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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

# H. R.

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

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## 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.

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:

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

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

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

1           (4) A nationally uniform baseline of protection  
2           from civil liability is needed for persons who use  
3           AEDs in perceived medical emergencies, who own or  
4           hold other property interests in AEDs used in per-  
5           ceived medical emergencies, or who own, occupy, or  
6           manage premises in which an AED is used or from  
7           which an AED is taken for use in a perceived med-  
8           ical emergency.

9   **SEC. 3. LIABILITY REGARDING EMERGENCY USE OF AUTO-**  
10                           **MATED EXTERNAL DEFIBRILLATORS.**

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

13   **“SEC. 248. LIABILITY REGARDING EMERGENCY USE OF**  
14                           **AUTOMATED EXTERNAL DEFIBRILLATORS.**

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

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

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

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

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

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

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

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

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

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

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

1           “(2) OWNER-ACQUIRER DEFINED.—For pur-  
2           poses of this section, the term ‘owner-acquirer’  
3           means any person who owns or has otherwise ac-  
4           quired a possessory property interest in an AED  
5           that is used or attempted to be used on a victim of  
6           a perceived medical emergency.

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

11           “(1) the AED that is used or attempted to be  
12           used is marked with or accompanied by cautionary  
13           signage;

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

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

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

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

1 person, including but not limited to a licensed physi-  
2 cian.

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

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

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

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

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

9           “(f) RULES OF CONSTRUCTION.—

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

12           “(A) This section does not establish any  
13 cause of action, or require that an automated  
14 external defibrillator device 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.

23           “(C) This section does not waive any pro-  
24 tection from liability for Federal officers or em-  
25 ployees under—

1 “(i) section 233 of this title; or

2 “(ii) sections 1346(b), 2672, and  
3 2679 of title 28, United States Code, or  
4 under alternative benefits provided by the  
5 United States where the availability of  
6 such benefits precludes a remedy under  
7 section 1346(b) of such title 28.

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

9 “(A) IN GENERAL.—The applicability of  
10 subsections (a), (b), (c), (d), and (e) includes  
11 applicability to any action for civil liability de-  
12 scribed in subsection (a), (b), or (c) that arises  
13 under Federal law.

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

1           that would apply in such area in the absence of  
2           this subparagraph.

3           “(g) FEDERAL JURISDICTION.—

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

7           “(2) The actual, asserted, or potential applica-  
8           tion of any provision of this section in any civil ac-  
9           tion or as to any civil claim shall not establish the  
10          original jurisdiction of the Federal courts over such  
11          action or claim under section 1331 of title 28,  
12          United States Code.

13          “(h) DEFINITIONS.—

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

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

1           “(A) The term ‘automated external  
2 defibrillator device’ or ‘AED’ means a  
3 defibrillator device that—

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

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

12                   “(iii) upon determining that  
13 defibrillation should be performed, is able  
14 to deliver an electrical shock to an indi-  
15 vidual; and

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

20           “(B) The term ‘cautionary signage’ means,  
21 with respect to an AED, any verbal or non-  
22 verbal markings or language purporting to limit  
23 use of the AED by members of the general pub-  
24 lic or to permit use of the AED only by persons  
25 with specific skills, qualifications, or training.

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

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

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