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SENATE BILL NO. 148

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 9, 2022)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia, relating to public health emergencies; immunity for health care providers; emergency.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia are amended and reenacted 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 disaster by delivering health care to persons injured in such disaster *or who commits any act or omission as directed by any order of public health in response to such 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, *state of emergency, or public health 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 disaster, *order of public health, resource shortage, or other condition arising out of the 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 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 applicable standards of an approved national accrediting organization for granting emergency practice privileges.

C. For the purposes of this section:

"Approved national accrediting organization" means an organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

"Communicable disease of public health threat" *has the same definition as provided in § 44-146.16.*

"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~~ *has the same definition as provided in § 8.01-581.1.*

"Local emergency" *has the same definition as provided in § 44-146.16.*

"Public health emergency" *means the condition declared by the State Commissioner of Health when, in his judgment, the threat or actual occurrence of a disaster due to a communicable disease of public health threat in any part of the Commonwealth is of sufficient severity and magnitude to warrant public health orders and other measures aimed at preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.*

"Resource shortage" *has the same definition as provided in § 44-146.16.*

"State of emergency" *has the same definition as provided 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 liability protection 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 not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a ~~state or~~ local emergency, *state of emergency, or public health emergency* has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue.

B. For purposes of this section:

"Communicable disease of public health threat" *has the same definition as provided in § 44-146.16.*

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

- 60 "Health care provider" has the same definition as provided in § 8.01-581.1.
61 *"Local emergency" has the same definition as provided in § 44-146.16.*
62 *"Public health emergency" has the same definition as provided in § 8.01-225.01.*
63 *"Resource shortage" has the same definition as provided in § 44-146.16.*
64 *"State of emergency" has the same definition as provided in § 44-146.16.*
65 **2. That an emergency exists and this act is in force from its passage.**