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HOUSE BILL NO. 2299

Offered January 12, 2005

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A BILL to amend and reenact §§ 8.01-225 and 22.1-274 of the Code of Virginia, relating to automated external defibrillators in public high schools.

Patrons—Fralin and O'Bannon

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-225 and 22.1-274 of the Code of Virginia are amended and reenacted, as follows:**

§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services technician certified by the Board of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, liquefied natural gas, hazardous material or hazardous waste as defined in § 18.2-278.1 or regulations of the Virginia Waste Management Board shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation, cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator (AED), or other emergency life-sustaining or resuscitative treatments or procedures ~~which~~ *that* have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an automated external defibrillator at the scene of an emergency, trains individuals to be operators of automated external defibrillators, or orders automated external defibrillators, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an automated external defibrillator in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

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59 *Whenever any employee of a school board is covered by the immunity granted by this subdivision,*
60 *the school board employing him shall not be liable for any civil damages for ordinary negligence in*
61 *acts or omissions resulting from the operation, testing, or maintenance of such AED.*

62 8. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol
63 System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any
64 injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue or any other
65 place or while transporting such injured or ill person to a place accessible for transfer to any available
66 emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by
67 him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable
68 for any civil damages for acts or omissions resulting from the rendering of such emergency care,
69 treatment or assistance, including but not limited to acts or omissions which involve violations of any
70 state regulation or any standard of the National Ski Patrol System, Inc., in the rendering of such
71 emergency care or assistance, unless such act or omission was the result of gross negligence or willful
72 misconduct.

73 9. Is an employee of a school board, authorized by a prescriber and trained in the administration of
74 insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with
75 the administration of insulin or administers glucagon to a student diagnosed as having diabetes who
76 requires insulin injections during the school day or for whom glucagon has been prescribed for the
77 emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence
78 in acts or omissions resulting from the rendering of such treatment if the insulin is administered
79 according to the child's medication schedule or such employee has reason to believe that the individual
80 receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any
81 employee of a school board is covered by the immunity granted herein, the school board employing him
82 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the
83 rendering of such insulin or glucagon treatment.

84 B. Any licensed physician serving without compensation as the operational medical director for a
85 licensed emergency medical services agency in ~~this the~~ Commonwealth shall not be liable for any civil
86 damages for any act or omission resulting from the rendering of emergency medical services in good
87 faith by the personnel of such licensed agency unless such act or omission was the result of such
88 physician's gross negligence or willful misconduct.

89 Any person serving without compensation as a dispatcher for any licensed public or nonprofit
90 emergency services agency in ~~this the~~ Commonwealth shall not be liable for any civil damages for any
91 act or omission resulting from the rendering of emergency services in good faith by the personnel of
92 such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or
93 willful misconduct.

94 Any individual, certified by the State Office of Emergency Medical Services as an emergency
95 medical services instructor and pursuant to a written agreement with such office, who, in good faith and
96 in the performance of his duties, provides instruction to persons for certification or recertification as a
97 certified basic life support or advanced life support emergency medical services technician shall not be
98 liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf
99 of such office unless such act or omission was the result of such emergency medical services instructor's
100 gross negligence or willful misconduct.

101 Any licensed physician serving without compensation as a medical advisor to an E-911 system in
102 ~~this the~~ Commonwealth shall not be liable for any civil damages for any act or omission resulting from
103 rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911
104 service, as defined in § 58.1-3813.1, when answering emergency calls unless such act or omission was
105 the result of such physician's gross negligence or willful misconduct.

106 Any licensed physician who directs the provision of emergency medical services, as authorized by
107 the State Board of Health, through a communications device shall not be liable for any civil damages
108 for any act or omission resulting from the rendering of such emergency medical services unless such act
109 or omission was the result of such physician's gross negligence or willful misconduct.

110 Any licensed physician serving without compensation as a supervisor of an automated external
111 defibrillator in ~~this the~~ Commonwealth shall not be liable for any civil damages for any act or omission
112 resulting from rendering medical advice in good faith to the owner of the automated external
113 defibrillator relating to personnel training, local emergency medical services coordination, protocol
114 approval, automated external defibrillator deployment strategies, and equipment maintenance plans and
115 records unless such act or omission was the result of such physician's gross negligence or willful
116 misconduct.

117 C. Any provider of telecommunication service, as defined in § 58.1-3812, including mobile service,
118 in ~~this the~~ Commonwealth shall not be liable for any civil damages for any act or omission resulting
119 from rendering such service with or without charge related to emergency calls unless such act or
120 omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. 1. In the absence of gross negligence or willful misconduct, a health care provider shall not be liable in any civil action resulting from (i) injuries to any health care worker sustained in connection with administration of the vaccinia (smallpox) vaccine or other smallpox countermeasure, or (ii) any injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker; provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration. Nothing in this subsection shall preclude an injured health care worker, who is otherwise eligible for workers' compensation benefits pursuant to Title 65.2, from receipt of such benefits.

2. In the absence of gross negligence or willful misconduct, a health care worker shall not be liable in any civil action for injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker, provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration.

3. For the purposes of this subsection, "health care provider" means a health care provider participating in a smallpox preparedness program, pursuant to a declaration by the United States Department of Health and Human Services ("HHS"), through which individuals associated with the health care provider have received the vaccinia (smallpox) vaccine or other smallpox countermeasure defined by HHS from any hospital, clinic, state or local health department, or any other entity that is identified by state or local government entities or the HHS to participate in a vaccination program.

