

080205528

HOUSE BILL NO. 403

Offered January 9, 2008

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A BILL to amend and reenact §§ 8.01-225.01, 8.01-581.1, 38.2-324, 44-146.16, 44-146.17, 44-146.18:1, 44-146.23, and 59.1-526 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-225.02, relating to health care provider liability protections.

 Patron—Hamilton

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225.01, 8.01-581.1, 38.2-324, 44-146.16, 44-146.17, 44-146.18:1, 44-146.23, and 59.1-526 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-225.02 as follows:

§ 8.01-225.01. Certain immunity for health care providers during disasters under specific circumstances.

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a ~~man-made~~ disaster by delivering health care to persons injured in such ~~man-made~~ disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant ~~man-made~~ disaster.

B. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a ~~man-made~~ disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared; and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the Joint Commission on Accreditation of Healthcare Organizations' standards for granting emergency practice privileges.

C. For the purposes of this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; and

"Health care provider" means those professions defined as such in § 8.01-581.1; ~~and~~

~~"Man-made disaster" means the circumstances described in § 44-146.16.~~

D. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and 44-146.23.

§ 8.01-225.02. *Certain immunity for health care providers during disasters.*

A. *In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall be immune from civil liability for any injury or wrongful death of any person arising from the delivery or withholding of health care when a state or local emergency has been or is subsequently declared in response to such disaster. The failure of a health care provider in response to a disaster to deliver the same level or manner of health care that would be delivered under nondisaster circumstances, where such failure results from a lack of any resource necessary for the delivery of such health care, shall not be a breach of any duty by such provider.*

B. *For purposes of this section:*

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; and

"Health care provider" has the same definition as provided in § 8.01-581.1.

§ 8.01-581.1. Definitions.

As used in this chapter:

"Health care" means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to

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59 practice such nursing under the Nurse Licensure Compact, optometrist, podiatrist, chiropractor, physical
60 therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor,
61 licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or
62 emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional
63 corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose
64 partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions
65 conducted by and for those who rely upon treatment by spiritual means alone through prayer in
66 accordance with a recognized church or religious denomination; (v) a professional limited liability
67 company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation,
68 partnership, limited liability company or any other entity, except a state-operated facility, which employs
69 or engages a licensed health care provider and which primarily renders health care services; or (vii) a
70 director, officer, employee, independent contractor, or agent of the persons or entities referenced herein,
71 acting within the course and scope of his employment or engagement as related to health care or
72 professional services.

73 "Health maintenance organization" means any person licensed pursuant to Chapter 43 (§ 38.2-4300 et
74 seq.) of Title 38.2 who undertakes to provide or arrange for one or more health care plans.

75 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of
76 Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

77 "Impartial attorney" means an attorney who has not represented (i) the claimant, his family, his
78 partners, co-proprietors or his other business interests; or (ii) the health care provider, his family, his
79 partners, co-proprietors or his other business interests.

80 "Impartial health care provider" means a health care provider who (i) has not examined, treated or
81 been consulted regarding the claimant or his family; (ii) does not anticipate examining, treating, or being
82 consulted regarding the claimant or his family; or (iii) has not been an employee, partner or
83 co-proprietor of the health care provider against whom the claim is asserted.

84 "Malpractice" means any tort action or breach of contract action for personal injuries or wrongful
85 death, based on health care or professional services rendered, or which should have been rendered, by a
86 health care provider, to a patient.

87 "Patient" means any natural person who receives or should have received health care from a licensed
88 health care provider except those persons who are given health care in an emergency situation which
89 exempts the health care provider from liability for his emergency services in accordance with § 8.01-225
90 or 44-146.23.

91 "Physician" means a person licensed to practice medicine or osteopathy in this Commonwealth
92 pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

93 § 38.2-324. Disclosure of property damage information.

