

115TH CONGRESS  
2D SESSION

# S. 2981

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

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IN THE SENATE OF THE UNITED STATES

MAY 24, 2018

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

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## 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 2018”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to save the lives of people  
8 who intentionally or inadvertently overdose on heroin or  
9 other opioids by providing certain protections from civil

1 liability with respect to the emergency administration of  
2 opioid overdose drugs.

3 **SEC. 3. DEFINITIONS.**

4 In this Act—

5 (1) the term “health care professional” means  
6 a person licensed by a State to prescribe prescription  
7 drugs;

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

12 (3) the term “opioid overdose program” means  
13 a program operated by a local health department,  
14 community-based organization, substance abuse  
15 treatment organization, law enforcement agency, fire  
16 department, other first responder department, or  
17 voluntary association or a program funded by a Fed-  
18 eral, State, or local government that works to pre-  
19 vent opioid overdoses by in part providing opioid  
20 overdose drugs and education to individuals at risk  
21 of experiencing an opioid overdose or to an indi-  
22 vidual in a position to assist another individual at  
23 risk of experiencing an opioid overdose.

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

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

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

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

17 (2) the State enacts legislation in accordance  
18 with State requirements for enacting legislation—

19 (A) citing the authority of this subsection;

20 (B) declaring the election of the State that  
21 such sections 5, 6, and 7 shall not apply, as of  
22 a date certain, to any civil actions covered by  
23 this Act; and

24 (C) containing no other provisions.

1 **SEC. 5. LIMITATION ON CIVIL LIABILITY FOR HEALTH**  
2 **CARE PROFESSIONALS WHO PROVIDE OPIOID**  
3 **OVERDOSE DRUGS.**

4 (a) **LIMITATION ON LIABILITY.**—

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

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

23 (A) when to administer the opioid overdose  
24 drug;

25 (B) how to administer the opioid overdose  
26 drug; and

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

3 (b) EXCEPTION.—Subsection (a) shall not apply to  
4 a health care professional if the harm was caused by the  
5 gross negligence or reckless misconduct of the health care  
6 professional.

7 **SEC. 6. LIMITATION ON CIVIL LIABILITY FOR INDIVIDUALS**  
8 **WORKING FOR OR VOLUNTEERING AT A**  
9 **STATE OR LOCAL AGENCY OPIOID OVERDOSE**  
10 **PROGRAM.**

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

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

19 (2) provides the opioid overdose drug as part of  
20 the opioid overdose program to an individual author-  
21 ized by the program to receive an opioid overdose  
22 drug.

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

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

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

9 (1) the individual who administers the opioid  
10 overdose drug—

11 (A) obtained the drug from a health care  
12 professional or as part of an opioid overdose  
13 program; or

14 (B) is doing so pursuant to a prescription  
15 for an opioid overdose drug under section 505  
16 of the Federal Food, Drug, and Cosmetic Act  
17 (21 U.S.C. 355) or is licensed under section  
18 351 of the Public Health Service Act (42  
19 U.S.C. 262); and

20 (2) was educated in accordance with section  
21 5(a)(2) by the health care professional or an opioid  
22 overdose program.

23 (b) **EXCEPTION.**—Subsection (a) shall not apply to  
24 an individual if the harm was caused by the gross neg-

- 1 ligence or reckless misconduct of the individual who ad-
- 2 ministers the drug.

