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HOUSE BILL NO. 2097

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare & Institutions
on February 1, 1999)

(Patrons Prior to Substitute—Delegates Cantor and Grayson [HB2027])

A BILL to amend and reenact §§ 8.01-225, 32.1-111.1, 32.1-111.3, and 32.1-111.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-111.14:1, relating to use of automated external defibrillators.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225, 32.1-111.1, 32.1-111.3, and 32.1-111.10 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 32.1-111.14:1 as follows:

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

A. Any person who, in:

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.

Any person who, in 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.

Any person who, in 3. In good faith and without compensation, administers epinephrine to an individual for whom an insect sting treatment kit has been prescribed shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if he has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

Any person who provides 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.

Any 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.

Any person having 6. Has attended and successfully completed a course in cardiopulmonary resuscitation, which has been approved by the State Board of Health, who, 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 such individual shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

Any 7. Provides automated external defibrillation services for emergencies or uses an automated external defibrillator at the scene of an emergency, in compliance with § 32.1-111.14:1, 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,

60 *unless such personal injury results from gross negligence or willful or wanton misconduct of the person*
61 *rendering such emergency care.*

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

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

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

90 B4. Any licensed physician serving without compensation as a medical advisor to an E-911 system
91 in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from
92 rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911
93 system, as defined in § 58.1-3813, when answering emergency calls unless such act or omission was the
94 result of such physician's gross negligence or willful misconduct.

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

99 B2C. Any provider of telecommunication service, as defined in § 58.1-3812, including mobile
100 service, in this Commonwealth shall not be liable for any civil damages for any act or omission
101 resulting from rendering such service with or without charge related to emergency calls unless such act
102 or omission was the result of such service provider's gross negligence or willful misconduct.

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

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

110 For the purposes of this section, the term "compensation" shall not be construed to include (i) the
111 salaries of police, fire or other public officials or personnel who render such emergency assistance, (ii)
112 the salaries or wages of employees of a coal producer engaging in emergency medical technician service
113 or first aid service pursuant to the provisions of §§ 45.1-161.38, 45.1-161.101, 45.1-161.199 or
114 § 45.1-161.263, or (iii) complimentary lift tickets, food, lodging or other gifts provided as a gratuity to
115 volunteer members of the National Ski Patrol System, Inc., by any resort, group or agency.

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

120 For the purposes of this section, an emergency medical care attendant or technician shall be deemed
121 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.

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.

§ 32.1-111.1. Definitions.

As used in this article:

"Advisory Board" means the State Emergency Medical Services Advisory Board.

"Agency" means any person engaged in the business, service or regular activity, whether or not for profit, of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless, or of rendering immediate medical care to such persons.

"Automated external defibrillator" means a medical device which combines a heart monitor and defibrillator and (i) has been approved by the United States Food and Drug Administration, (ii) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, (iii) is capable of determining, without intervention by an operator, whether defibrillation should be performed, and (iv) automatically charges and requests delivery of an electrical impulse to an individual's heart, upon determining that defibrillation should be performed.

"Emergency medical services personnel" means persons responsible for the direct provision of emergency medical services in a given medical emergency including all persons who could be described as attendants, attendants-in-charge, or operators.

"Emergency medical services vehicle" means any privately or publicly owned vehicle, vessel or aircraft that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated to provide immediate medical care to or to transport persons who are sick, injured, wounded or otherwise incapacitated or helpless.

§ 32.1-111.3. Statewide emergency medical care system.

A. The Board of Health shall develop a comprehensive, coordinated, emergency medical care system in the Commonwealth and prepare a Statewide Emergency Medical Services Plan, which shall incorporate, but not be limited to, the plans prepared by the regional emergency medical services councils. The Board shall review the Plan triennially and make such revisions as may be necessary. The objectives of such Plan and the system shall include, but not be limited to, the following:

1. Establishing a comprehensive statewide emergency medical care system, incorporating facilities, transportation, manpower, communications, and other components as integral parts of a unified system that will serve to improve the delivery of emergency medical services and thereby decrease morbidity, hospitalization, disability, and mortality;

2. Reducing the time period between the identification of an acutely ill or injured patient and the definitive treatment;

3. Increasing the accessibility of high quality emergency medical services to all citizens of Virginia;

4. Promoting continuing improvement in system components including ground, water and air transportation, communications, hospital emergency departments and other emergency medical care facilities, consumer health information and education, and health manpower and manpower training;

5. Improving the quality of emergency medical care delivered on site, in transit, in hospital emergency departments and within the hospital environment;

6. Working with medical societies, hospitals, and other public and private agencies in developing approaches whereby the many persons who are presently using the existing emergency department for routine, nonurgent, primary medical care will be served more appropriately and economically;

7. Conducting, promoting, and encouraging programs of education and training designed to upgrade the knowledge and skills of health manpower involved in emergency medical services;

8. Consulting with and reviewing, with agencies and organizations, the development of applications to governmental or other sources for grants or other funding to support emergency medical services programs;

