20200182D HOUSE BILL NO. 5073 2 Offered August 18, 2020 3 Prefiled August 18, 2020 4 A BILL to amend and reenact §§ 8.01-225.01 and 8.01-225.02 of the Code of Vi. disasters; health care providers; immunity. 6 Patron—Head 7 Patron—Head 7 Patron—Head 8 Referred to Committee for Courts of Justice 9 Be it enacted by the General Assembly of Virginia: 11 1. That §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia are amended at follows: 13 § 8.01-225.01. Certain immunity for health care providers during disaster circumstances. 14 A. As used in this section: 7 "Approved national accrediting organization" means an organization granted Centers for Medicare and Medicaid Services to ensure compliance with Medica participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 19 "Disaster" means any "disaster," "emergency," or "major disaster" as those ter defined in § 44-146.16. 11 "Health care provider" means (i) any person, corporation, facility, or institution lice inpatient or outpatient surgical center by the Department of Health, a free-sta department or endoscopy center, physician's office, or dental, orthodontic, or including any owner, operator, employee or agent thereof; (ii) any person who delive defined in § 8.01-581.1; and (iii) any person, corporation, facility, o	nded and reenacted as isasters under specific canted authority by the Medicare conditions of S.C. § 1395bb). ose terms are used and stitution licensed as an free-standing emergency , or endodontic office, o delivers health care as on licensed as a general § 32.1-162.3, home care
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29 any public or private entity to provide screening, examination, treatment, or other he	
30 for any individual confirmed or suspected to be infected with the COVID-19 virus, inc	her health care services
	us, including any owner,
31 operator, employee, or agent thereof.	
32 B. In the absence of gross negligence or willful misconduct, any health care provi	
33 to a disaster by delivering health care to persons injured in such disaster shall be in	l be immune from civil
34 liability for any injury or wrongful death arising from abandonment by such health ca	alth care provider of any
35 person to whom such health care provider owes a duty to provide health care when	when (i) a state or local
36 emergency has been or is subsequently declared; and (ii) the provider was unab	unable to provide the
37 requisite health care to the person to whom he owed such duty of care as a result	
38 voluntary or mandatory response to the relevant disaster.	1
39 B. \check{C} . In the absence of gross negligence or willful misconduct, any hospita	nospital or other entity
40 credentialing health care providers to deliver health care in response to a disaster shal	er shall be immune from
41 civil liability for any cause of action arising out of such credentialing or granting of	
42 if (i) a state or local emergency has been or is subsequently declared and (ii) the hos	
43 procedures for such credentialing and granting of practice privileges that are co	
44 applicable standards of an approved national accrediting organization for granting e	ting emergency practice
45 privileges.	ting emergency practice
46 C. For the purposes of this section:	
47 "Approved national accrediting organization" means an organization granted author	authority by the Centers
48 for Medicare and Medicaid Services to ensure compliance with Medicare condition	
\mathbf{H}_{0}	numbers of participation
49 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).	b).
 49 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). 50 "Disaster" means any "disaster," "emergency," or "major disaster" as those ter 	b).
 49 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). 50 "Disaster" means any "disaster," "emergency," or "major disaster" as those ter 51 defined in § 44-146.16; and 	b). ose terms are used and
 49 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). 50 "Disaster" means any "disaster," "emergency," or "major disaster" as those ter 51 defined in § 44-146.16; and 52 "Health care provider" means those professions defined as such in § 8.01-581.1. 	b). bse terms are used and .1.
 49 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). 50 "Disaster" means any "disaster," "emergency," or "major disaster" as those ter 51 defined in § 44-146.16; and 52 "Health care provider" means those professions defined as such in § 8.01-581.1. 53 D. In the case of a disaster caused by a communicable disease of public health is 	b). by terms are used and .1. ealth threat for which a
 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). "Disaster" means any "disaster," "emergency," or "major disaster" as those ter defined in § 44-146.16; and "Health care provider" means those professions defined as such in § 8.01-581.1. D. In the case of a disaster caused by a communicable disease of public health to state of emergency has been declared pursuant to § 44-146.17 and in the absence of g 	b). by terms are used and .1. ealth threat for which a ter of gross negligence or
 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). "Disaster" means any "disaster," "emergency," or "major disaster" as those ter defined in § 44-146.16; and "Health care provider" means those professions defined as such in § 8.01-581.1. D. In the case of a disaster caused by a communicable disease of public health to state of emergency has been declared pursuant to § 44-146.17 and in the absence of g willful misconduct, a health care provider who withholds the provision of health care 	b). by terms are used and .1. ealth threat for which a ter of gross negligence or alth care procedures for
 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). "Disaster" means any "disaster," "emergency," or "major disaster" as those ter defined in § 44-146.16; and "Health care provider" means those professions defined as such in § 8.01-581.1. D. In the case of a disaster caused by a communicable disease of public health to state of emergency has been declared pursuant to § 44-146.17 and in the absence of g willful misconduct, a health care provider who withholds the provision of health care which personal protective equipment is required and which, if delayed, are not an 	b). by terms are used and .1. ealth threat for which a the of gross negligence or with care procedures for not anticipated to cause
 pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb). "Disaster" means any "disaster," "emergency," or "major disaster" as those ter defined in § 44-146.16; and "Health care provider" means those professions defined as such in § 8.01-581.1. D. In the case of a disaster caused by a communicable disease of public health to state of emergency has been declared pursuant to § 44-146.17 and in the absence of g willful misconduct, a health care provider who withholds the provision of health care 	b). by terms are used and .1. ealth threat for which a the of gross negligence or with care procedures for the threat for cause leading to disability or