4. For the purposes of this subsection, "health care worker" means a health care worker to whom the vaccinia (smallpox) vaccine or other smallpox countermeasure has been administered as part of a smallpox preparedness program pursuant to a declaration by HHS. Such health care workers shall include but shall not be limited to: (i) employees of a health care provider referenced in subdivision 3, (ii) independent contractors with a health care provider referenced in subdivision 3, (iii) persons who have practice privileges in a hospital, (iv) persons who have agreed to be on call in an emergency room, (v) persons who otherwise regularly deliver prehospital care to patients admitted to a hospital, and (vi) first responders.

F. For the purposes of this section, the term "compensation" shall not be construed to include (i) the salaries of police, fire or other public officials or personnel who render such emergency assistance; (ii) the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of §§ 45.1-161.38, 45.1-161.101, 45.1-161.199 or § 45.1-161.263; ; (iii) complimentary lift tickets, food, lodging or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group or agency; or (iv) the salary of any person who (a) owns an automated external defibrillator for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate automated external defibrillators at the scene of emergencies, (c) orders automated external defibrillators for use at the scene of emergencies, or (d) operates an automated external defibrillator at the scene of an emergency.

For the purposes of this section, an emergency medical care attendant or technician shall be deemed to include a person licensed or certified as such or its equivalent by any other state when he is performing services which he is licensed or certified to perform by such other state in caring for a patient in transit in this the Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use cardiopulmonary resuscitation (CPR) and an automated external defibrillator (AED) in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

§ 22.1-274. School health services.

A. A school board shall provide pupil personnel and support services, in compliance with § 22.1-253.13:2. A school board may employ school nurses, physicians, physical therapists, occupational therapists and speech therapists. No such personnel shall be employed unless they meet such standards as may be determined by the Board of Education. Subject to the approval of the appropriate local governing body, a local health department may provide personnel for health services for the school

182 division.

183 B. In implementing subsection P of § 22.1-253.13:2, relating to providing support services which are
184 necessary for the efficient and cost-effective operation and maintenance of its public schools, each
185 school board may strive to employ, or contract with local health departments for, nursing services
186 consistent with a ratio of at least one nurse (i) per 2,500 students by July 1, 1996; (ii) per 2,000
187 students by July 1, 1997; (iii) per 1,500 students by July 1, 1998; and (iv) per 1,000 students by July 1,
188 1999. In those school divisions in which there are more than 1,000 students in average daily
189 membership in school buildings, this section shall not be construed to encourage the employment of
190 more than one nurse per school building. Further, this section shall not be construed to mandate the
191 aspired-to ratios.

192 C. The Board of Education shall monitor the progress in achieving the ratios set forth in subsection
193 B of this section and any subsequent increase in prevailing statewide costs, and the mechanism for
194 funding health services, pursuant to subsection P of § 22.1-253.13:2 and the appropriation act. The
195 Board shall also determine how school health funds are used and school health services are delivered in
196 each locality and shall provide, by December 1, 1994, a detailed analysis of school health expenditures
197 to the House Committee on Education, the House Committee on Appropriations, the Senate Committee
198 on Education and Health, and the Senate Committee on Finance.

199 D. With the exception of school administrative personnel and persons employed by school boards
200 who have the specific duty to deliver health-related services, no licensed instructional employee,
201 instructional aide, or clerical employee shall be disciplined, placed on probation or dismissed on the
202 basis of such employee's refusal to (i) perform nonemergency health-related services for students or (ii)
203 obtain training in the administration of insulin and glucagon. However, instructional aides and clerical
204 employees may not refuse to dispense oral medications.

205 For the purposes of this subsection, "health-related services" means those activities which, when
206 performed in a health care facility, must be delivered by or under the supervision of a licensed or
207 certified professional.

208 E. Each school board shall ensure that, in school buildings with an instructional and administrative
209 staff of ~~ten~~ 10 or more, (i) at least two employees have current certification in cardiopulmonary
210 resuscitation or have received training, within the last two years, in emergency first aid and
211 cardiopulmonary resuscitation and (ii) if one or more students diagnosed as having diabetes attend such
212 school, at least two employees have been trained in the administration of insulin and glucagon.

213 In school buildings with an instructional and administrative staff of fewer than ~~ten~~ 10, school boards
214 shall ensure that (i) at least one employee has current certification in cardiopulmonary resuscitation or
215 has received training, within the last two years, in emergency first aid and cardiopulmonary resuscitation
216 and (ii) if one or more students diagnosed as having diabetes attend such school, at least one employee
217 has been trained in the administration of insulin and glucagon.

218 *Each school board shall ensure that, in high school buildings with an instructional and*
219 *administrative staff of 10 or more, at least two employees have current certification in the operation of*
220 *an automated external defibrillator (AED) or have received training within the last two years in the*
221 *operation of an automated external defibrillator (AED). In high school buildings with an instructional*
222 *and administrative staff of fewer than 10, school boards shall ensure that at least one employee has*
223 *such current certification or training.*

224 "Employee" shall include any person employed by a local health department who is assigned to the
225 public school pursuant to an agreement between the local health department and the school board. When
226 a registered nurse, nurse practitioner, physician or physician assistant is present, no employee who is not
227 a registered nurse, nurse practitioner, physician or physician assistant shall assist with the administration
228 of insulin or administer glucagon. Prescriber authorization and parental consent shall be obtained for any
229 employee who is not a registered nurse, nurse practitioner, physician or physician assistant to assist with
230 the administration of insulin and administer glucagon.

231 *Schools shall not be required to employ personnel with separate certifications in CPR and AED, but*
232 *may satisfy the requirements of this subsection when individual employees hold dual certification or*
233 *training in both CPR and AED.*

234 F. Each school board shall ensure that each high school in the division is equipped with an
235 automated external defibrillator (AED) and shall provide each high school guidelines for the
236 maintenance and testing of such devices pursuant to the manufacturer's standards.