94 Nothing in this title shall prohibit an insurer or its agent from disclosing information obtained from
95 policyholders or other persons regarding claims or reports of property damage resulting from a natural
96 disaster, as defined in *clause (ii) of the definition of "disaster" in § 44-146.16*, to the Director of the
97 Department of Emergency Management or his designees or other state officials, to federal officials, or to
98 local government officials of the locality where the damage occurred; provided that the disclosures (i) do
99 not identify persons whose property is damaged or the address thereof and (ii) include only aggregated
100 data that relates to the assessment of damage from a natural disaster, including, but not limited to, the
101 number of claims, estimates of the dollar amount of damage, and types of damage, for a specified
102 geographic area, such as a census tract or zip code area.

103 § 44-146.16. Definitions.

104 As used in this chapter unless the context requires a different meaning:

105 "Communicable disease of public health threat" means an illness of public health significance, as
106 determined by the State Health Commissioner in accordance with regulations of the Board of Health,
107 caused by a specific or suspected infectious agent that may be reasonably expected or is known to be
108 readily transmitted directly or indirectly from one individual to another and has been found to create a
109 risk of death or significant injury or impairment; this definition shall not, however, be construed to
110 include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon.

111 "Individual" shall include any companion animal. Further, whenever "person or persons" is used in
112 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1, it shall be deemed, when the context
113 requires it, to include any individual;

114 "Disaster" means (i) any man-made disaster including any condition following an attack by any
115 enemy or foreign nation upon the United States resulting in substantial damage of property or injury to
116 persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological,
117 chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and
118 domestic; also any industrial, nuclear, or transportation accident, explosion, conflagration, power
119 failure, resources shortage, or other condition such as sabotage, oil spills, and other injurious
120 environmental contaminations that threaten or cause damage to property, human suffering, hardship, or

loss of life; and (ii) any natural disaster including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering, or possible loss of life;

"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases;

"Emergency" means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof;

"Emergency services" means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from ~~natural or man-made~~ disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs;

"Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards;

"Hazardous substances" means all materials or substances which now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government;

"Interjurisdictional agency for emergency management" is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery;

"Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage;

"Local emergency management organization" means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions;

"Major disaster" means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the ~~Strafford~~ *Stafford* Act (P.L. 43-288 93-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;

"Man-made disaster" means any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship or loss of life;

"Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life;

"Political subdivision" means any city or county in the Commonwealth and for the purposes of this

chapter, the Town of Chincoteague and any town of more than 5,000 population that chooses to have an emergency management program separate from that of the county in which such town is located;

"Resource shortage" means the absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services of any kind that bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

"State of emergency" means the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of ~~natural or man-made~~ disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

(5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the

Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;

(9) To provide incident command system guidelines for state agencies and local emergency response organizations; and

(10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a ~~man-made or natural~~ disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, the Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar months, to the employee to assist the employee with the hardship.

§ 44-146.18:1. Virginia Disaster Response Funds disbursements; reimbursements.

There is hereby created a nonlapsing revolving fund which shall be maintained as a separate special fund account within the state treasury, and administered by the Coordinator of Emergency Management, consistent with the purposes of this chapter. All expenses, costs, and judgments recovered pursuant to this section, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be paid into the fund. Additionally, an annual appropriation to the fund from the general fund or other unrestricted nongeneral fund, in an amount determined by the Governor, may be authorized to carry out the purposes of this chapter. All recoveries from occurrences prior to March 10, 1983, and otherwise qualifying under this section, received subsequent to March 10, 1983, shall be paid into the fund. No moneys shall be credited to the balance in the fund until they have been received by the fund. An accounting of moneys received and disbursed shall be kept and furnished to the Governor or the General Assembly upon request.

Disbursements from the fund may be made for the following purposes and no others:

1. For costs and expenses, including, but not limited to personnel, administrative, and equipment costs and expenses directly incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management, in and for preventing or alleviating damage, loss, hardship, or suffering caused by emergencies, resource shortages, or ~~natural or man-made~~ disasters; and

2. For procurement, maintenance, and replenishment of materials, equipment, and supplies, in such quantities and at such location as the Coordinator of Emergency Management may deem necessary to protect the public peace, health, and safety and to preserve the lives and property and economic well-being of the people of the Commonwealth; and

3. For costs and expenses incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management, in the recovery from the effects of a disaster or in the restoration of public property or facilities.

