

By: **Delegates Shank, Bartlett, Boteler, Costa, Elliott, Frank, Haddaway, Hogan, Kelly, McComas, McKee, Morhaim, Myers, Oaks, Shewell, Sophocleus, and Weldon**

Introduced and read first time: February 9, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice - Emergency Medical Care - Standard of Proof for**
3 **Liability**

4 FOR the purpose of providing immunity from civil liability for certain health care
5 providers providing assistance or medical aid under certain circumstances;
6 providing for the application of this Act; and generally relating to providing
7 assistance or medical aid in a medical facility.

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 5-603
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2005 Supplement)

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

15 **Article - Courts and Judicial Proceedings**

16 5-603.

17 (a) (1) A person described in [subsection (b)] PARAGRAPH (2) of this
18 [section] SUBSECTION is not civilly liable for any act or omission in giving any
19 assistance or medical care, if:

20 [(1)] (I) The act or omission is not one of gross negligence;

21 [(2)] (II) The assistance or medical care is provided without fee or other
22 compensation; and

23 [(3)] (III) The assistance or medical care is provided:

24 [(i)] 1. At the scene of an emergency;

- 1 [(ii)] 2. In transit to a medical facility; or
- 2 [(iii)] 3. Through communications with personnel providing
3 emergency assistance.
- 4 [(b)] (2) [Subsection (a) of this section] THIS SUBSECTION applies to the
5 following:
- 6 [(1)] (I) An individual who is licensed by this State to provide medical
7 care;
- 8 [(2)] (II) A member of any State, county, municipal, or volunteer fire
9 department, ambulance and rescue squad or law enforcement agency or of the
10 National Ski Patrol System, or a corporate fire department responding to a call
11 outside of its corporate premises, if the member:
- 12 [(i)] 1. Has completed an American Red Cross course in advanced
13 first aid and has a current card showing that status;
- 14 [(ii)] 2. Has completed an equivalent of an American Red Cross
15 course in advanced first aid, as determined by the Secretary of Health and Mental
16 Hygiene; or
- 17 [(iii)] 3. Is certified or licensed by this State as an emergency
18 medical services provider;
- 19 [(3)] (III) A volunteer fire department, ambulance and rescue squad
20 whose members have immunity; and
- 21 [(4)] (IV) A corporation when its fire department personnel are immune
22 under [paragraph (2)] ITEM (II) of this [subsection] PARAGRAPH.
- 23 (B) (1) "HEALTH CARE PROVIDER" HAS THE MEANING STATED IN § 3-2A-01
24 OF THIS ARTICLE.
- 25 (2) A HEALTH CARE PROVIDER IS NOT CIVILLY LIABLE FOR ANY ACT OR
26 OMISSION IN PROVIDING ASSISTANCE OR MEDICAL AID TO A PATIENT IN A MEDICAL
27 FACILITY, IF:
- 28 (I) THE FACTUAL FINDINGS OF AN ACT OR OMISSION UNDER THIS
29 SUBSECTION ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE;
- 30 (II) THE ACT OR OMISSION IS NOT ONE OF GROSS NEGLIGENCE;
- 31 (III) THE TREATMENT IS GIVEN TO THE PATIENT BEFORE THE
32 PATIENT'S CONDITION IS STABILIZED;
- 33 (IV) THE TIMING AND TYPE OF DIAGNOSIS AND TREATMENT ARE
34 NOT AFFECTED BY FINANCIAL CONSIDERATIONS; AND

1 (V) THE HEALTH CARE PROVIDER IS ACTING IN FULL COMPLIANCE
2 WITH THE FEDERAL EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT
3 (EMTALA) AND THE REGULATIONS ADOPTED UNDER THAT ACT.

4 (c) An individual who is not covered otherwise by this section is not civilly
5 liable for any act or omission in providing assistance or medical aid to a victim at the
6 scene of an emergency, if:

7 (1) The assistance or aid is provided in a reasonably prudent manner;

8 (2) The assistance or aid is provided without fee or other compensation;
9 and

10 (3) The individual relinquishes care of the victim when someone who is
11 licensed or certified by this State to provide medical care or services becomes
12 available to take responsibility.

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
18 effect June 1, 2006.