9. Establishing a statewide air medical evacuation system which shall be developed by the Department of Health in coordination with the Department of State Police and other appropriate state agencies;

10. Establishing and maintaining a process for designation of appropriate hospitals as trauma centers and specialty care centers based on an applicable national evaluation system;

11. Establishing a comprehensive emergency medical services patient care data collection and evaluation system pursuant to Article 3.1 (§ 32.1-116.1 et seq.) of this chapter; and

12. Collecting data and information and preparing reports for the sole purpose of the designation and verification of trauma centers and other specialty care centers pursuant to this section. All data and

183 information collected shall remain confidential and shall be exempt from the provisions of the Virginia
184 Freedom of Information Act (§ 2.1-340 et seq.); and

185 13. *Establishing a registration program for automated external defibrillators, pursuant to*
186 *§ 32.1-111.14:1.*

187 B. The Board of Health shall also develop and maintain as a component of the Emergency Medical
188 Services Plan a statewide prehospital and interhospital Trauma Triage Plan designed to promote rapid
189 access for pediatric and adult trauma patients to appropriate, organized trauma care through the
190 publication and regular updating of information on resources for trauma care and generally accepted
191 criteria for trauma triage and appropriate transfer. The Trauma Triage Plan shall include:

192 1. A strategy for implementing the statewide Trauma Triage Plan through formal regional trauma
193 triage plans developed by the regional emergency medical services councils which can incorporate each
194 region's geographic variations and trauma care capabilities and resources, including hospitals designated
195 as trauma centers pursuant to subsection A of this section. The regional trauma triage plans shall be
196 implemented by July 1, 1999, upon the approval of the Commissioner.

197 2. A uniform set of proposed criteria for prehospital and interhospital triage and transport of trauma
198 patients, consistent with the trauma protocols of the American College of Surgeons' Committee on
199 Trauma, developed by the Emergency Medical Services Advisory Board, in consultation with the
200 Virginia Chapter of the American College of Surgeons, the Virginia College of Emergency Physicians,
201 the Virginia Hospital and Healthcare Association, and prehospital care providers. The Emergency
202 Medical Services Advisory Board may revise such criteria from time to time to incorporate accepted
203 changes in medical practice or to respond to needs indicated by analyses of data on patient outcomes.
204 Such criteria shall be used as a guide and resource for health care providers and are not intended to
205 establish, in and of themselves, standards of care or to abrogate the requirements of § 8.01-581.20. A
206 decision by a health care provider to deviate from the criteria shall not constitute negligence per se.

207 3. A program for monitoring the quality of care, consistent with other components of the Emergency
208 Medical Services Plan. The program shall provide for collection and analysis of data on emergency
209 medical and trauma services from existing validated sources, including but not limited to the emergency
210 medical services patient care information system, pursuant to Article 3.1 (§ 32.1-116.1 et seq.) of this
211 chapter, the Patient Level Data System, and mortality data. The Emergency Medical Services Advisory
212 Board shall review and analyze such data on a quarterly basis and report its findings to the
213 Commissioner. The first such report shall be for the quarter beginning on July 1, 1999. The Advisory
214 Board may execute these duties through a committee composed of persons having expertise in critical
215 care issues and representatives of emergency medical services providers. The program for monitoring
216 and reporting the results of emergency medical and trauma services data analysis shall be the sole means
217 of encouraging and promoting compliance with the trauma triage criteria.

218 The Commissioner shall report aggregate findings of the analysis annually to each regional
219 emergency medical services council, with the first such report representing data submitted for the quarter
220 beginning July 1, 1999, through the quarter ending June 30, 2000. The report shall be available to the
221 public and shall identify, minimally, as defined in the statewide plan, the frequency of (i) incorrect
222 triage in comparison to the total number of trauma patients delivered to a hospital prior to
223 pronouncement of death and (ii) incorrect interfacility transfer for each region. The Advisory Board shall
224 ensure that each hospital or emergency medical services director is informed of any incorrect
225 interfacility transfer or triage, as defined in the statewide plan, specific to the provider and shall give the
226 provider an opportunity to correct any facts on which such determination is based, if the provider asserts
227 that such facts are inaccurate. The findings of the report shall be used to improve the Trauma Triage
228 Plan, including triage, and transport and trauma center designation criteria. The Commissioner shall
229 ensure the confidentiality of patient information, in accordance with § 32.1-116.2. Such data or
230 information in the possession of or transmitted to the Commissioner, the Advisory Board, or any
231 committee acting on behalf of the Advisory Board, any hospital or prehospital care provider, or any
232 other person shall be privileged and shall not be disclosed or obtained by legal discovery proceedings,
233 unless a circuit court, after a hearing and for good cause shown arising from extraordinary
234 circumstances, orders disclosure of such data.

235 C. Whenever any state-owned aircraft, vehicle, or other form of conveyance is utilized under the
236 provisions of this section, an appropriate amount not to exceed the actual costs of operation may be
237 charged by the agency having administrative control of such aircraft, vehicle or other form of
238 conveyance.

239 § 32.1-111.10. State Emergency Medical Services Advisory Board; purpose; membership; duties.

240 A. For the purpose of advising the State Board of Health concerning the administration of the
241 statewide emergency medical care system and emergency medical services vehicles maintained and
242 operated to provide transportation to persons requiring emergency medical treatment, and reviewing and
243 making recommendations on the Statewide Emergency Medical Services Plan, there is hereby created
244 the State Emergency Medical Services Advisory Board, which shall be composed of twenty-four

members. The membership of the Advisory Board shall be appointed by the Governor and shall include one representative of each of the following groups: Virginia Municipal League, Virginia Association of Counties, Medical Society of Virginia, Virginia Chapter of the American College of Emergency Physicians, Virginia Chapter of the American College of Surgeons, Virginia Chapter of the American Academy of Pediatrics, one member of either the Emergency Nurses Association or the Virginia Nurses' Association, Virginia Hospital Association, Virginia State Firefighters Association, State Fire Chiefs Association of Virginia, Virginia Ambulance Association, Virginia Association of Governmental Emergency Medical Services Administrators, and Virginia Association of Public Safety Communications Officials; a consumer who shall not be involved in or affiliated with emergency medical services in any capacity; one representative from each of the eight regional emergency medical services councils; and two members of the Virginia Association of Volunteer Rescue Squads, Inc. Appointments may be made, at the discretion of the Governor, from lists of three nominees submitted by such organizations and groups, where applicable. To ensure diversity in representation, the Governor may request additional nominees from the applicable organizations and groups. In no case shall the Governor be bound to make any appointment from among any list of nominees. Each regional emergency medical services advisory council shall submit three nominations, at least one of which shall be a representative of providers of prehospital care. Each member shall be designated as serving as the representative of one of the aforementioned groups.

B. Members serving on the State Emergency Medical Services Advisory Board on January 1, 1996, shall complete their current terms of office. Thereafter, appointments shall be made to accomplish the restructuring of the Advisory Board according to the membership in effect on July 1, 1996, and shall be for terms of three years or the unexpired portions thereof in a manner to preserve insofar as possible the representation of the specified groups. No member shall serve more than two successive terms. Effective July 1, 1997, no individual representing any one or more of the groups named in subsection A who has served as a member of the State Emergency Medical Services Advisory Board for two or more successive terms for any period or for six or more consecutive years shall be nominated for appointment or appointed to the Advisory Board unless at least three consecutive years have elapsed since such individual has served on the Advisory Board.

The chairman shall be elected from the membership of the Advisory Board for a term of one year and shall be eligible for reelection. The Advisory Board shall meet at least four times annually at the call of the chairman or the Commissioner.

C. The State Emergency Medical Services Advisory Board shall:

1. Advise the State Board of Health on the administration of this article;
2. Review and make recommendations for the Statewide Emergency Medical Services Plan and any revisions thereto;

3. Review the annual financial report of the Virginia Association of Volunteer Rescue Squads, as required by § 32.1-111.13; and

4. Review, on a schedule as it may determine, reports on the status of all aspects of the statewide emergency medical care system, including the Financial Assistance and Review Committee, the Rescue Squad Assistance Fund, the regional emergency medical services councils, and the emergency medical services vehicles, submitted by the State Office of Emergency Medical Services; and

5. Advise the Board on the requirements for the registration of automated external defibrillators pursuant to § 32.1-111.14:1.

§ 32.1-111.14:1. Automated external defibrillation; registration required.

A. An automated external defibrillator may be used to save or attempt to save the life of a person who is in cardiac arrest in accordance with this section and the Board's regulations.

B. Upon obtaining an automated external defibrillator and prior to placing such equipment in use, any person, as defined in § 1-13.19 of this Code, other than an emergency medical services agency regulated by the Board, shall register with the Board. The Board shall establish requirements for automated external defibrillator registration which shall include, but need not be limited to, the following criteria:

1. All operators of the automated external defibrillator shall be required to receive training by the American Heart Association in cardiopulmonary resuscitation and in the use of automated external defibrillators or other course in CPR and automated external defibrillator use which has been approved by the Board of Health.

2. The defibrillator shall be maintained and tested in compliance with the manufacturer's operational guidelines and any Board regulations and written records of such maintenance and testing shall be kept.

3. A licensed physician shall supervise the defibrillation program, including personnel training, local emergency medical services coordination, protocol approval, automated external defibrillator deployment strategies, and an equipment maintenance plan and records.

4. The payment of a registration fee, not to exceed twenty-five dollars.

306 5. *The establishment of disciplinary actions upon failure to comply with the requirements of this*
307 *section, other relevant law or the Board's regulations which may include, but need not be limited to,*
308 *citations, suspension of the registration, revocation of the registration or denial of registration renewal.*

309 6. *The registration shall be effective for four years, and the registrant shall apply for renewal before*
310 *the expiration of his registration, as provided in the Board's regulations.*

311 C. *Upon compliance with the requirements of this section, any other relevant law, and Board*
312 *regulations, the Board shall issue the owner of the automated external defibrillator a certificate of*
313 *registration.*