 through online education; and
- 4-49 ~~[(3) be provided]~~ in accordance with the policy
- 4-50 adopted under Section 21.4515.

4-51 SECTION 9. The heading to Section 38.211, Education Code,  
 4-52 is amended to read as follows:

4-53 Sec. 38.211. PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS  
 4-54 AND MEDICATION FOR RESPIRATORY DISTRESS ~~[ASTHMA MEDICINE]~~.

4-55 SECTION 10. Sections 38.211(a), (b), (c), (e), and (f),  
 4-56 Education Code, are amended to read as follows:

4-57 (a) A physician or person who has been delegated  
 4-58 prescriptive authority under Chapter 157, Occupations Code, may  
 4-59 prescribe epinephrine auto-injectors or medication for respiratory  
 4-60 distress ~~[asthma medicine]~~ in the name of a school district,  
 4-61 open-enrollment charter school, or private school.

4-62 (b) A physician or other person who prescribes epinephrine  
 4-63 auto-injectors or medication for respiratory distress ~~[asthma~~  
 4-64 ~~medicine]~~ under Subsection (a) shall provide the school district,  
 4-65 open-enrollment charter school, or private school with a standing  
 4-66 order for the administration of, as applicable:

- 4-67 (1) an epinephrine auto-injector to a person
- 4-68 reasonably believed to be experiencing anaphylaxis; or
- 4-69 (2) medication for respiratory distress ~~[asthma~~

5-1 ~~medicine]~~ to a person reasonably believed to be experiencing  
5-2 respiratory distress ~~[a symptom of asthma and who has provided~~  
5-3 ~~written notification and permission as required by Section~~  
5-4 38.208(b-1)].

5-5 (c) The standing order under Subsection (b) is not required  
5-6 to be patient-specific, and the epinephrine auto-injector or  
5-7 medication for respiratory distress ~~[asthma medicine]~~ may be  
5-8 administered to a person without a previously established  
5-9 physician-patient relationship.

5-10 (e) An order issued under this section must contain:

5-11 (1) the name and signature of the prescribing  
5-12 physician or other person;

5-13 (2) the name of the school district, open-enrollment  
5-14 charter school, or private school to which the order is issued;

5-15 (3) as applicable, the quantity of epinephrine  
5-16 auto-injectors or the quantity and types of medications for  
5-17 respiratory distress ~~[asthma medicine]~~ to be obtained and  
5-18 maintained under the order; and

5-19 (4) the date of issue.

5-20 (f) A pharmacist may dispense an epinephrine auto-injector  
5-21 or medication for respiratory distress ~~[asthma medicine]~~ to a  
5-22 school district, open-enrollment charter school, or private school  
5-23 without requiring the name or any other identifying information  
5-24 relating to the user.

5-25 SECTION 11. Section 38.212, Education Code, is amended to  
5-26 read as follows:

5-27 Sec. 38.212. NOTICE TO PARENTS; WRITTEN CONSENT. (a) If a  
5-28 school district, open-enrollment charter school, or private school  
5-29 implements a policy under this subchapter, the district or school  
5-30 shall:

5-31 (1) provide written notice of the policy to a parent or  
5-32 guardian of each student enrolled in the district or school; and

5-33 (2) obtain written consent from a parent or guardian  
5-34 of each student on the student's enrollment in the district or  
5-35 school to administer an epinephrine auto-injector or medication for  
5-36 respiratory distress, as applicable, to the student in accordance  
5-37 with the policy.

5-38 (b) Notice required under Subsection (a)(1) ~~[this section]~~  
5-39 must be provided before a policy is implemented by the district or  
5-40 school under this subchapter and before the start of each school  
5-41 year.

5-42 (c) Subsection (a)(2) does not prohibit a school personnel  
5-43 member or school volunteer from administering in good faith an  
5-44 epinephrine auto-injector to a student reasonably believed to be  
5-45 experiencing anaphylaxis or medication for respiratory distress to  
5-46 a student reasonably believed to be experiencing respiratory  
5-47 distress, as applicable, in accordance with a policy implemented  
5-48 under this subchapter, regardless of whether the student's parent  
5-49 or guardian has provided written consent under Subsection (a)(2).

5-50 SECTION 12. Section 38.215(a), Education Code, is amended  
5-51 to read as follows:

5-52 (a) A person who in good faith takes, or fails to take, any  
5-53 action under this subchapter is immune from civil or criminal  
5-54 liability or disciplinary action resulting from that action or  
5-55 failure to act, including:

5-56 (1) issuing an order for epinephrine auto-injectors or  
5-57 medication for respiratory distress ~~[asthma medicine]~~;

5-58 (2) supervising or delegating the administration of an  
5-59 epinephrine auto-injector or medication for respiratory distress  
5-60 ~~[asthma medicine]~~;

5-61 (3) possessing, maintaining, storing, or disposing of  
5-62 an epinephrine auto-injector or medication for respiratory  
5-63 distress ~~[asthma medicine]~~;

5-64 (4) prescribing an epinephrine auto-injector or  
5-65 medication for respiratory distress ~~[asthma medicine]~~;

5-66 (5) dispensing:

5-67 (A) an epinephrine auto-injector; or

5-68 (B) medication for respiratory distress ~~[asthma~~  
5-69 ~~medicine, provided that permission has been granted as provided by~~

6-1 ~~Section 38.208(b-1)];~~

6-2 (6) administering, or assisting in administering, an  
6-3 epinephrine auto-injector or medication for respiratory distress  
6-4 ~~[asthma medicine, provided that permission has been granted as~~  
6-5 ~~provided by Section 38.208(b-1)];~~

6-6 (7) providing, or assisting in providing, training,  
6-7 consultation, or advice in the development, adoption, or  
6-8 implementation of policies, guidelines, rules, or plans; or

6-9 (8) undertaking any other act permitted or required  
6-10 under this subchapter.

6-11 SECTION 13. This Act takes effect immediately if it  
6-12 receives a vote of two-thirds of all the members elected to each  
6-13 house, as provided by Section 39, Article III, Texas Constitution.  
6-14 If this Act does not receive the vote necessary for immediate  
6-15 effect, this Act takes effect September 1, 2023.

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