The Coordinator of Emergency Management shall promptly seek reimbursement from any person causing or contributing to an emergency or disaster for all sums disbursed from the fund for the protection, relief and recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within ~~sixty~~ 60 days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The Coordinator of Emergency Management shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection. The Coordinator is authorized to recover any sums incurred by any other state agency or political subdivision acting at the direction of the Coordinator as provided in this paragraph.

§ 44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies, nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

305 B. Any person owning or controlling real estate or other premises who voluntarily and without
306 compensation grants a license or privilege, or otherwise permits the designation or use of the whole or
307 any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency
308 access or of other uses relating to emergency services shall, together with his successors in interest, if
309 any, not be liable for negligently causing the death of, or injury to any person on or about such real
310 estate or premises or for loss of or damage to the property of any person on or about such real estate or
311 premises during such actual or impending disaster.

312 C. If any person holds a license, certificate, or other permit issued by any state, or political
313 subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills,
314 the person, *without compensation other than reimbursement for actual and necessary expenses*, may
315 ~~gratuitously~~ render aid involving that skill in the Commonwealth during a disaster, and such person shall
316 not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage
317 to, the property of any person resulting from such ~~gratuitous~~ service.

318 D. No person, firm or corporation which ~~gratuitously~~ services or repairs any electronic devices or
319 equipment under the provisions of this section after having been approved for the purposes by the State
320 Coordinator shall be liable for negligently causing the death of, or injury to, any person or for the loss
321 of, or damage to, the property of any person resulting from any defect or imperfection in any such
322 device or equipment so ~~gratuitously~~ serviced or repaired.

323 E. Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or
324 other legal entity shall be liable in civil damages as a result of acts taken voluntarily and without
325 compensation in the course of rendering care, assistance, or advice with respect to an incident creating a
326 danger to person, property, or the environment as a result of an actual or threatened discharge of a
327 hazardous substance, or in preventing, cleaning up, treating, or disposing of or attempting to prevent,
328 clean up, treat, or dispose of any such discharge, provided that such acts are taken under the direction of
329 state or local authorities responding to the incident. This section shall not preclude liability for civil
330 damages as a result of gross negligence, recklessness or willful misconduct. The provisions of this
331 section shall not affect the right of any person to receive benefits to which he would otherwise be
332 entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any
333 pension law, nor the right of any such person to receive any benefits or compensation under any act of
334 Congress. The immunity provided by the provisions of this paragraph shall be in addition to, not in lieu
335 of, any immunities provided by § 8.01-225.

336 § 59.1-526. Definitions.

337 As used in this chapter:

338 "Disaster" means any ~~natural~~ disaster," ~~man-made disaster~~," "emergency," or "major disaster," as
339 those terms are used and defined in § 44-146.16, that results in the declaration of a state of emergency
340 by the Governor or the President of the United States.

341 "Goods," "services," and "supplier" have the same meanings as are set forth for those terms in
342 § 59.1-198.

343 "Necessary goods and services" means any necessary good or service for which consumer demand
344 does, or is likely to, increase as a consequence of the disaster, and includes, but is not limited to, water,
345 ice, consumer food items or supplies, property or services for emergency cleanup, emergency supplies,
346 communication supplies and services, medical supplies and services, home heating fuel, building
347 materials and services, tree removal supplies and services, freight, storage services, housing, lodging,
348 transportation, and motor fuels.

349 "Time of disaster" means the shorter of (i) the period of time when a state of emergency declared by
350 the Governor or the President of the United States as the result of a ~~natural~~ disaster, ~~manmade disaster~~,
351 emergency, or major disaster, as those terms are used and defined in § 44-146.16, is in effect or (ii) 30
352 days after the occurrence of the ~~natural~~ disaster, ~~manmade disaster~~, emergency, or major disaster that
353 resulted in the declaration of the state of emergency; however, if the state of emergency is extended or
354 renewed within 30 days after such an occurrence, then such period shall be extended to include the 30
355 days following the date the state of emergency was extended or renewed.