

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 09-226

BY SENATOR(S) Sandoval, Boyd, Carroll M., Gibbs, Groff, Heath, Hudak, Morse, Newell, Schwartz, Shaffer B., Tochtrop, Lundberg, Spence, Williams;
also REPRESENTATIVE(S) Gagliardi, Benefield, Fischer, Gerou, Green, Labuda, Levy, Marostica, McFadyen, Merrifield, Primavera, Schafer S., Solano, Stephens, Todd, Frangas, Pace.

CONCERNING POLICIES FOR THE MANAGEMENT OF FOOD ALLERGIES AMONG SCHOOL CHILDREN, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Food allergies are a growing public health concern in the United States, especially among children;

(b) From 1997 to 2002, the incidence of reported food allergies among children less than eighteen years of age increased eighteen percent, and at least one study has shown that the incidence of peanut allergies among children less than eighteen years of age has doubled in this time;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) In a recent survey of four hundred elementary school nurses, nearly half of them reported that the number of children with food allergies in their schools had increased during a recent five-year period;

(d) Recent studies indicate that hospitalizations resulting in food allergy diagnoses for children have increased, and from 2004 to 2006, there was an average of 9,537 hospital discharges in the United States each year that included a diagnosis of a food allergy for a child less than eighteen years of age;

(e) Allergies to milk, eggs, fish, shellfish, tree nuts, peanuts, wheat, and soy account for ninety percent of all allergic reactions to food; and

(f) There is no known cure for a food allergy, and strict avoidance of an offending food is the only known way to prevent an allergic reaction.

(2) The general assembly further finds and declares that:

(a) Anaphylaxis is a systemic allergic reaction that is rapid in onset and can kill a person within minutes;

(b) Food allergies are the leading cause of anaphylaxis outside of hospital settings, accounting for approximately one-third of all instances of anaphylaxis;

(c) Anaphylaxis attacks resulting from food allergies cause an estimated fifty thousand emergency room visits, two thousand hospitalizations, and between one hundred fifty and two hundred deaths in the United States each year; and

(d) Studies clearly show that many fatalities resulting from anaphylaxis are associated with a failure to administer epinephrine, a delay in the administration of epinephrine, or a failure to recognize the symptoms of anaphylaxis.

(3) The general assembly further finds and declares that the importance of managing life-threatening food allergies has been recognized by the American medical association; the American academy of pediatrics; the American academy of allergy, asthma, and immunology; the American

college of allergy, asthma, and immunology; the national association of elementary school principals; the national school boards association; and the national association of school nurses.

(4) Now, therefore, the general assembly hereby declares that:

(a) The state board of education, in consultation with the department of public health and environment, should promulgate rules to manage the risks posed by food allergies and anaphylaxis in public schools; and

(b) Each school district of the state and the state charter school institute should develop a policy to manage the risks posed by food allergies and anaphylaxis to students, which policy, at a minimum, shall satisfy the rules promulgated by the state board of education.

SECTION 2. Part 1 of article 2 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-2-135. Food allergy and anaphylaxis management - rules.

(1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO SCHOOL CHILDREN'S FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT ACT".

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "APPROPRIATE STAFF" MEANS EMPLOYEES OF A SCHOOL WHOM THE PRINCIPAL OR EQUIVALENT EXECUTIVE IN CONSULTATION WITH THE SCHOOL NURSE OF THE SCHOOL DETERMINES TO BE APPROPRIATE RECIPIENTS OF EMERGENCY ANAPHYLAXIS TREATMENT TRAINING, WHICH EMPLOYEES SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, EMPLOYEES WHO ARE DIRECTLY INVOLVED DURING THE SCHOOL DAY WITH A STUDENT WHO HAS A KNOWN FOOD ALLERGY.

