~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 4, 2010

**S. 168**

Introduced by Senators Cleary, Campsen, Rose, Bryant, Elliott and Hutto

S. Printed 3/4/10--H. [SEC 3/8/10 12:12 PM]

Read the first time May 12, 2009.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 168) to amend Section 38‑79‑30, Code of Laws of South Carolina, 1976, relating to medical malpractice insurance so as to provide that a licensed health care provider, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding appropriately numbered SECTIONS to read:

/ SECTION \_\_. Article 3, Chapter 77, Title 38 of the 1976 Code is amended by adding:

“Section 38‑77‑146. (A) As used in this section:

(1) ‘Charitable organization’ means any organization, institution, association, society, or corporation which:

(a)(i) is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended;

(ii) is a charitable unit of a religious or civic group, including those supported wholly or partially by private donations; or

(iii) is a human service unit, clinic, senior citizens program, congregate meal center, or day‑care center for the elderly, whether supported wholly or partially from public funds; and

(b) sponsors a volunteer transportation service.

(2) ‘Handicapped person’ means as defined in Section 2‑7‑35.

(3) ‘Volunteer provider’ or ‘volunteer’ means:

(a) an individual who operates the motor vehicle in which a volunteer transportation service is provided;

(b) an owner of the motor vehicle in which a volunteer transportation service is provided;

(c) a named insured in a policy of automobile insurance providing coverage on the motor vehicle in which a volunteer transportation service is provided; and

(d) the owner of an uninsured motor vehicle registered with the Department of Motor Vehicles pursuant to Section 56‑10‑510 in which a volunteer transportation service is provided.

(4) ‘Volunteer transportation service’ or ‘transportation service’ means motor vehicle transportation provided without compensation or the expectation or promise of compensation by an individual under the direction, sponsorship, or supervision of a charitable organization.

(B)(1) If a volunteer provider renders a transportation service to a handicapped person or a person who is fifty‑five years of age or older, the liability of the volunteer and the charitable organization to the person for injury, death, or loss arising out of or resulting from the volunteer transportation service is limited to the minimum automobile insurance policy limits provided by Section 38‑77‑140.

(2) The liability of two or more volunteers, charitable organizations, or a combination of these whose liability is limited pursuant to the provisions of this section, on claims arising out of a single accident, shall not exceed in the aggregate the amounts provided in item (1).

(C) The limitation on liability provided by subsection (B) applies to a volunteer provider only if:

(1) the volunteer, as defined in Section 38‑77‑146(A)(3)(a), properly is licensed to operate a motor vehicle;

(2) the volunteer provides the transportation service on a nonprofit and voluntary basis. However, this subitem does not prohibit a volunteer provider from accepting reimbursement for actual expenses incurred;

(3) the volunteer providing the transportation service does not receive from the person using the service any substantial benefit in a material or business sense that is a substantial motivating factor for the transportation. Any mere gratuity, social amenity, or item of a nominal value is not a substantial benefit under this subitem;

(4) except as provided in item (2), the transportation service is provided without charge to the person using the service;

(5) the volunteer acts in good faith within the scope of his responsibilities to the charitable organization in the rendering of the transportation service;

(6) the accident or injury is not intentional on the part of the volunteer provider;

(7) the accident or injury is not caused by the volunteer’s gross negligence or wilful or wanton misconduct; and

(8) the volunteer is not driving while:

(a) under the influence of alcohol to the extent that the volunteer’s faculties to drive a motor vehicle are materially and appreciably impaired;

(b) under the influence of another drug or a combination of drugs or substances which cause impairment to the extent that the volunteer’s faculties to drive a motor vehicle are materially and appreciably impaired; or

(c) under the combined influence of alcohol and another drug or drugs or substances which cause impairment to the extent that the volunteer’s faculties to drive a motor vehicle are materially and appreciably impaired.

(D) The limitation on liability provided by subsection (B) applies to a charitable organization only if:

(1) the transportation service is provided on a nonprofit and voluntary basis. However, this subitem does not prohibit a charitable organization from reimbursing a volunteer for actual expenses incurred;

(2) the transportation service is provided without charge to the person or expectation of compensation from the person using the service;

(3) notwithstanding item (2), a charitable organization accepts from a person using the service a contribution or donation or any mere gratuity, social amenity, or item of a nominal value so long as the provision of a volunteer transportation service is not contingent upon the offer or payment of the consideration;

(4) the accident or injury is not intentional on the part of the charitable organization; and

(5) the accident or injury is not caused by the charitable organization’s gross negligence or wilful or wanton misconduct.

(E) In the case of the liability of two or more volunteers, charitable organizations, or a combination of these on claims arising out of a single accident, nothing in this section may be construed so as to extend or preclude this section’s limitation of liability of one volunteer or charitable organization based only on the application of this section’s limitation of liability to another volunteer or charitable organization.”

SECTION \_\_. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION \_\_. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION \_\_. The provisions of this act do not affect any right, privilege, or provision of Chapter 78, Title 15 of the 1976 Code, the South Carolina Tort Claims Act. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 38‑79‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAL MALPRACTICE INSURANCE SO AS TO PROVIDE THAT A LICENSED HEALTH CARE PROVIDER WHO RENDERS MEDICAL SERVICES VOLUNTARILY AND WITHOUT COMPENSATION, AND SEEKS NO REIMBURSEMENT FROM CHARITABLE AND GOVERNMENTAL SOURCES, AND PROVIDES NOTICE TO THE PATIENT OR PATIENT’S PROVIDER IN A NON‑EMERGENCY, IS NOT LIABLE FOR ANY CIVIL DAMAGES FOR ANY ACT OR OMISSION UNLESS THE ACT OR OMISSION WAS THE RESULT OF THE HEALTH CARE PROVIDER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑79‑30 of the 1976 Code is amended to read:

“Section 38‑79‑30. No licensed health care provider, as defined in Section 38‑79‑410, who renders medical services voluntarily and without compensation or the expectation or promise of compensation and seeks no reimbursement from charitable and governmental sources is liable for any civil damages for any act or omission resulting from the rendering of the services unless the act or omission was the result of the licensed health care provider’s gross negligence or willful misconduct. The agreement to provide a voluntary, noncompensated service must be made before ~~the~~ rendering ~~of the~~ service ~~by the licensed health care provider~~ in the case of a non‑emergency and may be evidenced by the provider’s giving notice to the patient or to the person responsible for the patient’s care and acting for the patient that the service being rendered is voluntary and without compensation.”

SECTION 2. This act takes effect upon approval by the Governor.

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