
By: **Delegates Shank, Donoghue, Haddaway, Kelly, McComas, McKee,
Morhaim, Myers, Sophocleus, Weldon, and Zirkin**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Health Care Injuries - Standard of Proof for Liability for**
3 **Emergency Care**

4 FOR the purpose of exempting certain health care providers from civil liability for
5 certain acts or omissions in providing certain assistance or aid to a victim in a
6 medical facility under certain circumstances; establishing that the standard of
7 proof for liability for certain acts or omissions of certain health care providers is
8 clear and convincing evidence in certain circumstances; providing for the
9 application of this Act; and generally relating to emergency care treatment in
10 medical facilities.

11 BY repealing and reenacting, with amendments,
12 Article - Courts and Judicial Proceedings
13 Section 5-603
14 Annotated Code of Maryland
15 (2002 Replacement Volume and 2004 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Courts and Judicial Proceedings**

19 5-603.

20 (a) A person described in subsection (b) of this section is not civilly liable for
21 any act or omission in giving any assistance or medical care, if:

22 (1) The act or omission is not one of gross negligence;

23 (2) The assistance or medical care is provided without fee or other
24 compensation; and

25 (3) The assistance or medical care is provided:

26 (i) At the scene of an emergency;

- 1 (ii) In transit to a medical facility; or
2 (iii) Through communications with personnel providing emergency
3 assistance.

4 (b) Subsection (a) of this section applies to the following:

5 (1) An individual who is licensed by this State to provide medical care;

6 (2) A member of any State, county, municipal, or volunteer fire
7 department, ambulance and rescue squad or law enforcement agency or of the
8 National Ski Patrol System, or a corporate fire department responding to a call
9 outside of its corporate premises, if the member:

10 (i) Has completed an American Red Cross course in advanced first
11 aid and has a current card showing that status;

12 (ii) Has completed an equivalent of an American Red Cross course
13 in advanced first aid, as determined by the Secretary of Health and Mental Hygiene;
14 or

15 (iii) Is certified or licensed by this State as an emergency medical
16 services provider;

17 (3) A volunteer fire department, ambulance and rescue squad whose
18 members have immunity; and

19 (4) A corporation when its fire department personnel are immune under
20 paragraph (2) of this subsection.

21 (c) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
22 AN individual who is not covered otherwise by this section is not civilly liable for any
23 act or omission in providing assistance or medical aid to a victim at the scene of an
24 emergency, if:

25 [(1)] (I) The assistance or aid is provided in a reasonably prudent
26 manner;

27 [(2)] (II) The assistance or aid is provided without fee or other
28 compensation; and

29 [(3)] (III) The individual relinquishes care of the victim when someone
30 who is licensed or certified by this State to provide medical care or services becomes
31 available to take responsibility.

32 (2) UNLESS THE FACTUAL FINDINGS OF AN ACT OR OMISSION UNDER
33 THIS PARAGRAPH ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AN
34 INDIVIDUAL WHO IS NOT COVERED OTHERWISE BY THIS SECTION IS NOT CIVILLY
35 LIABLE FOR ANY ACT OR OMISSION IN PROVIDING ASSISTANCE OR MEDICAL AID TO A
36 VICTIM IN A MEDICAL FACILITY, IF:

1 (I) THE VICTIM INITIALLY VISITED THE MEDICAL FACILITY
2 REQUESTING EXAMINATION OR TREATMENT FOR AN EMERGENCY MEDICAL
3 CONDITION;

4 (II) THE INDIVIDUAL IS A HEALTH CARE PROVIDER AS DEFINED IN
5 § 3-2A-01 OF THIS ARTICLE;

6 (III) THE TREATMENT IS GIVEN TO THE PATIENT BEFORE THE
7 PATIENT'S CONDITION IS STABILIZED;

8 (IV) THE TIMING AND TYPE OF DIAGNOSIS AND TREATMENT ARE
9 NOT AFFECTED BY FINANCIAL CONSIDERATIONS; AND

10 (V) THE INDIVIDUAL IS ACTING IN FULL COMPLIANCE WITH THE
11 FEDERAL EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA) AND
12 THE REGULATIONS ADOPTED UNDER THAT ACT.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
14 construed to apply only prospectively and may not be applied or interpreted to have
15 any effect on or application to any causes of action arising before the effective date of
16 this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 June 1, 2005.