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HOUSE BILL NO. 39

Offered January 8, 2014

Prefiled December 2, 2013

A BILL to amend and reenact § 2.2-507 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-225.03 and by adding in Title 32.1 a chapter numbered 17, consisting of a section numbered 32.1-370, relating to volunteer health care providers.

Patrons—Marshall, R.G. and Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-507 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-225.03 and by adding in Title 32.1 a chapter numbered 17, consisting of a section numbered 32.1-370, as follows:

§ 2.2-507. Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents or employees of the Alcoholic Beverage Control Board;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;

5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;

6. Persons employed by the Commissioner of Motor Vehicles;

7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;

9. Conservation police officers appointed by the Department of Game and Inland Fisheries;

10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;

13. Conservation officers of the Department of Conservation and Recreation; or

14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

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Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any health care provider in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.03.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

§ 8.01-225.03. Certain liability protection for volunteer health care providers.

Any health care provider who is certified as a volunteer health care provider in accordance with § 32.1-370 shall be exempt from civil liability for any injury or wrongful death of any person resulting from the provision of any health care provided in his professional capacity, regardless of the location at which such care is provided, absent gross negligence or willful misconduct.

CHAPTER 17.

VOLUNTEER HEALTH CARE PROVIDERS.

§ 32.1-370. Volunteer health care providers; certification; immunity from liability.

A. As used in this chapter, unless the context requires a different meaning:

"Free clinic" means a health care facility that is licensed by the Department and operated by a nonprofit private entity and that, in providing health services through the facility, (i) does not accept reimbursement from any third-party payor, including reimbursement under any insurance policy or health plan or under a federal or state health benefit program, and (ii) does not impose charges on the individuals to whom the services are provided.

"Free clinic offsite program" means a program or event operated by a free clinic through which qualifying health services are provided to patients at a site other than the free clinic, which may include a volunteer health care provider's customary practice location or another appropriate location.

"Qualifying health services" means any medical assistance required or authorized to be provided in the program under Title XIX of the Social Security Act (42 USC §§ 1396 et seq.) without regard to whether the medical assistance is included in the plan submitted under such program by the state in which the health care provider involved provides the medical assistance.

"Volunteer health care provider" means a health care provider certified by the Department in accordance with subsection B.

B. The Department shall certify a health care provider as a volunteer health care provider upon application and submission of evidence, satisfactory to the Department, that the applicant:

1. Is a resident of the Commonwealth;

2. Holds a current, valid license as a doctor of medicine or osteopathy issued by the Board of Medicine or holds a current, valid license as a dentist issued by the Board of Dentistry;

3. Is deemed to be an employee of the federal Public Health Service as a free clinic health professional providing qualifying health services pursuant to 42 U.S.C. § 233; and

4. Has, without compensation, provided at least four hours of qualifying health services at a free clinic or free clinic offsite program per week for four consecutive weeks during the three-month period immediately preceding the date of application.

C. Certification as a volunteer health care provider shall be renewed annually, upon submission to the Department of an application and evidence satisfactory to the Department indicating that the health care provider (i) continues to meet the criteria for certification set forth in subdivisions 1, 2, and 3 of subsection B and (ii) has, without compensation, provided no fewer than 48 hours of qualifying health services at a free clinic or free clinic offsite program in each calendar quarter of the year immediately preceding application for renewal, which shall be verified by the medical director of the free clinic at which such services were provided or by which such free clinic offsite program was operated.

D. The Department may refuse to issue or refuse to renew a health care provider's certification as a volunteer health care provider if the health care provider fails to satisfy the requirements set out in subsection B or C.

E. A health care provider who is certified as a volunteer health care provider in accordance with this section shall be exempt from civil liability for any injury or wrongful death of any person resulting from the provision of any health care provided in his professional capacity, regardless of where such services are performed, unless such act or omission was the result of the volunteer health care

121 *provider's gross negligence or willful misconduct.*