

AMENDED IN SENATE JUNE 12, 2006

AMENDED IN SENATE APRIL 25, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1137**

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**Introduced by Assembly Member Dymally**

February 22, 2005

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An act to amend and repeal Section 49414 of, and to add Section 49414.2 to, the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1137, as amended, Dymally. Child care centers: child, pupil, and staff health: asthma and anaphylactic emergencies.

Existing law authorizes a school district or county office of education to provide emergency epinephrine auto-injectors to trained personnel, and authorizes the trained personnel to utilize those epinephrine auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction. Existing law expressly authorizes each public and private elementary and secondary school in the state to voluntarily determine whether or not to make emergency epinephrine auto-injectors and trained personnel available at its school and to designate one or more school personnel to receive prescribed training regarding epinephrine auto-injectors from individuals in specified positions. Existing law requires the Superintendent of Public Instruction to establish minimum standards of training for the administration of epinephrine auto-injectors and to consult with the State Department of Health Services, organizations, and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment

in developing those standards. Existing law authorizes school nurses or, if the school does not have a school nurse, a person who has received training regarding epinephrine auto-injectors, to obtain prescriptions for epinephrine auto-injectors from individuals in certain positions and to immediately administer an epinephrine auto-injector under certain circumstances. Existing law requires those individuals to initiate emergency medical services or other appropriate medical followup in accordance with written training materials. Existing law also requires any school district or county office of education electing to utilize epinephrine auto-injectors for emergency medical aid to create a plan to address specified issues.

*This bill would repeal the above provisions of existing law on January 1, 2007.*

**This**

*The bill, instead, would require the State Department of Education to provide educational materials to each licensed child care center, school district, and county office of education regarding the identification of and appropriate response to a child's, pupil's, or staff member's asthma or anaphylactic emergency.*

*The bill would require the department to develop training for personnel selected by a licensed child care center, school district, and county office of education to administer emergency medical aid to children, pupils, or staff members suffering from an asthma or anaphylactic emergency and would provide the manner of selecting trainees. The bill would prohibit a principal or other administrator from requiring a particular staff member to be designated as the person trained to assist in administering the emergency medical aid.*

*The bill would require the department to develop prerequisites for issuance of the medicines and equipment specified below to licensed child care centers and public schools with pupils in kindergarten or any of grades 1 to 12, inclusive, including certification that sufficient personnel have successfully completed the specified training, an agreement to comply with the department's guidelines regarding administration of the medicines and storage of the medicines and equipment, and any other requirements the department deems appropriate. The bill would require the department guidelines regarding the administration of specified medications to require specified individuals employed by specified local agencies to (A) immediately administer an epinephrine auto-injector to an individual exhibiting specified symptoms when a physician is not immediately*

*available or (B) write a standing order for the administration of albuterol to any person with a known specified diagnoses, as specified. The bill thereby would establish a state-mandated local program by imposing new requirements on specified local agencies.*

The bill would require the department to develop a form for licensed child care centers and public schools with pupils in kindergarten or any of grades 1 to 12, inclusive, to indicate compliance with the prerequisites imposed by the department.

The bill would require the department to issue 2 epinephrine auto-injectors, *and, at the discretion of the school district's consulting physician, either one nebulizer, and 3 ampules of 2.5 milligrams each of albuterol for nebulization or one albuterol metered dose inhaler and holding chamber* to each licensed child care center or public school with pupils in kindergarten or any of grades 1 to 12, inclusive, that completes and returns to the department the specified form.

The bill would require the department to develop a request for proposals for educational materials and a request for proposals for the specified medicines and equipment.

The bill would require the department to use existing resources to convene a task force to aid the department in complying with specified requirements of the bill, and in addressing issues relating to funding those requirements. *The bill would require the task force to consult with members of organizations and providers, as specified, with expertise in administering albuterol and epinephrine auto-injectors and administering medication in a school or a licensed child care environment, or both.*

~~The bill would establish the California School Allergy and Asthma Endowment in state government. The bill would authorize the endowment to seek assistance, including financial and in-kind assistance, from government, educational, and private sources to fund the requirements of the bill. The bill would require the endowment to deposit all funds obtained under these provisions in the California School Allergy and Asthma Endowment Fund, which the bill would establish in the State Treasury. The bill would make all money in the fund available, upon appropriation, to fund the requirements of the bill.~~

~~The bill would provide that certain of its requirements shall become operative on the date on which the Superintendent of Public Instruction determines that funding sufficient to implement those requirements is provided in the annual Budget Act, or on the date on~~

which the Superintendent determines that funds appropriated from the fund, either alone or in combination with funds provided in the annual Budget Act, are sufficient to implement those requirements, whichever date is earlier.

