AN ACT

To amend the title of Act No. 139 of June 3, 1976, as amended; extend the immunity granted to Government employees who render medical-hospital services in entities of the Government of Puerto Rico; hold harmless from civil liability for damages any employees who, pursuant to the provisions of Act No. 141-2008, offer first aid, as well as those covered by Act No. 85-2007, known as the “Act to Require the Installation of a Defibrillator in Public Agencies, Corporations, Instrumentalities, and Municipal Facilities or in Public Service Establishments,” as defined in said Act; extend the immunity granted by Act No. 139 of June 3, 1976, to persons who render emergency medical services through the use of an Automated External Defibrillator in private establishments within the jurisdiction of the Commonwealth of Puerto Rico; add a new Section 1; renumber Sections 1, 2, 3, and 4 as Sections 2, 3, 4, and 5, respectively; add new Sections 6, 7, and 8; and make technical corrections.

STATEMENT OF MOTIVES

Act No. 141-2008, known as an “Act to Establish the Use of the Automated External Defibrillator in Private Establishments,” was approved during the preceding four-year term. Act No. 85 was approved on July 30, 2007, for the same purpose of establishing the use of a defibrillator in public places. The main purpose of both Acts is to establish a prevention and protection mechanism to save the life of any citizen who suffers a heart attack, which could lead to sudden death. The mechanism provided therein consists of the placement in private establishments of a device known as an Automated External Defibrillator (AED), which is described
as a technical device that analyses heart rate and, if necessary, applies a special electrical charge. If used within a specified timeframe, such device is able to restore the normal heart rate of a person during an emergency that may be identified as a life-or-death situation.

Upon analysis of the legislative intent set forth in the Statement of Motives of Act No. 141, supra, it is evident that it seeks to protect citizens to the greatest extent possible by requiring that an AED be available in private places where a significant number of people gathers or passes by, and where an emergency such as the one described above could arise. However, requiring the use of an AED as intended by both Act No. 141, supra, and Act No. 85, supra, in public and private places poses a question that apparently was not considered at the time of the creation thereof. It is worth questioning whether the management of said businesses or places where an AED must be installed, who are responsible for coordinating with the Department of Health of Puerto Rico the administration and application of what could be called first aid, can force an employee to use said device during an emergency without any guarantees that, should the person die after the intervention of said employee, the employee or the company or business shall not become easy target for a cause of action for damages. Said situation could discourage employees or the designated persons from using the AED for fear of being liable for damages.

It is a recognized doctrine in the code of laws of Puerto Rico that our Courts cannot force a person to specifically comply with the performance of a non-transferrable skill, such as administering medical treatment or first aid, even if said person has a license to do so. This doctrine has even greater significance when such action must be performed during an emergency and there is no legal duty to take action. Both Act No. 141, supra, and Act No. 85, supra, can require the installation of an AED, but they cannot require the use of said device during an emergency, even when the employees or personnel of the business, agency, or public instrumentality
in question are duly trained to use it. In view of said situation and of the actual possibility that those called to administer first aid may refuse to do so, the creation of this legislative measure becomes imperative in order to provide those employees or anyone familiar with the use of said device with immunity equal to that granted to professionals who act in good faith and become “good samaritans” by attempting to save a life. It shall not be construed that the immunity granted shall affect in any manner whatsoever the absolute liability of the manufacturer or distributor with respect to the design, development, manufacturing, or indications for use of the AED.

Act No. 139 of June 3, 1976, known as the “Good Samaritan Act,” is generally recognized as a statute that grants civil immunity to citizens who, during emergency situations, provide unselfish, gratuitous, and voluntary aid outside the regular course of their professions or the scope of their jobs with the purpose of helping another whose physical, emotional, or any other type of integrity is in imminent danger. This, insofar as it is a medical emergency and such citizen’s intervention is not malicious or an act of gross negligence. Said statute responds to a doctrine in which the State places a positive value on the actions that certain professionals voluntarily take in emergencies, when they are not duty bound to act. When one of these citizens decides to assist someone who is in danger he is trying to provide assistance or help. In the course of such action, both the person receiving assistance and the person providing the assistance or even a third party could potentially be harmed.