(3) (a) ON OR BEFORE JANUARY 1, 2010, THE STATE BOARD OF EDUCATION, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, SHALL PROMULGATE RULES FOR THE MANAGEMENT OF FOOD ALLERGIES AND ANAPHYLAXIS AMONG STUDENTS ENROLLED IN THE PUBLIC SCHOOLS OF THE STATE. THE RULES SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING:

(I) REASONABLE ACCOMMODATIONS FOR COMMUNICATION BETWEEN

SCHOOLS AND EMERGENCY MEDICAL SERVICES, INCLUDING INSTRUCTIONS FOR EMERGENCY MEDICAL RESPONDERS;

(II) REASONABLE ACCOMMODATIONS TO REDUCE THE RISK OF STUDENTS' EXPOSURE TO AGENTS THAT MAY CAUSE ANAPHYLAXIS, INCLUDING BUT NOT LIMITED TO EXPOSURE THAT MAY OCCUR IN CLASSROOMS, CAFETERIAS, AND COMMON AREAS AND DURING EXTRACURRICULAR ACTIVITIES, FIELD TRIPS, SCHOOL-SPONSORED PROGRAMS OCCURRING BEFORE AND AFTER REGULAR SCHOOL HOURS, AND OTHER SCHOOL-SPONSORED PROGRAMS;

(III) THE PROVISION OF EMERGENCY ANAPHYLAXIS TREATMENT TRAINING FOR APPROPRIATE STAFF TO PREPARE THEM TO RESPOND APPROPRIATELY IN THE EVENT THAT A STUDENT SUFFERS ANAPHYLAXIS AS A RESULT OF AN ALLERGIC REACTION TO FOOD, WHICH TRAINING SHALL INCLUDE BUT NEED NOT BE LIMITED TO TRAINING IN THE ADMINISTRATION OF SELF-INJECTABLE EPINEPHRINE; AND

(IV) PROCEDURES TO ENSURE THE AVAILABILITY OF A STUDENT'S SELF-INJECTABLE EPINEPHRINE TO FACULTY AND ADMINISTRATIVE STAFF OF THE SCHOOL IN THE EVENT THAT A STUDENT SUFFERS ANAPHYLAXIS AND REQUIRES EMERGENCY MEDICAL TREATMENT.

(b) PRIOR TO THE BEGINNING OF EACH SCHOOL YEAR, EACH SCHOOL DISTRICT SHALL PROVIDE NOTICE TO A PARENT OR LEGAL GUARDIAN OF EACH STUDENT ENROLLED IN A SCHOOL OF THE SCHOOL DISTRICT OF THE POLICY ADOPTED BY THE SCHOOL DISTRICT PURSUANT TO SECTION 22-32-139. THE NOTICE SHALL INCLUDE THE STANDARD FORM DEVELOPED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-109, C.R.S., TO ALLOW THE PARENT OR LEGAL GUARDIAN OF A STUDENT WITH A KNOWN FOOD ALLERGY TO PROVIDE THE FOLLOWING INFORMATION TO THE SCHOOL'S ADMINISTRATION:

(I) DOCUMENTATION REGARDING THE DIAGNOSIS AND HISTORY OF THE STUDENT'S FOOD ALLERGY;

(II) IDENTIFICATION OF ALL FOODS TO WHICH THE STUDENT IS KNOWN TO BE ALLERGIC;

(III) IDENTIFICATION OF ANY MEDICATION THAT HAS BEEN

PRESCRIBED FOR THE STUDENT FOR THE TREATMENT OF A FOOD ALLERGY OR ANAPHYLAXIS;

(IV) ANY SPECIFIC SIGNS OR SYMPTOMS THAT MAY INDICATE THE STUDENT IS HAVING AN ALLERGIC REACTION TO A FOOD;

(V) EMERGENCY TREATMENT PROCEDURES TO EMPLOY IN THE EVENT THAT THE STUDENT SUFFERS AN ALLERGIC REACTION TO FOOD;

(VI) THE NAMES AND TELEPHONE NUMBERS OF PERSONS WHOM THE ADMINISTRATION OF THE STUDENT'S SCHOOL SHOULD CONTACT IN ADDITION TO EMERGENCY MEDICAL PERSONNEL IN THE EVENT THAT THE STUDENT SUFFERS AN ALLERGIC REACTION TO FOOD; AND

(VII) THE NAME, TELEPHONE NUMBER, AND SIGNATURE OF THE STUDENT'S PRIMARY HEALTH CARE PROVIDER.