68

Board of Health or Commissioner of Health, shall be immune from civil liability for any injury or 59

wrongful death arising from abandonment by such health care provider of any person to whom such 60 61 health care provider owes a duty to provide health care when the provider was unable to provide the

62 requisite health care to the person to whom he owed such duty of care as a result of the provider's

63 voluntary or mandatory response to the relevant disaster.

64 E. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any 65 immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and 66 44-146.23. 67

§ 8.01-225.02. Certain liability protection for health care providers during disasters.

A. As used in this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and 69 70 defined in § 44-146.16.

"Health care provider" means (i) those professions defined as such in § 8.01-581.1 and (ii) home 71 care organizations as defined in § 32.1-162.7. 72

73 B. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery 74 75 or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of 76 77 resources, attributable to the disaster, rendering the health care provider unable to provide the level or 78 manner of care that otherwise would have been required in the absence of the emergency and which 79 resulted in the injury or wrongful death at issue. 80

B. For purposes of this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and 81 82 defined in § 44-146.16; and 83

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

84 C. In the case of a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared pursuant to § 44-146.17 and in the absence of gross negligence 85 or willful misconduct, any health care provider who responds to such disaster shall not be liable for any 86 injury to or wrongful death of any person arising from the delivery or withholding of health care when 87 88 the emergency and subsequent conditions caused a lack of resources, including insufficient availability 89 of personal protective equipment, ventilators, or other drugs, blood products, supplies, or equipment and 90 an insufficient availability of trained health care providers and other staff, that is attributable to the 91 disaster and that renders the health care provider unable to provide the level or manner of care that 92 otherwise would have been required in the absence of the emergency, including situations in which such health care provider is required to (i) provide care that, while included in the scope of his license, 93 94 exceeds the credentials or other practice privilege issued to him by the hospital or other health care 95 facility at which he delivers services or exceeds the scope of services he would normally provide; (ii) implement or execute triage protocols or scarce resources allocation policies necessitated by declaration 96 97 of crisis standards of care; or (iii) use supplies or equipment in a manner that is different from the manner in which such supplies or equipment are normally used and that resulted in the injury or 98 99 wrongful death at issue.