The main purpose of the “Good Samaritan Act” is to hold the first responder harmless from liability under Article 1802 of the Civil Code of Puerto Rico, so that he may provide assistance and carry out a rescue during an emergency without fear of being sued. Based on such principle, many jurisdictions have approved this type of legislation with marked differences as to the persons who are covered, the level of care required, and the circumstances in which immunity shall apply. Although the
differences lie in the stance of the State with respect to such conduct, all the statutes share three essential elements, to wit: (1) there is no contractual relationship between the good samaritan and the person assisted; (2) the actions of the good samaritan must be carried out in good faith, voluntarily, and without any compensation whatsoever; and (3) assistance must be provided at the place where the emergency arises.

In the U.S. jurisdiction, several individual versions of legislation have been developed based on the Good Samaritan doctrine. For example, there are statutes that grant immunity from civil liability to those Samaritans who are not certified to offer first aid, provided that the damages are not caused intentionally. Others only grant immunity to officially-trained first responders such as physicians, nurses, emergency medical technicians, and others.

In Puerto Rico, Act No. 139, supra, as amended, was approved to provide that physicians, nurses, emergency medical technicians, American Red Cross volunteers, the Civil Defense, the Volunteers in Action Corps, as well as police officers, firefighters, or ambulance personnel who voluntarily and without compensation provide emergency services to any person outside of their regular workplace or work hours shall not be liable for damages caused to the person to whom they are offering said service.

Act No. 139, supra, has been dubbed the “Good Samaritan Act” by treatise writers and even by our Supreme Court, even though the title and body of said Act do not hint at legislators’ intent that the Act be thus known. In Elías y Otros v. Chenet y Otros, 147 D.P.R. 507 (1999), the Supreme Court examined Act No. 139, supra, in light of other Good Samaritan statutes. In doing so, the Court interpreted this Act, its legislative intent, and its raison d’être based on the premise that said Act is “Our Good Samaritan Act.”
The Supreme Court analyzed and interpreted the different requirements established in Act No. 139, *supra*, by accepting the general interpretation of U.S. state jurisdictions. Under such interpretation, our Good Samaritan statute only holds certain professionals or individuals harmless from liability for damages when providing emergency assistance. Therefore, under such interpretation of this statute, a duty to provide assistance to others is not imposed, since individuals with no formal training are not exempt from civil liability for damages.

This legislation model, which only holds fully harmless from liability those first responders who have a degree or training as such, overlooks the fact that, in practice, very simple rescue measures can also be performed by persons who are not officially trained or who lack formal medical education. Another fact that was overlooked is that it is not always possible to wait for a trained first responder, which was the legislative intent of Act No. 141, *supra*, and Act No. 85, *supra*.

So as not to discourage employees or persons who are willing to comply with said Act, it is indispensable to approve this measure so that they may also be granted the immunity provided under the “Good Samaritan Act,” just as health and search-and-rescue professionals are.

Therefore, this Legislative Assembly deems it necessary to amend Act No. 139, *supra*, in order to designate it as the “Good Samaritan Act of the Commonwealth of Puerto Rico,” and to also hold harmless from civil liability any person who, acting in accordance with the provisions of Act No. 141, *supra*, and Act No. 85, *supra*, causes any damages after using an AED during a medical emergency, as described in said Acts, provided that said damages are not caused as a result of gross negligence or malice when assisting a person pursuant to the aforementioned statutes.
BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- The title of Act No. 139 of June 3, 1976, as amended, is hereby amended to read as follows:

“To establish the ‘Good Samaritan Act of the Government of Puerto Rico.’”

Section 2.- A new Section 1 is hereby added; Sections 1, 2, 3, and 4 are hereby renumbered as Sections 2, 3, 4, and 5, respectively; new Sections 6, 7, and 8 are hereby added to also hold harmless for damages those persons covered under Act No. 141 of August 1, 2008, and Act No. 85 of July 30, 2007, and to clarify the scope of this Act. To such effects, the provisions of Act No. 139 of June 3, 1976, as amended, are hereby amended to read as follows:

“Section 1.-
This Act shall be known as the ‘Good Samaritan Act of the Government of Puerto Rico.’

