

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2011

Mr. OLSON introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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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