

114TH CONGRESS
1ST SESSION

S. _____

To provide certain protections from civil liability with respect to the emergency administration of opioid overdose drugs.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself and Ms. AYOTTE) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To provide certain protections from civil liability with respect to the emergency administration of opioid overdose drugs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Opioid Overdose Re-
5 duction Act of 2015”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Overdoses from opioids have increased dra-
9 matically in the United States.

1 (2) Deaths from drug overdose, largely from
2 prescription pain relievers, have tripled among men
3 and increased fivefold among women over the past
4 decade.

5 (3) Nationwide, drug overdoses now claim more
6 lives than car accidents.

7 (4) Overdose deaths from heroin and other
8 opioids can be prevented if the person who overdosed
9 is timely administered an opioid overdose drug.

10 (5) Medical personnel as well as non-medical
11 personnel can be trained to administer opioid over-
12 dose drugs safely and effectively.

13 (6) On April 13, 2014, the Food and Drug Ad-
14 ministration approved a prescription opioid overdose
15 drug hand held auto-injector for use by family mem-
16 bers and caregivers to treat a person known or sus-
17 pected to have had an opioid overdose.

18 (7) Several States, including Massachusetts,
19 have established programs allowing for the adminis-
20 tration of opioid overdose drugs by non-medical per-
21 sonnel, and those programs have saved lives.

22 (8) The willingness of medical and non-medical
23 personnel to administer opioid overdose drugs may
24 be deterred by potential civil liability, and the will-
25 ingness of physicians to prescribe opioid overdose

1 drugs to persons other than a patient may also be
2 deterred by potential civil liability.

3 (b) PURPOSE.—The purpose of this Act is to save
4 the lives of people who intentionally or inadvertently over-
5 dose on heroin or other opioids by providing certain pro-
6 tections from civil liability with respect to the emergency
7 administration of opioid overdose drugs.

8 **SEC. 3. DEFINITIONS.**

9 In this Act—

10 (1) the term “health care professional” means
11 a person licensed by a State to prescribe prescription
12 drugs;

13 (2) the term “opioid overdose drug” means a
14 drug that, when administered, reverses in whole or
15 part the pharmacological effects of an opioid over-
16 dose in the human body; and

17 (3) the term “opioid overdose program” means
18 a program operated by a local health department,
19 community-based organization, substance abuse
20 treatment organization, law enforcement agency, fire
21 department, other first responder department, or
22 voluntary association or a program funded by a Fed-
23 eral, State, or local government that works to pre-
24 vent opioid overdoses by in part providing opioid
25 overdose drugs and education to individuals at risk

1 of experiencing an opioid overdose or to an indi-
2 vidual in a position to assist another individual at
3 risk of experiencing an opioid overdose.

4 **SEC. 4. PREEMPTION AND ELECTION OF STATE NON-**
5 **APPLICABILITY.**

6 (a) PREEMPTION.—Except as provided in subsection
7 (b), this Act preempts the law of a State to the extent
8 that such law is inconsistent with this Act, except that
9 this Act shall not preempt any State law that provides
10 additional protection from liability relating to the adminis-
11 tration of opioid overdose drugs or that shields from liabil-
12 ity any person who provides or administers opioid overdose
13 drugs.

14 (b) ELECTION OF STATE REGARDING NONAPPLICA-
15 BILITY.—Sections 5, 6, and 7 shall not apply to any civil
16 action in a State court against a person who administers
17 opioid overdose drugs if—

18 (1) all parties to the civil action are citizens of
19 the State in which such action is brought; and

20 (2) the State enacts legislation in accordance
21 with State requirements for enacting legislation—

22 (A) citing the authority of this subsection;

23 (B) declaring the election of the State that
24 such sections 5, 6, and 7 shall not apply, as of

1 a date certain, to any civil actions covered by
2 this Act; and

3 (C) containing no other provisions.

4 **SEC. 5. LIMITATION ON CIVIL LIABILITY FOR HEALTH**
5 **CARE PROFESSIONALS WHO PROVIDE OPIOID**
6 **OVERDOSE DRUGS.**

7 (a) **LIMITATION ON LIABILITY.—**

8 (1) **IN GENERAL.—**Notwithstanding any other
9 provision of law, a health care professional who pre-
10 scribes or provides an opioid overdose drug to an in-
11 dividual at risk of experiencing an opioid overdose,
12 or who prescribed or provided an opioid overdose
13 drug to a family member, friend, or other individual
14 in a position to assist an individual at risk of experi-
15 encing an opioid overdose, shall not be liable for
16 harm caused by the use of the opioid overdose drug
17 if the individual to whom such drug is prescribed or
18 provided has been educated in accordance with para-
19 graph (2) about opioid overdose prevention and
20 treatment by the health care professional or as part
21 of an opioid overdose program.

22 (2) **EDUCATION REQUIREMENTS.—**For pur-
23 poses of paragraph (1), an individual who has been
24 educated in accordance with this paragraph shall
25 have been trained on—

1 (A) when to administer the opioid overdose
2 drug;

3 (B) how to administer the opioid overdose
4 drug; and

5 (C) the steps that need to be taken after
6 administration of the opioid overdose drug.

7 (b) EXCEPTION.—Subsection (a) shall not apply to
8 a health care professional if the harm was caused by the
9 gross negligence or reckless misconduct of the health care
10 professional.

11 **SEC. 6. LIMITATION ON CIVIL LIABILITY FOR INDIVIDUALS**
12 **WORKING FOR OR VOLUNTEERING AT A**
13 **STATE OR LOCAL AGENCY OPIOID OVERDOSE**
14 **PROGRAM.**

15 (a) IN GENERAL.—Notwithstanding any other provi-
16 sion of law, except as provided in subsection (b), no indi-
17 vidual who provides an opioid overdose drug shall be liable
18 for harm caused by the emergency administration of an
19 opioid overdose drug by another individual if the indi-
20 vidual who provides such drug—

21 (1) works for or volunteers at an opioid over-
22 dose program; and

23 (2) provides the opioid overdose drug as part of
24 the opioid overdose program to an individual author-

1 ized by the program to receive an opioid overdose
 2 drug.

3 (b) EXCEPTION.—Subsection (a) shall not apply if
 4 the harm was caused by the gross negligence or reckless
 5 misconduct of the individual who provides the drug.

6 **SEC. 7. LIMITATION ON CIVIL LIABILITY FOR INDIVIDUALS**
 7 **WHO ADMINISTER OPIOID OVERDOSE DRUGS.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
 9 sion of law, except as provided in subsection (b), no indi-
 10 vidual shall be liable for harm caused by the emergency
 11 administration of an opioid overdose drug to an individual
 12 who has or reasonably appears to have suffered an over-
 13 dose from heroin or other opioid, if—

14 (1) the individual who administers the opioid
 15 overdose drug—

16 (A) obtained the drug from a health care
 17 professional or as part of an opioid overdose
 18 program; or

19 (B) is doing so pursuant to a prescription
 20 for an opioid overdose drug under section 505
 21 of the Federal Food, Drug, and Cosmetic Act
 22 (21 U.S.C. 355) or is licensed under section
 23 351 of the Public Health Service Act (42
 24 U.S.C. 262); and

1 (2) was educated in accordance with section
2 5(a)(2) by the health care professional or an opioid
3 overdose program.

4 (b) EXCEPTION.—Subsection (a) shall not apply to
5 an individual if the harm was caused by the gross neg-
6 ligence or reckless misconduct of the individual who ad-
7 ministers the drug.