

115TH CONGRESS
2D SESSION

H. R. 5013

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2018

Mr. OLSON (for himself, Mr. CONNOLLY, Mr. ROE of Tennessee, Mr. BEYER,
Ms. CHENEY, Mr. DUNN, and Mr. HARRIS) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cardiac Arrest Sur-
5 vival Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Establishing a nationally uniform baseline
9 of protection from civil liability for persons who use

1 automated external defibrillators (in this section re-
2 ferred to as “AEDs”) in perceived medical emer-
3 gencies, who own or hold other property interests in
4 AEDs used in perceived medical emergencies, or who
5 own, occupy, or manage premises in which an AED
6 is used or from which an AED is taken for use in
7 a perceived medical emergency will encourage the
8 deployment of additional AEDs, which will ulti-
9 mately save lives that would otherwise have been lost
10 to cardiac arrest.

11 (2) The current patchwork of State “Good Sa-
12 maritan” laws provides incomplete, inconsistent,
13 and, in some instances, inadequate protection for en-
14 tities considering the acquisition or deployment of
15 AEDs. In these circumstances, concerns about po-
16 tential liability resulting from the good-faith acquisi-
17 tion and deployment of this life-saving technology
18 are inhibiting its deployment.

19 (3) Such concerns are especially acute for enti-
20 ties with operations or facilities in multiple States,
21 yet such entities are also among those in which the
22 widespread deployment of AEDs would be most ben-
23 eficial.

24 (4) A nationally uniform baseline of protection
25 from civil liability is needed for persons who use

1 AEDs in perceived medical emergencies, who own or
 2 hold other property interests in AEDs used in per-
 3 ceived medical emergencies, or who own, occupy, or
 4 manage premises in which an AED is used or from
 5 which an AED is taken for use in a perceived med-
 6 ical emergency.

7 **SEC. 3. LIABILITY REGARDING EMERGENCY USE OF AUTO-**
 8 **MATED EXTERNAL DEFIBRILLATORS.**

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

11 **“SEC. 248. LIABILITY REGARDING EMERGENCY USE OF**
 12 **AUTOMATED EXTERNAL DEFIBRILLATORS.**

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

15 “(1) uses or attempts to use an automated ex-
 16 ternal defibrillator device on a victim of a perceived
 17 medical emergency, and

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

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

23 “(b) PREMISES OWNER/LESSEE/MANAGER PROTEC-
 24 TIONS.—Except as provided in subsection (e), in the case
 25 of a person who—

1 “(1) owns, occupies under a lease or similar ar-
2 rangement, or manages—

3 “(A) the premises at which an automated
4 external defibrillator device is used or at-
5 tempted to be used on a victim of a perceived
6 medical emergency, or

7 “(B) the premises from which an auto-
8 mated external defibrillator device used or at-
9 tempted to be used on a victim of a perceived
10 medical emergency is taken for such use, and

11 “(2) is not the owner-acquirer of such device,
12 such person is immune from civil liability for any
13 harm resulting from such use or attempted use of
14 such device.

15 “(c) DEVICE OWNER-ACQUIRER PROTECTIONS.—

16 “(1) IN GENERAL.—Except as provided in sub-
17 section (e), an owner-acquirer of an AED is immune
18 from civil liability for any harm resulting from the
19 use or attempted use of such device, unless the harm
20 was proximately caused by the failure of the owner-
21 acquirer to properly maintain the device according to
22 the guidelines of the device manufacturer.

23 “(2) OWNER-ACQUIRER DEFINED.—For pur-
24 poses of this section, the term ‘owner-acquirer’
25 means any person who owns or has otherwise ac-

1 quired a possessory property interest in an AED
2 that is used or attempted to be used on a victim of
3 a perceived medical emergency.

4 “(d) APPLICABILITY OF IMMUNITY IN CERTAIN CIR-
5 CUMSTANCES.—The immunity provided by subsections
6 (a), (b), and (c) of this section shall apply regardless of
7 whether—

8 “(1) the AED that is used or attempted to be
9 used is marked with or accompanied by cautionary
10 signage;

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

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

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

21 “(5) the person who used or attempted to use
22 the AED was assisted or supervised by any other
23 person, including but not limited to a licensed physi-
24 cian.

