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SENATE BILL NO. 1042

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 31, 2007)

(Patron Prior to Substitute—Senator O'Brien)

A BILL to amend and reenact §§ 8.01-225 and 46.2-1231.1 of the Code of Virginia, relating to towing and recovery operators; exemption from liability.

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-225 and 46.2-1231.1 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 (i) 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 or (ii) the handling or transportation of motor vehicles by a towing and recovery operator who is in compliance with Chapter 28 (§ 46.2-2800 et seq.) of Title 46.2 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, or other emergency life-sustaining or resuscitative treatments or procedures which 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.

8. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol

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

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

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

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

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

98 Any licensed physician serving without compensation as a medical advisor to an E-911 system in
99 this Commonwealth shall not be liable for any civil damages for any act or omission resulting from
100 rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911
101 service, as defined in § 58.1-1730, when answering emergency calls unless such act or omission was the
102 result of such physician's gross negligence or willful misconduct.

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

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

114 C. Any communications services provider, as defined in § 58.1-647, including mobile service, and
115 any provider of Voice-over-Internet Protocol service, in this Commonwealth shall not be liable for any
116 civil damages for any act or omission resulting from rendering such service with or without charge
117 related to emergency calls unless such act or omission was the result of such service provider's gross
118 negligence or willful misconduct.

119 Any volunteer engaging in rescue or recovery work at a mine or any mine operator voluntarily
120 providing personnel to engage in rescue or recovery work at a mine not owned or operated by such
121 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. For purposes of this subsection, the term "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle, *other than the operation of a tow truck pursuant to clause (ii) of subdivision A 4.*

E. (Expires July 1, 2008) 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 who, for the purposes of this section, are defined as any law-enforcement officer, firefighter, emergency medical personnel, or other public safety personnel functioning in a role identified by a federal, state, or local emergency response plan.

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 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.

§ 46.2-1231.1. Immunity from liability for certain towing.

No towing and recovery operator shall be liable for damages in any civil action for responding in

183 good faith to the lawful direction of a law-enforcement, *fire, or rescue* agency to tow, recover, or store
184 any vehicle, combination of vehicles, their contents, or any other object. The immunity provided by this
185 section shall not extend to the liability for negligence in the towing, recovery, or storage carried out by
186 the towing and recovery operator. For the purposes of this section, any towing, recovery, or storage
187 carried out in compliance with a contract between a towing business and a local law-enforcement agency
188 or local government shall be deemed to have been performed at the lawful direction of a
189 law-enforcement agency.