

By: Lucio III

H.B. No. 4633

A BILL TO BE ENTITLED

AN ACT

relating to the care of elementary and secondary school students with food or other life-threatening allergies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 172 to read as follows:

CHAPTER 172. CARE OF STUDENTS WITH FOOD OR OTHER LIFE-THREATENING ALLERGIES

Sec. 172.001. DEFINITIONS. In this chapter:

(1) "Allergy" means a dangerous or life-threatening reaction of the human body to an allergen introduced by inhalation, ingestion, injection, or skin contact.

(2) "School" means a public elementary or secondary school. The term includes an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(3) "School employee" means a person employed by:

(A) a school;

(B) a local health department that assists a school under this chapter; or

(C) any other entity that assists a school under this chapter, including an entity that provides transportation for students.

Sec. 172.002. ALLERGY AND ANAPHYLAXIS MANAGEMENT IN SCHOOLS. (a) Each school district or charter school in this state

1 shall develop an allergy and anaphylaxis management plan that  
2 includes the following:

3 (1) a communication plan regarding dissemination of  
4 information regarding a student's allergy when a student with a  
5 life-threatening allergy is admitted to a school;

6 (2) strategies for reducing a student's exposure to  
7 anaphylactic causative agents, including food and other  
8 life-threatening allergens;

9 (3) a procedure for the development of an  
10 individualized health care plan as required by Section 172.003 for  
11 each student with a life-threatening allergy;

12 (4) a training course for each school employee that  
13 includes annual training regarding recognizing the signs and  
14 symptoms of allergic reaction, administering life-saving  
15 medication with a cartridge injector, and emergency procedures  
16 after injecting medication; and

17 (5) a procedure and treatment plan for responding to  
18 anaphylaxis that includes the responsibilities of a school nurse  
19 and the responsibilities of school employees who serve as first  
20 responders in an anaphylactic emergency, recognizing that  
21 anaphylaxis may occur in a student who has never experienced an  
22 allergic reaction.

23 (b) In developing the plan under Subsection (a), a school  
24 district or charter school shall consult The Texas Guide to School  
25 Health Programs published by the Department of State Health  
26 Services and may reference best practice guidelines from the  
27 following organizations:

1           (1) the American Medical Association;

2           (2) the American Academy of Allergy, Asthma, and  
3 Immunology;

4           (3) the American Academy of Pediatrics;

5           (4) the National Association of School Nurses; and

6           (5) the Food Allergy and Anaphylaxis Network.

7           Sec. 172.003. INDIVIDUALIZED HEALTH CARE PLAN. (a) An  
8 individualized health care plan is a coordinated plan of care  
9 designed to meet the unique health care needs of a student with an  
10 allergy in the school setting.

11           (b) An individualized health care plan must be developed for  
12 each student with an allergy who may seek care for the allergy while  
13 at school or while participating in a school activity. The school  
14 principal and the school nurse, if a school nurse is assigned to the  
15 school, shall develop a student's individualized health care plan  
16 in collaboration with the student's parent or guardian and, to the  
17 extent practicable, the physician responsible for the treatment of  
18 the student's allergy.

19           (c) The school must develop an individualized health care  
20 plan for each student with an allergy:

21           (1) before the first day of the school year for a  
22 student enrolled at the school on the first day of the school year;

23           (2) on enrollment of the student, if the student  
24 enrolls in the school after the first day of the school year; or

25           (3) as soon as practicable after a student is  
26 diagnosed with an allergy if the allergy is diagnosed after the  
27 student is enrolled in the school.

1       Sec. 172.004. INDEPENDENT MONITORING AND TREATMENT. In  
2 accordance with the student's individualized health care plan, a  
3 school shall permit the student to attend to the management and care  
4 of the student's allergy, which may include:

5           (1) possessing and self-administering anaphylaxis  
6 medicine under Section 38.015, Education Code;

7           (2) possessing on the student's person at any time any  
8 supplies or equipment necessary to care for the student's allergy;  
9 and

10          (3) otherwise attending to the management and care of  
11 the student's allergy in the classroom, in any area of the school or  
12 school grounds, or at any school-related activity.

13       Sec. 172.005. IMMUNITY FROM DISCIPLINARY ACTION OR  
14 LIABILITY. A school employee may not be subject to any disciplinary  
15 proceeding, as defined by Section 22.0512(b), Education Code,  
16 resulting from an action taken in compliance with this chapter. The  
17 requirements of this chapter are considered to involve the  
18 employee's judgment and discretion and are not considered  
19 ministerial acts for purposes of immunity from liability under  
20 Section 22.0511, Education Code. Nothing in this chapter shall be  
21 considered to limit the immunity from liability afforded under  
22 Section 22.0511, Education Code.

23       SECTION 2. Chapter 172, Health and Safety Code, as added by  
24 this Act, applies beginning with the 2009-2010 school year.

25       SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

H.B. No. 4633

- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2009.