1 “(e) INAPPLICABILITY OF IMMUNITY IN CERTAIN
2 CIRCUMSTANCES.—Notwithstanding anything to the con-
3 trary in subsection (d) of this section, immunity under
4 subsection (a), (b), or (c)(1) does not apply to a person
5 if—

6 “(1) such person’s willful or criminal mis-
7 conduct, gross negligence, reckless misconduct, or a
8 conscious, flagrant indifference to the rights or safe-
9 ty of the victim proximately caused the harm in-
10 volved;

11 “(2) such person is a licensed or certified health
12 professional who used the automated external defi-
13 brillator device while acting within the scope of the
14 license or certification of the professional and within
15 the scope of the employment or agency of the profes-
16 sional;

17 “(3) such person is a hospital, clinic, or other
18 entity whose purpose is providing health care di-
19 rectly to patients, and the harm was caused by an
20 employee or agent of the entity who used the device
21 while acting within the scope of the employment or
22 agency of the employee or agent; or

23 “(4) such person is an owner-acquirer of the
24 device who leased the device to a health care entity
25 (or who otherwise provided the device to such entity

1 for compensation without selling the device to the
2 entity), and the harm was caused by an employee or
3 agent of the entity who used the device while acting
4 within the scope of the employment or agency of the
5 employee or agent.

6 “(f) RULES OF CONSTRUCTION.—

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

9 “(A) This section does not establish any
10 cause of action, or require that an automated
11 external defibrillator device be placed at any
12 building or other location. This section does not
13 preempt any State law requiring that an auto-
14 mated external defibrillator be placed at any
15 building or other location.

16 “(B) With respect to the class of persons
17 for which this section provides immunity from
18 civil liability, this section preempts the law of
19 any State to the extent that the otherwise-appli-
20 cable State law would allow for civil liability in
21 any circumstance where this section would pro-
22 vide immunity from civil liability. This section
23 does not preempt any State law providing im-
24 munity from civil liability in any circumstance

1 for which this section would not provide such
2 immunity.

3 “(C) This section does not waive any pro-
4 tection from liability for Federal officers or em-
5 ployees under—

6 “(i) section 233 of this title; or

7 “(ii) sections 1346(b), 2672, and
8 2679 of title 28, United States Code, or
9 under alternative benefits provided by the
10 United States where the availability of
11 such benefits precludes a remedy under
12 section 1346(b) of such title 28.

13 “(2) CIVIL ACTIONS UNDER FEDERAL LAW.—

14 “(A) IN GENERAL.—The applicability of
15 subsections (a), (b), (c), (d), and (e) includes
16 applicability to any action for civil liability de-
17 scribed in subsection (a), (b), or (c) that arises
18 under Federal law.

19 “(B) FEDERAL AREAS ADOPTING STATE
20 LAW.—If a geographic area is under Federal
21 jurisdiction and is located within a State but
22 out of the jurisdiction of the State, and if, pur-
23 suant to Federal law, the law of the State ap-
24 plies in such area regarding matters for which
25 there is no applicable Federal law, then an ac-

tion 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.

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

3 “(A) The term ‘automated external defi-
4 brillator device’ or ‘AED’ means a defibrillator
5 device that—

6 “(i) is commercially distributed in ac-
7 cordance with the Federal Food, Drug,
8 and Cosmetic Act;

9 “(ii) is capable of recognizing the
10 presence or absence of ventricular fibrilla-
11 tion, and is capable of determining without
12 intervention by the user of the device
13 whether defibrillation should be performed;

14 “(iii) upon determining that defibrilla-
15 tion should be performed, is able to deliver
16 an electrical shock to an individual; and

17 “(iv) in the case of a defibrillator de-
18 vice that may be operated in either an
19 automated or a manual mode, is set to op-
20 erate in the automated mode.

21 “(B) The term ‘cautionary signage’ means,
22 with respect to an AED, any verbal or non-
23 verbal markings or language purporting to limit
24 use of the AED by members of the general pub-

1 lic or to permit use of the AED only by persons
2 with specific skills, qualifications, or training.

3 “(C)(i) The term ‘harm’ includes physical,
4 nonphysical, economic, and noneconomic losses.

5 “(ii) The term ‘economic loss’ means any
6 pecuniary loss resulting from harm (including
7 the loss of earnings or other benefits related to
8 employment, medical expense loss, replacement
9 services loss, loss due to death, burial costs, and
10 loss of business or employment opportunities)
11 to the extent recovery for such loss is allowed
12 under applicable State law.

13 “(iii) The term ‘noneconomic losses’ means
14 losses for physical and emotional pain, suf-
15 fering, inconvenience, physical impairment,
16 mental anguish, disfigurement, loss of enjoy-
17 ment of life, loss of society and companionship,
18 loss of consortium (other than loss of domestic
19 service), hedonic damages, injury to reputation
20 and all other nonpecuniary losses of any kind or
21 nature.”.

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