(c) THE NOTICE REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (3) SHALL INCLUDE LANGUAGE THAT ENCOURAGES PARENTS AND LEGAL GUARDIANS OF STUDENTS FOR WHOM MEDICATION HAS BEEN PRESCRIBED FOR TREATMENT OF A FOOD ALLERGY OR ANAPHYLAXIS TO GIVE TO THE SCHOOL NURSE OR OTHER ADMINISTRATOR OF THE STUDENT'S SCHOOL A SUPPLY OF THE MEDICATION UNLESS THE STUDENT HAS AN APPROVED TREATMENT PLAN PURSUANT TO SECTION 22-1-119.5 THAT AUTHORIZES THE STUDENT TO SELF-ADMINISTER THE MEDICATION.

SECTION 3. 22-30.5-505, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-30.5-505. State charter school institute - institute board - appointment - powers and duties - rules. (15) PURSUANT TO SECTION 22-30.5-518, THE INSTITUTE SHALL ADOPT AND IMPLEMENT A POLICY FOR THE MANAGEMENT OF FOOD ALLERGIES AND ANAPHYLAXIS AMONG STUDENTS ENROLLED IN INSTITUTE CHARTER SCHOOLS.

SECTION 4. Part 5 of article 30.5 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-30.5-518. Institute charter school food allergy and anaphylaxis management policy required. (1) ON OR BEFORE JULY 1,

2010, THE STATE CHARTER SCHOOL INSTITUTE SHALL ADOPT AND IMPLEMENT A POLICY FOR THE MANAGEMENT OF FOOD ALLERGIES AND ANAPHYLAXIS AMONG STUDENTS ENROLLED IN INSTITUTE CHARTER SCHOOLS. THE POLICY SHALL INCLUDE, AT A MINIMUM, MEASURES THAT SATISFY THE RULES PROMULGATED BY THE STATE BOARD PURSUANT TO SECTION 22-2-135.

(2) (a) THE POLICY ADOPTED BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL ENSURE THAT, PRIOR TO THE BEGINNING OF EACH SCHOOL YEAR, EACH INSTITUTE CHARTER SCHOOL PROVIDE NOTICE TO A PARENT OR LEGAL GUARDIAN OF EACH STUDENT ENROLLED IN THE INSTITUTE CHARTER SCHOOL OF THE POLICY. THE NOTICE SHALL INCLUDE THE STANDARD FORM DEVELOPED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-109, C.R.S., TO ALLOW THE PARENT OR LEGAL GUARDIAN OF A STUDENT WITH A KNOWN FOOD ALLERGY TO PROVIDE TO THE INSTITUTE CHARTER SCHOOL'S ADMINISTRATION THE INFORMATION THAT IS DESCRIBED IN SECTION 22-2-135 (3) (b).

(b) THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL INCLUDE LANGUAGE THAT ENCOURAGES PARENTS AND LEGAL GUARDIANS OF STUDENTS FOR WHOM MEDICATION HAS BEEN PRESCRIBED FOR TREATMENT OF A FOOD ALLERGY OR ANAPHYLAXIS TO GIVE TO THE SCHOOL NURSE OR OTHER ADMINISTRATOR OF THE STUDENT'S SCHOOL A SUPPLY OF THE MEDICATION UNLESS THE STUDENT HAS AN APPROVED TREATMENT PLAN PURSUANT TO SECTION 22-1-119.5 THAT AUTHORIZES THE STUDENT TO SELF-ADMINISTER THE MEDICATION.

SECTION 5. Article 32 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-32-139. Food allergies and anaphylaxis policy required. ON OR BEFORE JULY 1, 2010, EACH SCHOOL DISTRICT BOARD OF EDUCATION SHALL ADOPT AND IMPLEMENT A POLICY FOR THE MANAGEMENT OF FOOD ALLERGIES AND ANAPHYLAXIS AMONG STUDENTS ENROLLED IN THE PUBLIC SCHOOLS OF THE SCHOOL DISTRICT. THE POLICY SHALL INCLUDE, AT A MINIMUM, MEASURES THAT SATISFY THE RULES PROMULGATED BY THE STATE BOARD OF EDUCATION PURSUANT TO SECTION 22-2-135.

