[115H5013]

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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To amend the Public Health Service Act to clarify liability protections regarding emergency use of automated external defibrillators.

IN THE HOUSE OF REPRESENTATIVES

Mr. OLSON introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Public Health Service Act to clarify liability protections regarding emergency use of automated external defibrillators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Cardiac Arrest Survival Act of 2019''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Establishing a nationally uniform baseline of protection from civil liability for persons who use automated external defibrillators (in this section referred to as ''AEDs'') in perceived medical emergencies, who own or hold other property interests in AEDs used in perceived medical emergencies, or who own, occupy, or manage premises in which an AED is used or from which an AED is taken for use in a perceived medical emergency will encourage the deployment of additional AEDs, which will ultimately save lives that would otherwise have been lost to cardiac arrest.

(2) The current patchwork of State ''Good Samaritan'' laws provides incomplete, inconsistent, and, in some instances, inadequate protection for entities considering the acquisition or deployment of AEDs. In these circumstances, concerns about potential liability resulting from the good-faith acquisition and deployment of this life-saving technology are inhibiting its deployment.

(3) Such concerns are especially acute for entities with operations or facilities in multiple States, yet such entities are also among those in which the widespread deployment of AEDs would be most beneficial.

(4) A nationally uniform baseline of protection from civil liability is needed for persons who use AEDs in perceived medical emergencies, who own or hold other property interests in AEDs used in perceived medical emergencies, or who own, occupy, or manage premises in which an AED is used or from which an AED is taken for use in a perceived medical emergency.

SEC. 3. LIABILITY REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS.

Section 248 of the Public Health Service Act (42 U.S.C. 238q) is amended to read as follows:

"SEC. 248. LIABILITY REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS.

''(a) GOOD SAMARITAN PROTECTIONS.—Except as provided in subsection (e), in the case of a person who—

''(1) uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency, and

''(2) is not the owner-acquirer (as defined in subsection (c)(2)) of the device,

such person is immune from civil liability for any harm resulting from the use or attempted use of such device by such person.

''(b) PREMISES OWNER/LESSEE/MANAGER PROTECTIONS.—Except as provided in subsection (e), in the case of a person who—

''(1) owns, occupies under a lease or similar arrangement, or manages—

''(A) the premises at which an automated external defibrillator device is used or attempted to be used on a victim of a perceived medical emergency, or

''(B) the premises from which an automated external defibrillator device used or attempted to be used on a victim of a perceived medical emergency is taken for such use, and

''(2) is not the owner-acquirer of such device,

such person is immune from civil liability for any harm resulting from such use or attempted use of such device.

''(c) DEVICE OWNER-ACQUIRER PROTECTIONS.—

''(1) IN GENERAL.—Except as provided in subsection (e), an owner-acquirer of an AED is immune from civil liability for any harm resulting from the use or attempted use of such device, unless the harm was proximately caused by the failure of the owner-acquirer to properly maintain the device according to the guidelines of the device manufacturer.

''(2) OWNER-ACQUIRER DEFINED.—For purposes of this section, the term 'owner-acquirer' means any person who owns or has otherwise acquired a possessory property interest in an AED that is used or attempted to be used on a victim of a perceived medical emergency.

''(d) APPLICABILITY OF IMMUNITY IN CERTAIN CIRCUMSTANCES.—The immunity provided by subsections (a), (b), and (c) of this section shall apply regardless of whether—

''(1) the AED that is used or attempted to be used is marked with or accompanied by cautionary signage;

''(2) the AED that is used or attempted to be used is registered with any government;

''(3) the person who used or attempted to use the AED saw, read, understood, complied with, or attempted to comply with any cautionary signage present;

''(4) the person who used or attempted to use the AED had received any training relating to the use of (a) AEDs in general or (b) the particular AED used or attempted to be used; or

''(5) the person who used or attempted to use the AED was assisted or supervised by any other

person, including but not limited to a licensed physician.

''(e) INAPPLICABILITY OF IMMUNITY IN CERTAIN CIRCUMSTANCES.—Notwithstanding anything to the contrary in subsection (d) of this section, immunity under subsection (a), (b), or (c)(1) does not apply to a person if—

''(1) such person's willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim proximately caused the harm involved;

''(2) such person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

''(3) such person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

''(4) such person is an owner-acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—The following apply with respect to this section:

''(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location. This section does not preempt any State law requiring that an automated external defibrillator be placed at any building or other location.

''(B) With respect to the class of persons for which this section provides immunity from civil liability, this section preempts the law of any State to the extent that the otherwise-applicable State law would allow for civil liability in any circumstance where this section would provide immunity from civil liability. This section

does not preempt any State law providing immunity from civil liability in any circumstance for which this section would not provide such immunity.

''(C) This section does not waive any protection from liability for Federal officers or employees under—

''(i) section 233 of this title; or

''(ii) sections 1346(b), 2672, and 2679 of title 28, United States Code, or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of such title 28.

''(2) CIVIL ACTIONS UNDER FEDERAL LAW.—

''(A) IN GENERAL.—The applicability of subsections (a), (b), (c), (d), and (e) includes applicability to any action for civil liability described in subsection (a), (b), or (c) that arises under Federal law.

''(B) FEDERAL AREAS ADOPTING STATE LAW.—If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State ap-

plies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a), (b), or (c) that in such area arises under the law of the State is subject to subsections (a) through (f) in lieu of any related State law that would apply in such area in the absence of this subparagraph.

''(g) FEDERAL JURISDICTION.—

''(1) In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section.

''(2) The actual, asserted, or potential application of any provision of this section in any civil action or as to any civil claim shall not establish the original jurisdiction of the Federal courts over such action or claim under section 1331 of title 28, United States Code.

''(h) DEFINITIONS.—

''(1) PERCEIVED MEDICAL EMERGENCY.—For purposes of this section, the term 'perceived medical emergency' means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate

medical response regarding the heart or other cardiopulmonary functioning of the individual.

''(2) OTHER DEFINITIONS.—For purposes of this section:

''(A) The term 'automated external defibrillator device' or 'AED' means a defibrillator device that—

''(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;

''(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

''(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

''(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

''(B) The term 'cautionary signage' means, with respect to an AED, any verbal or non-

verbal markings or language purporting to limit use of the AED by members of the general public or to permit use of the AED only by persons with specific skills, qualifications, or training.

''(C)(i) The term 'harm' includes physical, nonphysical, economic, and noneconomic losses.

''(ii) The term 'economic loss' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

''(iii) The term 'noneconomic losses' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.''.