

112TH CONGRESS
1ST SESSION

H. R. 3511

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2011

Mr. OLSON 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 external 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 2011”.

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
10 automated external defibrillators (in this section re-

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

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

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

23 (4) A nationally uniform baseline of protection
24 from civil liability is needed for persons who use
25 AEDs in perceived medical emergencies, who own or

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

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

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

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

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

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

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

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

22 “(b) PREMISES OWNER/LESSEE/MANAGER PROTEC-
23 TIONS.—Except as provided in subsection (e), in the case
24 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 harm
13 resulting from such use or attempted use of such device.

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

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

22 “(2) OWNER-ACQUIRER DEFINED.—For pur-
23 poses of this section, the term ‘owner-acquirer’
24 means any person who owns or has otherwise ac-
25 quired a possessory property interest in an AED

1 that is used or attempted to be used on a victim of
2 a perceived medical emergency.

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

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

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

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

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

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

24 “(e) INAPPLICABILITY OF IMMUNITY IN CERTAIN
25 CIRCUMSTANCES.—Notwithstanding anything to the con-

1 trary in subsection (d) of this section, immunity under
2 subsection (a), (b), or (c)(1) does not apply to a person
3 if—

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

9 “(2) such person is a licensed or certified health
10 professional who used the automated external
11 defibrillator device while acting within the scope of
12 the license or certification of the professional and
13 within the scope of the employment or agency of the
14 professional;

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

21 “(4) such person is an owner-acquirer of the
22 device who leased the device to a health care entity
23 (or who otherwise provided the device to such entity
24 for compensation without selling the device to the
25 entity), and the harm was caused by an employee or

1 agent of the entity who used the device while acting
2 within the scope of the employment or agency of the
3 employee or agent.

4 “(f) RULES OF CONSTRUCTION.—

5 “(1) IN GENERAL.—The following applies with
6 respect to this section:

7 “(A) This section does not establish any
8 cause of action, or require that an automated
9 external defibrillator device be placed at any
10 building or other location.

11 “(B) With respect to the class of persons
12 for which this section provides immunity from
13 civil liability, this section preempts the law of
14 any State to the extent that the otherwise-appli-
15 cable State law would allow for civil liability in
16 any circumstance where this section would pro-
17 vide immunity from civil liability.

18 “(C) This section does not waive any pro-
19 tection from liability for Federal officers or em-
20 ployees under—

21 “(i) section 233 of this title; or

22 “(ii) sections 1346(b), 2672, and
23 2679 of title 28, United States Code, or
24 under alternative benefits provided by the
25 United States where the availability of

1 such benefits precludes a remedy under
2 section 1346(b) of such title 28.

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

4 “(A) IN GENERAL.—The applicability of
5 subsections (a), (b), (c), (d), and (e) includes
6 applicability to any action for civil liability de-
7 scribed in subsection (a), (b), or (c) that arises
8 under Federal law.

9 “(B) FEDERAL AREAS ADOPTING STATE
10 LAW.—If a geographic area is under Federal
11 jurisdiction and is located within a State but
12 out of the jurisdiction of the State, and if, pur-
13 suant to Federal law, the law of the State ap-
14 plies in such area regarding matters for which
15 there is no applicable Federal law, then an ac-
16 tion for civil liability described in subsection
17 (a), (b), or (c) that in such area arises under
18 the law of the State is subject to subsections
19 (a) through (f) in lieu of any related State law
20 that would apply in such area in the absence of
21 this subparagraph.

22 “(g) FEDERAL JURISDICTION.—

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

1 “(2) The actual, asserted, or potential applica-
2 tion of any provision of this section in any civil ac-
3 tion or as to any civil claim shall not establish the
4 original jurisdiction of the Federal courts over such
5 action or claim under section 1331 of title 28,
6 United States Code.

7 “(h) DEFINITIONS.—

8 “(1) PERCEIVED MEDICAL EMERGENCY.—For
9 purposes of this section, the term ‘perceived medical
10 emergency’ means circumstances in which the behav-
11 ior of an individual leads a reasonable person to be-
12 lieve that the individual is experiencing a life-threat-
13 ening medical condition that requires an immediate
14 medical response regarding the heart or other
15 cardiopulmonary functioning of the individual.

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

18 “(A) The term ‘automated external
19 defibrillator device’ or ‘AED’ means a
20 defibrillator device that—

21 “(i) is commercially distributed in ac-
22 cordance with the Federal Food, Drug,
23 and Cosmetic Act;

24 “(ii) is capable of recognizing the
25 presence or absence of ventricular fibrilla-

1 tion, and is capable of determining without
2 intervention by the user of the device
3 whether defibrillation should be performed;

4 “(iii) upon determining that
5 defibrillation should be performed, is able
6 to deliver an electrical shock to an indi-
7 vidual; and

8 “(iv) in the case of a defibrillator de-
9 vice that may be operated in either an
10 automated or a manual mode, is set to op-
11 erate in the automated mode.

12 “(B) The term ‘cautionary signage’ means,
13 with respect to an AED, any verbal or non-
14 verbal markings or language purporting to limit
15 use of the AED by members of the general pub-
16 lic or to permit use of the AED only by persons
17 with specific skills, qualifications, or training.

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

20 “(ii) The term ‘economic loss’ means any
21 pecuniary loss resulting from harm (including
22 the loss of earnings or other benefits related to
23 employment, medical expense loss, replacement
24 services loss, loss due to death, burial costs, and
25 loss of business or employment opportunities)

1 to the extent recovery for such loss is allowed
2 under applicable State law.

3 “(iii) The term ‘noneconomic losses’ means
4 losses for physical and emotional pain, suf-
5 fering, inconvenience, physical impairment,
6 mental anguish, disfigurement, loss of enjoy-
7 ment of life, loss of society and companionship,
8 loss of consortium (other than loss of domestic
9 service), hedonic damages, injury to reputation
10 and all other nonpecuniary losses of any kind or
11 nature.”.

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