Section 2.-
Persons legally authorized to practice medicine in Puerto Rico by virtue of Act No. 22 of April 22, 1931, as amended; those authorized to practice nursing under Act No. 9 of October 11, 1987, as amended; Emergency Medical Technicians authorized to practice their profession under Act No. 310 of December 25, 2002; and medical students who have satisfactorily completed their first year in an accredited institution, all of whom outside the course of regular employment and workplace or professional practice, voluntarily and without compensation provide emergency services or assistance to any person, as well as American Red Cross volunteers, the Civil Defense, and members of the Volunteers in Action Corps duly accredited as such by the corresponding organization, in the discharge of their duties as volunteers are hereby held harmless from civil liability should they cause any damages to the person who receives their assistance.
Section 3.-

Likewise, police officers, firefighters, or ambulance personnel who are working as such and have approved a first aid course offered by the American Red Cross, the American Heart Association, or any other duly accredited institution, shall not be held liable for any damages caused by their actions and omissions while providing services or administering first aid to any person in need thereof during emergency situations.

Section 4.-

Section 5.-

This exemption from liability shall only be applicable when the actions or omissions of the persons referred to in this Act do not constitute gross negligence or when there has been no intent to cause harm.

Section 6.-

Any employee or any natural or juridical person who, by virtue of the provisions of Act No. 141 of August 1, 2008, and of Act No. 85 of July 30, 2007, provides emergency medical services through the use of an Automated External Defibrillator in private and public establishments within the jurisdiction of the Commonwealth of Puerto Rico, is hereby held harmless from civil liability for damages, by virtue of this Section.

Section 7.-

The immunity granted in this Section shall not be applicable if: (a) the person against whom an action for damages is filed is found to have acted with gross negligence or in disregard to proper care, or if said person acted willfully and with the intent to harm the victim; (b) the use, attempted use, or failure to use the AED occurred in a place where the use of said device is part of his regular job, because said place is a medical emergency care center such as, but not strictly limited to hospital emergency rooms, medical clinics, or ambulance services; (c) the person
against whom an action for damages is filed was aware that the AED was malfunctioning and there is a causal connection between the damages and the defect in the AED.

Section 8.-

None of the provisions herein shall affect the strict product liability doctrine involving manufacturers, distributors, or salespersons for defects in the AED, or may be construed as meaning that the immunity herein granted excludes state of necessity defenses, acting under the imposition of a law, obedience to orders, or any others contained in the code of laws in effect in Puerto Rico as related to a claim filed under Article 1802 of the Civil Code of Puerto Rico.

…”

Section 3.- This Act shall take effect immediately after its approval.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 182-2012 (S. B. 512) of the 7th Regular Session of the 16th Legislative Assembly of Puerto Rico:

AN ACT to

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 17th day of July, 2017.

Orlando Pagán-Ramírez
Acting Director
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 182-2012 (S. B. 512) of the 7th Regular Session of the 16th Legislative Assembly of Puerto Rico:

AN ACT to amend the title of Act No. 139 of June 3, 1976, as amended; extend the immunity granted to Government employees who render medical-hospital services in entities of the Government of Puerto Rico; hold harmless from civil liability for damages any employees who, pursuant to the provisions of Act No. 141-2008, offer first aid, as well as those covered by Act No. 85-2007, known as the “Act to Require the Installation of a Defibrillator in Public Agencies, Corporations, Instrumentalities, and Municipal Facilities or in Public Service Establishments,” as defined in said Act; extend the immunity granted by Act No. 139 of June 3, 1976, to persons who render emergency medical services through the use of an Automated External Defibrillator in private establishments within the jurisdiction of the Commonwealth of Puerto Rico; add a new Section 1; renumber Sections 1, 2, 3, and 4 as Sections 2, 3, 4, and 5, respectively; add new Sections 6, 7, and 8; and make technical corrections.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 19th day of October, 2017.

Orlando Pagán-Ramírez
Acting Director