H. R. 1733

To amend the Public Health Service Act to limit the liability of health care professionals who volunteer to provide health care services in response to a disaster.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2013

MRS. BLACKBURN (for herself, MR. MATHESON, MR. GRIFFITH of Virginia, MR. GRIMM, MR. DESJARLAIS, MRS. BLACK, and MR. BILIRAKIS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Public Health Service Act to limit the liability of health care professionals who volunteer to provide health care services in response to a disaster.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Good Samaritan Health Professionals Act of 2013”.

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SEC. 2. LIMITATION ON LIABILITY FOR VOLUNTEER HEALTH CARE PROFESSIONALS.

(a) IN GENERAL.—Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by inserting after section 224 the following:

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"SEC. 224A. LIMITATION ON LIABILITY FOR VOLUNTEER HEALTH CARE PROFESSIONALS.

(a) LIMITATION ON LIABILITY.—Except as provided in subsection (b), a health care professional shall not be liable under Federal or State law for any harm caused by an act or omission of the professional if—

"(1) the professional is serving as a volunteer for purposes of responding to a disaster; and

"(2) the act or omission occurs—

"(A) during the period of the disaster, as determined under the laws listed in subsection (e)(1);

"(B) in the health care professional’s capacity as such a volunteer; and

"(C) in a good faith belief that the individual being treated is in need of health care services.

(b) EXCEPTIONS.—Subsection (a) does not apply if—

"(1) the harm was caused by an act or omission constituting willful or criminal misconduct, gross
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negligence, reckless misconduct, or a conscious fla-
grant indifference to the rights or safety of the indi-
vidual harmed by the health care professional; or

“(2) the health care professional rendered the
health care services under the influence (as deter-
mined pursuant to applicable State law) of intoxi-
cating alcohol or an intoxicating drug.

“(c) STANDARD OF PROOF.—In any civil action or
proceeding against a health care professional claiming that
the limitation in subsection (a) applies, the plaintiff shall
have the burden of proving by clear and convincing evi-
dence the extent to which limitation does not apply.

“(d) PREEMPTION.—

“(1) IN GENERAL.—This section preempts the
laws of a State or any political subdivision of a State
to the extent that such laws are inconsistent with
this section, unless such laws provide greater protec-
tion from liability.

“(2) VOLUNTEER PROTECTION ACT.—Protec-
tions afforded by this section are in addition to those
provided by the Volunteer Protection Act of 1997.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘disaster’ means—

“(A) a national emergency declared by the
President under the National Emergencies Act;
“(B) an emergency or major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

“(C) a public health emergency determined by the Secretary under section 319 of this Act.

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

“(3) The term ‘health care professional’ means an individual who is licensed, certified, or authorized in one or more States to practice a health care profession.

“(4) The term ‘State’ includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

“(5)(A) The term ‘volunteer’ means a health care professional who, with respect to the health care services rendered, does not receive—

“(i) compensation; or

“(ii) any other thing of value in lieu of compensation, in excess of $500 per year.
“(B) For purposes of subparagraph (A), the term ‘compensation’—

“(i) includes payment under any insurance policy or health plan, or under any Federal or State health benefits program; and

“(ii) excludes—

“(I) reasonable reimbursement or allowance for expenses actually incurred;

“(II) receipt of paid leave; and

“(III) receipt of items to be used exclusively for rendering the health services in the health care professional’s capacity as a volunteer described in subsection (a)(1).”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—This Act and the amendment made by subsection (a) shall take effect 90 days after the date of the enactment of this Act.

(2) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a health care professional where the claim is filed on or after the effective date of this Act, but only if the harm that is the subject of the claim or the conduct
that caused such harm occurred on or after such effective date.