*The bill would provide that its provisions shall not be construed to abrogate a parent’s responsibility to provide necessary medication or an action plan, or both, for a child, as specified.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California School Allergy and Asthma ~~Act of 2006~~ *Emergencies*
- 3 *Act.*
- 4 SEC. 2. The Legislature finds and declares all of the
- 5 following:
- 6 (a) Food allergy is an increasing medical issue that must be
- 7 addressed in the school and child care setting. It is generally
- 8 believed that the condition affects 4 percent of all schoolage
- 9 children, and an even greater percentage of children under the
- 10 age of five.
- 11 (b) The incidence of peanut allergy is growing rapidly, having
- 12 doubled from 1997 to 2002.
- 13 (c) An estimated 400,000 California children suffer from food
- 14 allergies.
- 15 (d) One in five children with a food allergy will experience an
- 16 allergic reaction in school.
- 17 (e) A food allergy reaction that occurs in a school setting has
- 18 been the first reaction for 25 percent of children experiencing a
- 19 reaction at school.

1 (f) Asthma is the most prevalent chronic disease among  
2 children.

3 (g) In California, nearly one in five pupils will have asthma  
4 during his or her childhood.

5 (h) The prevalence of asthma is likely underestimated, as  
6 studies have shown that there are many individuals suffering  
7 from undiagnosed asthma.

8 (i) In addition, staff at licensed child care centers and public  
9 schools also may suffer asthma and anaphylactic emergencies  
10 while at work.

11 *(j) With only one school nurse for every 2,241 pupils in*  
12 *California's public schools during 2004–05, California has an*  
13 *acute shortage of school nurses. Many schools do not have a*  
14 *school nurse present when a child or staff member experiences*  
15 *an allergy or asthma emergency. It is the intent of the Legislature*  
16 *that public schools make every effort to have a school nurse at*  
17 *each schoolsite.*

18 ~~(j)~~

19 (k) Laws are needed to ensure that California child care center  
20 and school personnel have the ability to respond to a child, pupil,  
21 or staff member experiencing a life-threatening asthma or  
22 anaphylactic emergency at the child care center or public school.

23 SEC. 3. Section 49414 of the Education Code is amended to  
24 read:

25 49414. (a) A school district or county office of education  
26 may provide emergency epinephrine auto-injectors to trained  
27 personnel, and trained personnel may utilize those epinephrine  
28 auto-injectors to provide emergency medical aid to persons  
29 suffering from an anaphylactic reaction. Any school district or  
30 county office of education choosing to exercise the authority  
31 provided under this subdivision shall not receive state funds  
32 specifically for the purposes of this subdivision.

33 (b) For purposes of this section, the following terms have the  
34 following meaning:

35 (1) "Anaphylaxis" means a potentially life-threatening  
36 hypersensitivity to a substance.

37 (A) Symptoms of anaphylaxis may include shortness of  
38 breath, wheezing, difficulty breathing, difficulty talking or  
39 swallowing, hives, itching, swelling, shock, or asthma.

1 (B) Causes of anaphylaxis may include, but are not limited to,  
2 an insect sting, food allergy, drug reaction, and exercise.

3 (2) “Epinephrine auto-injector” means a disposable drug  
4 delivery system with a spring-activated concealed needle that is  
5 designed for emergency administration of epinephrine to provide  
6 rapid, convenient first aid for persons suffering a potentially fatal  
7 reaction to anaphylaxis.

8 (c) Each public and private elementary and secondary school  
9 in the state may voluntarily determine whether or not to make  
10 emergency epinephrine auto-injectors and trained personnel  
11 available at its school. In making this determination, a school  
12 shall evaluate the emergency medical response time to the school  
13 and determine whether initiating emergency medical services is  
14 an acceptable alternative to epinephrine auto-injectors and  
15 trained personnel. Any school choosing to exercise the authority  
16 provided under this subdivision shall not receive state funds  
17 specifically for the purposes of this subdivision.

18 (d) Each public and private elementary and secondary school  
19 in the state may designate one or more school personnel on a  
20 voluntary basis to receive initial and annual refresher training,  
21 based on the standards developed pursuant to subdivision (e),  
22 regarding the storage and emergency use of an epinephrine  
23 auto-injector from the school nurse or other qualified person  
24 designated by the school district physician, the medical director  
25 of the local health department, or the local emergency medical  
26 services director. Any school choosing to exercise the authority  
27 provided under this subdivision shall not receive state funds  
28 specifically for the purposes of this subdivision.

29 (e) (1) The Superintendent shall establish minimum standards  
30 of training for the administration of epinephrine auto-injectors  
31 that satisfy the requirements in paragraph (2). For purposes of  
32 this subdivision, the Superintendent shall consult with  
33 organizations and providers with expertise in administering  
34 epinephrine auto-injectors and administering medication in a  
35 school environment, including, but not limited to, the State  
36 Department of Health Services, the Emergency Medical Services  
37 Authority, the American Academy of Allergy, Asthma, and  
38 Immunology, the California School Nurses Organization, the  
39 California Medical Association, the American Academy of  
40 Pediatrics, and others.

1 (2) Training established pursuant to this subdivision shall  
2 include all of the following:

- 3 (A) Techniques for recognizing symptoms of anaphylaxis.
- 4 (B) Standards and procedures for the storage and emergency  
5 use of epinephrine auto-injectors.
- 6 (C) Emergency followup procedures, including calling the  
7 emergency 911 phone number and contacting, if possible, the  
8 pupil's parent and physician.
- 9 (D) Instruction and certification in cardiopulmonary  
10 resuscitation.
- 11 (E) Written materials covering the information required under  
12 this subdivision.

13 (3) A school shall retain for reference the written materials  
14 prepared under subparagraph (E) of paragraph (2).

15 (f) A school nurse, or if the school does not have a school  
16 nurse, a person who has received training pursuant to subdivision  
17 (d), may do the following:

18 (1) Obtain from the school district physician, the medical  
19 director of the local health department, or the local emergency  
20 medical services director a prescription for epinephrine  
21 auto-injectors.

22 (2) Immediately administer an epinephrine auto-injector to a  
23 person exhibiting potentially life-threatening symptoms of  
24 anaphylaxis *or asthma* at school or a school activity when a  
25 physician is not immediately available.

26 (g) A person who has received training as set forth in  
27 subdivision (d) or a school nurse shall initiate emergency medical  
28 services or other appropriate medical follow up in accordance  
29 with the training materials retained pursuant to paragraph (3) of  
30 subdivision (e).

31 (h) Any school district or county office of education electing  
32 to utilize epinephrine auto-injectors for emergency medical aid  
33 shall create a plan to address all of the following issues:

34 (1) Designation of the individual or individuals who will  
35 provide the training pursuant to subdivision (d).

36 (2) Designation of the school district physician, the medical  
37 director of the local health department, or the local emergency  
38 medical services director that the school district or county office  
39 of education will consult for the prescription for epinephrine  
40 auto-injectors pursuant to paragraph (1) of subdivision (f).

1 (3) Documentation as to which individual, the school nurse or  
2 other trained person pursuant to subdivision (f), in the school  
3 district or county office of education will obtain the prescription  
4 from the physician and the medication from a pharmacist.

5 (4) Documentation as to where the medication is stored and  
6 how the medication will be made readily available in case of an  
7 emergency.

8 ~~(i) This section shall remain in effect only until the date that~~  
9 ~~subdivision (a) of Section 49414.2 becomes operative.~~

10 *(i) This section shall remain in effect only until January 1,*  
11 *2007, and as of that date is repealed, unless a later enacted*  
12 *statute, that is enacted before January 1, 2007, deletes or extends*  
13 *that date.*

14 SEC. 4. Section 49414.2 is added to the Education Code, to  
15 read:

16 49414.2. (a) The department shall do all of the following:

17 (1) Provide educational materials to each licensed child care  
18 center, school district, and county office of education regarding  
19 the identification of, and appropriate response to, a child's,  
20 pupil's, or staff member's asthma or anaphylactic emergency.

21 (2) Develop training for personnel selected by a licensed child  
22 care center, school district, and county office of education to  
23 administer emergency medical aid to children, pupils, or staff  
24 members suffering from an asthma or anaphylactic emergency.  
25 *In determining who shall be trained, the licensed child care*  
26 *center, school district, or county office of education shall select*  
27 *one or more individuals who have volunteered to assist in*  
28 *administering emergency medical aid. The principal or other*  
29 *administrator may not require a staff member to be designated as*  
30 *the person trained to assist in administering the emergency*  
31 *medical aid.*

32 (3) Develop prerequisites for issuance of the medicines and  
33 equipment listed under paragraph (5) to licensed child care  
34 centers and public schools with pupils in kindergarten or any of  
35 grades 1 to 12, inclusive, including, but not limited to,  
36 certification that sufficient personnel have successfully  
37 completed the training developed under paragraph (2), an  
38 agreement to comply with the department's guidelines regarding  
39 administration of the medicines and storage of the medicines and  
40 equipment, and any other requirements the department deems

1 appropriate. *The department guidelines regarding the*  
2 *administration of epinephrine and albuterol, shall do all of the*  
3 *following:*

4 (A) *Require the school nurse, or if the school does not have a*  
5 *school nurse, a person who has completed the training developed*  
6 *pursuant to paragraph (2), to immediately administer an*  
7 *epinephrine auto-injector to an individual exhibiting potentially*  
8 *life-threatening symptoms of anaphylaxis or asthma at school or*  
9 *a school activity when a physician is not immediately available.*

10 (B) *Require the school district's physician, the medical*  
11 *director of the local health department, or the local emergency*  
12 *medical services director to write a standing order for any*  
13 *person with a known diagnosis of asthma to be assisted in the use*  
14 *of albuterol in an emergency, but only an emergency, and only if*  
15 *an epinephrine auto injector has first been used. An order written*  
16 *pursuant to this subparagraph shall be superseded by an order*  
17 *on file from the individual's personal physician.*

18 (4) *Develop a form for licensed child care centers and public*  
19 *schools with pupils in kindergarten or any of grades 1 to 12,*  
20 *inclusive, to indicate compliance with the prerequisites imposed*  
21 *under paragraph (3).*

22 (5) *Issue two epinephrine auto-injectors, and, at the discretion*  
23 *of the school district's consulting physician, either one nebulizer;*  
24 *and three ampules of 2.5 milligrams each of albuterol for*  
25 *nebulization or one albuterol metered dose inhaler and holding*  
26 *chamber to each licensed child care center or public school with*  
27 *pupils in kindergarten or any of grades 1 to 12, inclusive, that*  
28 *completes and returns to the department the form developed*  
29 *under paragraph (4).*

30 (6) *Develop a request for proposals for any educational*  
31 *materials required in compliance with paragraphs (1) and (2) and*  
32 *a request for proposals for the medicines and equipment required*  
33 *to be issued under paragraph (5). The department may combine*  
34 *these two requests for proposals in one request for proposals.*

35 (b) *The department shall use existing resources to convene a*  
36 *task force to aid the department in complying with the*  
37 *requirements of paragraphs (1) to (4), inclusive, of subdivision*  
38 *(a), and in addressing issues relating to funding the requirements*  
39 *of this section. The task force shall consult with members of*  
40 *organizations and providers, including, but not limited to, the*

1 *State Department of Health Services, the Emergency Medical*  
2 *Services Authority, the American Academy of Allergy, Asthma,*  
3 *and Immunology, the California School Nurses Organization, the*  
4 *California Medical Association, and the American Academy of*  
5 *Pediatrics, and others with expertise in administering albuterol*  
6 *and epinephrine auto-injectors and administering medication in*  
7 *a school or a licensed child care environment, or both.*

8 (c) *Nothing in this act shall be construed to abrogate a*  
9 *parent's responsibility to provide necessary medication or an*  
10 *action plan, or both, for a child who has previously experienced*  
11 *anaphylaxis or asthma, and ensure that the child is carrying*  
12 *necessary asthma or allergy medication with him or her during*  
13 *the schoolday consistent with the provisions of Sections 49423*  
14 *and 49423.1 or if the child is too young or otherwise unable to*  
15 *self-administer his or her medication, to ensure that the child has*  
16 *his or her medication in the school office or other appropriate*  
17 *location.*

18 SEC. 5. *If the Commission on State Mandates determines that*  
19 *this act contains costs mandated by the state, reimbursement to*  
20 *local agencies and school districts for those costs shall be made*  
21 *pursuant to Part 7 (commencing with Section 17500) of Division*  
22 *4 of Title 2 of the Government Code.*

23 ~~(e) (1) The California School Allergy and Asthma~~  
24 ~~Endowment is hereby established in state government. The~~  
25 ~~endowment may seek assistance, including, but not limited to,~~  
26 ~~financial and in-kind assistance, from government, educational,~~  
27 ~~and private sources to fund the requirements of this section. The~~  
28 ~~endowment shall deposit all funds obtained under this paragraph~~  
29 ~~in the fund established under paragraph (2).~~

30 ~~(2) The California School Allergy and Asthma Endowment~~  
31 ~~Fund is hereby established in the State Treasury. All money in~~  
32 ~~the fund shall be available, upon appropriation, to fund the~~  
33 ~~requirements of this section.~~

34 ~~(d) Subdivision (a) shall become operative on the date on~~  
35 ~~which the Superintendent determines that either of the following~~  
36 ~~applies, whichever date is earlier:~~

37 ~~(1) Funding sufficient to implement the requirements of~~  
38 ~~subdivision (a) is provided in the annual Budget Act.~~

39 ~~(2) Funds appropriated from the California School Allergy and~~  
40 ~~Asthma Endowment Fund, either alone or in combination with~~

1 ~~funds provided in the annual Budget Act, are sufficient to~~  
2 ~~implement the requirement of subdivision (a):~~  
3 ~~(e) The Legislature urges governmental, educational, and~~  
4 ~~private entities to enter into partnerships with the state to~~  
5 ~~implement this section as expeditiously as possible.~~

O