SECTION 6. Part 1 of article 1.5 of title 25, Colorado Revised

Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-1.5-109. Food allergies and anaphylaxis form for schools - powers and duties of department. (1) THE DEPARTMENT HAS, IN ADDITION TO ALL OTHER POWERS AND DUTIES IMPOSED UPON IT BY LAW, THE DUTY TO DEVELOP, MAINTAIN, AND MAKE AVAILABLE TO SCHOOL DISTRICTS AND INSTITUTE CHARTER SCHOOLS A STANDARD FORM TO BE USED BY SCHOOL DISTRICTS AND INSTITUTE CHARTER SCHOOLS TO GATHER INFORMATION FROM PHYSICIANS AND PARENTS AND GUARDIANS OF STUDENTS CONCERNING STUDENTS' RISKS OF FOOD ALLERGIES AND ANAPHYLAXIS AND THE TREATMENT THEREOF. THE STANDARD FORM SHALL INCLUDE, AT A MINIMUM, FIELDS FOR GATHERING THE INFORMATION DESCRIBED IN SECTION 22-2-135 (3) (b), C.R.S.

SECTION 7. 22-1-119.5 (1), (2) (a), (2) (b), and (4), Colorado Revised Statutes, are amended to read:

22-1-119.5. Asthma, food allergy, and anaphylaxis health management - self-administered medication. (1) This section shall be known and may be cited as the "Colorado Schoolchildren's Asthma, FOOD ALLERGY, and Anaphylaxis Health Management Act".

(2) (a) A student with asthma, A FOOD ALLERGY, OTHER severe allergies, or ~~other~~ A related, life-threatening condition may possess and self-administer medication to treat the student's asthma, FOOD OR OTHER ALLERGY, anaphylaxis, or other related, life-threatening condition if the student has a treatment plan approved pursuant to this subsection (2).

(b) A public school shall, and a nonpublic school is encouraged to, approve a treatment plan for a student enrolled in the school to possess and self-administer medication for asthma, A FOOD ALLERGY, or anaphylaxis if all of the following conditions are met:

(I) A health care practitioner has prescribed medication for use by the student during school hours, at school-sponsored activities, and while in transit to or from school or school-sponsored activities and has instructed the student in the correct and responsible use of the medication.

(II) The student demonstrates to the health care practitioner or the health care practitioner's designee and the school nurse OR A SCHOOL

ADMINISTRATOR the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed.

(III) ~~The school nurse and the health care practitioner collaborate~~ OR A SCHOOL ADMINISTRATOR COLLABORATES WITH THE STUDENT'S HEALTH CARE PRACTITIONER to formulate a written treatment plan for managing asthma, FOOD ALLERGY, or anaphylaxis episodes of the student and for medication use by the student during school hours, at school-sponsored activities, and while in transit to or from school or school-sponsored activities.

(IV) The student's parent or legal guardian completes and submits to the public or nonpublic school the documentation required by rule of the state board of education, including but not limited to:

(A) A written medical authorization that includes the signature of the health care practitioner for the medication prescribed; the name, purpose, prescribed dosage, frequency, and length of time between dosages of the medications to be self-administered; and confirmation from the health care practitioner that the student has been instructed and is capable of self-administration of the prescribed medications;

(B) A written statement from the student's parent or legal guardian releasing the school, school district, any associated entity, and employees and volunteers of the school, school district, and associated entity from liability, except in cases of willful or wanton conduct or disregard of the criteria of the treatment plan; and

(C) A written contract between the school nurse OR A SCHOOL ADMINISTRATOR, the student, and the student's parent or legal guardian assigning levels of responsibility to the parent or legal guardian, student, and school employees.

(4) With the approval of the parent or legal guardian of a student with a treatment plan approved pursuant to subsection (2) of this section, a school may maintain additional asthma, FOOD OR OTHER ALLERGY, or anaphylaxis medication to be kept at the school in a location to which the student has immediate access in the event of an asthma, FOOD OR OTHER ALLERGY, or anaphylaxis emergency.

SECTION 8. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of education, assistance to public schools, grant programs, distributions, and other assistance, health and nutrition, federal nutrition programs, for the fiscal year beginning July 1, 2009, the sum of one thousand nine hundred fifty-one dollars (\$1,951), or so much thereof as may be necessary, for the implementation of this act.

SECTION 9. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item,

section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO