STATE OF NEW YORK

7542

IN SENATE

January 22, 2018

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to first aid instructions concerning allergic reaction emergencies in public eating establishments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1352-b of the public health law, as added by chapter 613 of the laws of 1980, is amended to read as follows:

§ 1352-b. Public eating establishments; first aid instructions concerning food lodged in [~~throat; liability~~] **throats and allergic reaction emergencies**. 1. **First aid instructions concerning food lodged in throat; liability.**

a. Definitions. For purposes of this [~~section~~] **subdivision**:

[~~a.~~] **(i)** "Public eating establishment" shall mean a cafeteria or lunchroom located in a school or educational institution and a restaurant, dining room, dining car or other place engaged in the preparation and service on the premises of food for and to the general public;

[~~b.~~] **(ii)** "Choking emergency" shall mean a situation occurring in a public eating establishment in which food has become lodged in a person's throat in such a manner as to prevent or severely inhibit the continued breathing of such person.

[~~2~~] **b**. First aid instructions.

[~~a.~~] **(i)** The commissioner shall adopt and approve first aid instructions designed and intended for use in removing food lodged in the throat of a victim of a choking emergency. Such instructions shall be limited to first aid techniques not involving the use of any physical instrument or device to be inserted into the victim's mouth or throat.

[~~b.~~] **(ii)** The commissioner shall, as soon as is practicable, supply to the proprietor of every public eating establishment in this state such adopted and approved instructions.

[~~3~~] **c**. Posting. The proprietor of every public eating establishment in this state shall, upon receipt thereof, post such instructions in a conspicuous place or places in order that the proprietor and employees

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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may become familiar with them, and in order that the instructions may be consulted by any person attempting to provide relief to the victim of a choking emergency; provided, that the fact that such instructions shall not have been posted as required by this section at the time of a choking emergency shall not in and of itself subject such a proprietor, or his employees or agents, to liability in any civil action for damages for personal injuries or wrongful death arising from such choking emergency.

[~~4~~] **d**. No duty to act. Nothing contained in this section shall impose any duty or obligation on any proprietor, employee or other person to remove, assist in removing, or attempt to remove food from the throat of the victim of a choking emergency.

[~~5~~] **e**. Immunity from liability. Notwithstanding any inconsistent provision of law or ordinance, a proprietor, employee or other person who voluntarily and without expectation of monetary compensation removes, assists in removing, or attempts to remove food from the throat of the victim of a choking emergency in accordance with the instructions adopted by the commissioner shall not be liable for damages for injuries alleged to have been sustained by such victim or for damages for the death of such victim alleged to have occurred by reason of an act or omission in the rendering of such emergency assistance unless it is established that such injuries were, or such death was, caused by gross negligence on the part of such proprietor, employee or person.

2. Allergic reaction emergencies. a. Definitions. For purposes of this subdivision:

(i) "Public eating establishment" shall mean a cafeteria or lunchroom located in a school or educational institution and a restaurant, dining room, dining car or other place engaged in the preparation and service on the premises of food for and to the general public;

(ii) "Allergic reaction emergency" shall mean a situation occurring in a public eating establishment in which food has caused a person in such establishment to suffer an allergic reaction, that if not immediately treated could cause such person death, serious harm, illness, injury or hardship.

(iii) "Epinephrine auto-injector device" shall mean a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body for the purpose of emergency treatment of a person appearing to experience anaphylactic symptoms approved by the food and drug administration.

b. Duty to make an epinephrine auto-injector device available. Every public eating establishment shall have a serviceable epinephrine auto-injector device, readily available for emergency use, to treat an allergic reaction emergency. Such epinephrine auto-injector device shall be contained within an alarmed, protected, but publicly accessible case, which is affixed to the wall of the establishment, in a prominent and readily available location.

c. Posting. (i) Directly above the alarmed, protected, but publicly accessible case, containing the serviceable epinephrine auto-injector device, shall be clear instructions on how to access the epinephrine auto-injector device, and how to properly operate such device, in order to inject the person who is suffering the allergic reaction with epinephrine.

(ii) The commissioner shall, as soon as is practicable, adopt and approve instructions on how to access the epinephrine auto-injector device, and how to properly operate such device, in order to inject the person who is suffering the allergic reaction with epinephrine.

d. Procurement of serviceable epinephrine auto-injector devices. The commissioner shall procure on state contract, and make available to every public eating establishment at cost, serviceable epinephrine auto-injector devices, with alarmed, protected, but publicly accessible cases, which can be affixed to the wall of public eating establishments, in a prominent and readily available location. The commissioner shall further design and procure on state contract, and make available to every public eating establishment at cost, signs to be affixed above the alarmed, protected, but publicly accessible cases, which contain the clear instructions adopted and approved in accordance with paragraph c of this subdivision.

e. No duty to act. Nothing contained in this section shall impose any duty or obligation on any proprietor, employee or other person to inject, assist in injecting, or attempt to inject any person suffering from an allergic reaction emergency with the epinephrine auto-injector device.

f. Immunity from liability. Notwithstanding any inconsistent provision of law or ordinance, a proprietor, employee or other person who voluntarily and without expectation of monetary compensation, injects, assists in injecting, or attempts to inject any person suffering from an allergic reaction emergency with the epinephrine auto-injector device in accordance with the instructions posted directly above the alarmed, protected, but publicly accessible case, containing the serviceable epinephrine auto-injector device, shall not be liable for damages for injuries alleged to have been sustained by such victim or for damages for the death of such victim alleged to have occurred by reason of an act or omission in the rendering of such emergency assistance unless it is established that such injuries were, or such death was, caused by gross negligence on the part of such proprietor, employee or person.

§ 2. Paragraph (a) of subdivision 1 of section 3000-c of the public health law, as amended by chapter 200 of the laws of 2017, is amended to read as follows:

(a) "Eligible person or entity" means (i) an ambulance service or advanced life support first response service; a certified first responder, emergency medical technician, or advanced emergency medical technician, who is employed by or an enrolled member of any such service; (ii) a children's overnight camp as defined in subdivision one of section thirteen hundred ninety-two of this chapter, a summer day camp as defined in subdivision two of section thirteen hundred ninety-two of this chapter, a traveling summer day camp as defined in subdivision three of section thirteen hundred ninety-two of this chapter or a person employed by such a camp; (iii) a school district, board of cooperative educational services, county vocational education and extension board, charter school, and non-public elementary and secondary school in this state or any person employed by any such entity, or employed by a contractor of such an entity while performing services for the entity; or (iv) a sports, entertainment, amusement, education, government, day care or retail facility; an educational institution, youth organization or sports league; an establishment that serves food; or a person employed by such entity; [~~and~~] (v) any proprietor or employee of, or any other person within or at, a public eating establishment as defined in subparagraph (i) of paragraph (a) of subdivision two of section one thousand three hundred fifty-two-b of this chapter; and (vi) any other person or entity designated or approved, or in a category designated or approved pursuant to regulations of the commissioner in consultation with other appropriate agencies.

§ 3. Paragraphs (d) and (e) of subdivision 2 of section 3000-c of the public health law, as amended by chapter 373 of the laws of 2016, are amended to read as follows:

(d) This section does not prohibit the use of an epinephrine auto-injector device (i) by a health care practitioner or (ii) by a person acting pursuant to a lawful patient-specific prescription **or (iii) by a person in a public eating establishment in accordance with the provisions of subdivision two of section one thousand three hundred fifty-two-b of this chapter**.

(e) Every eligible person and entity authorized to possess and use epinephrine auto-injector devices pursuant to this section**, except a person in a public eating establishment in accordance with the provisions of subdivision two of section one thousand three hundred fifty-two-b of this chapter,** shall use, maintain and dispose of such devices pursuant to regulations of the department.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.