

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5073

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Head

3. Committee: Courts of Justice

4. Title: Declaration of disaster; health care providers; immunity.

5. Summary: Under current law, any health care provider who responds to a disaster is not 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 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.

This bill expands immunity, 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 (Emergency Services and Disaster Law. Powers and duties of Governor) and in the absence of gross negligence or willful misconduct, to a health care provider who withholds the provision of health care procedures for which personal protective equipment is required and which, if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes or leading to disability or death, in accordance with the provisions of an Order of Public Health Emergency declared by the Board of Health or Commissioner of Health. Such health care providers would 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 the provider was unable to provide the requisite health care as a result of the provider's voluntary or mandatory response to the relevant disaster.

The bill also provides that, 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 (Emergency Services and Disaster Law. Powers and duties of Governor) and in the absence of gross negligence or willful misconduct, any health care provider who responds to such disaster is not liable for any injury to or wrongful death of any person arising from the delivery or withholding of health care when the emergency and subsequent conditions caused a lack of resources, including insufficient availability of personal protective equipment, ventilators, or other drugs, blood products, supplies, or equipment and an insufficient availability of trained health care providers and other staff, that is attributable to the disaster and that renders 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. The provisions of the

bill include situations in which such health care provider is required to (i) provide care that, while included in the scope of his license, exceeds the credentials or other practice privilege issued to him by the hospital or other health care 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 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 wrongful death at issue.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: This bill is not expected to have a fiscal impact on state agencies. According to the Virginia Department of Health, the provisions of the bill is not expected to have fiscal impact on agency operations.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Health, Department of Medical Assistance Services, Virginia Department of Emergency Management

10. Technical Amendment Necessary: No

11. Other Comments: None