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HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH PROMOTION
ANALYSIS

BILL #: HB 1429

RELATING TO: Cardiac Arrest Survival Act

SPONSOR(S): Representative(s) Byrd

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH PROMOTION YEAS 7 NAYS 0
(2) COUNCIL FOR HEALTHY COMMUNITIES
(3)
(4)
(5)

I. SUMMARY:

HB 1429 creates the "Cardiac Arrest Survival Act," to provide immunity from liability for a person who uses or attempts to use an automatic external defibrillator device in a perceived medical emergency. The bill provides a series of "whereas" clauses. The bill provides definitions of relevant terms. The bill specifies the circumstances under which immunity is granted, and certain exceptions. The bill specifies that the act does not establish a cause of action. The bill repeals an existing provision in the "Good Samaritan Act" specific to use of an external automatic defibrillator under certain circumstances. The bill revises language relating to training requirements for use of automatic external defibrillator.

The bill's effective date is October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background

Heart disease is the leading cause of death in the U.S. and in Florida. Although the death rate from heart disease has been declining for the past thirty years, sudden cardiac arrest remains a major unresolved public health problem. Each year in the U.S., sudden cardiac arrest strikes more than 350,000 people, making it the single leading cause of death. Due to the unexpectedness with which sudden cardiac arrest strikes, most of its victims die before reaching a hospital. Currently, the chances of surviving sudden cardiac arrest are less than 1 in 20.

Sudden cardiac arrest is usually caused by a condition called ventricular fibrillation. This is a condition where the normal flow of electrical impulses in the heart is disturbed and the heart muscle is not contracting in a coordinated way. Ventricular fibrillation is often caused by an acute constriction of the coronary artery that disrupts blood flow to the heart muscle and disturbs the electrical activity of the heart.

When a person's heart goes into ventricular fibrillation, the heart (usually) must be restarted through defibrillation within a matter of minutes or the patient will die. Some authorities indicate that a victim's chance of survival decreases as much as 10 percent with each minute that passes before his or her heart is returned to normal rhythm. Cardiopulmonary resuscitation can be used to pump blood through the body, but (usually) will not restart the heart.

As early as 1947, it was demonstrated that ventricular fibrillation could be abolished and a normal rhythm restored to the human heart by passing an electrical current through electrodes applied directly to the heart. By 1956 a defibrillator was perfected that could pass a current through the intact chest wall and defibrillate the heart and restore a normal rhythm. However, these early units were large, required special training, and direct medical supervision, so they were initially available only in hospital emergency rooms.

Within several years, defibrillators were made more portable and paramedics were trained to use them in the field. Paramedics had to be experienced to know how to recognize when a heart was in ventricular fibrillation. An attempt to defibrillate the heart of a patient when the patient is not fibrillating might actually kill the patient. There were other dangers associated with the use of defibrillators, including the risk of shocking oneself or shocking a bystander.

Advances in medical technology resulted in the development of the semi-automatic and the automatic external defibrillator (AED). An AED can analyze the electrical current coming from the heart of the victim and determine if the heart is fibrillating, or if the heart has a "reasonable beat" but is contracting weakly. In the first case, the AED will automatically pass a current through the heart. However neither device will, theoretically, allow a patient to be shocked unless the patient is in ventricular fibrillation. As early as December 1996, an AED device came on the market, the manufacturer of which refers to the product as "completely automated," with a single-button design, with non-polarized electrodes, and with step-by-step voice instructions.

Relevant Florida Law

Part III of chapter 401, F.S., provides the statutory basis for Florida's emergency medical services system. Due to risks associated with the use of defibrillators, their use in the field is classified as "advanced life support" under s. 401.23(1), F.S. The minimum level of training required for advanced life support is the training required to become a paramedic and in some cases an emergency medical technician (EMT). Minimum training requirements for a paramedic are from 700 to 1000 hours, and for an EMT minimum training consists of from 120 to 200 hours.

Based on the development of AED technology and in an effort to reduce the death rate associated with sudden cardiac arrest, the Legislature enacted s. 401.291, F.S., in 1990. This law broadened the list of persons authorized to use an AED to include first responders. First responders include police officers, firefighters, and citizens who are trained as part of locally coordinated emergency medical services response teams. In order to qualify to use an AED, a first responder had to meet specific training requirements including certification in cardiopulmonary resuscitation or successful completion of an 8 hour basic first aid course that included cardiopulmonary resuscitation training, demonstrated proficiency in the use of an automatic or semiautomatic defibrillator, and successful completion of at least 6 hours of training in at least two sessions, in the use of an AED. The local EMS medical director or another physician authorized by the medical director must authorize the use of an AED by a first responder.

The enactment of the 1990 law to expand the use of an AED to first responders had little impact on increasing the availability of automatic external defibrillators and on reducing the rate of death from sudden cardiac arrest in Florida. Some argued that the training requirements were too stringent for the evolving technology. Therefore, the American Heart Association proposed expanding the list of persons authorized to use an AED to include persons who meet minimum training requirements, but who are members of an emergency medical services response team. Chapter 97-34, Laws of Florida, accomplished this expansion by deregulating the use of an AED by repealing s. 401.291, F.S., and specifying legislative intent that an AED may be used by any person for the purpose of saving the life of another person in cardiac arrest. The bill required users of an AED to successfully complete an appropriate training course in cardiopulmonary resuscitation or a basic first aid course that includes cardiopulmonary resuscitation and demonstrate proficiency in the use of an AED. In addition, the bill specified that any person or entity in possession of an AED is encouraged to register the device with the local emergency medical services (EMS) medical director, and any person who uses an AED is required to activate the EMS system as soon as possible.

Part I of chapter 768, F.S., provides the state's general negligence law. Section 768.13, F.S., is the "Good Samaritan Act." This act provides immunity from liability for those rendering gratuitous services under emergency circumstances, as specified, when such services meet the reasonably prudent person standard. Chapter 97-34, Laws of Florida, also amended the "Good Samaritan Act," s. 768.13, F.S., to provide immunity from civil liability to any person who renders emergency care or treatment through the use of or provision of an AED.

With substantive law revisions in 1990 and 1997, and the 1997 amendment to the "Good Samaritan Act," Florida was among the first states to promote the widespread use of automatic external defibrillators for the purpose of saving the life of an individual experiencing a cardiac arrest.

Relevant Federal Law

On November 16, 2000, President Clinton signed into law the Cardiac Arrest Survival Act (HR 2498). The law directed the placing of automated external defibrillator devices in federal buildings and provided nationwide Good Samaritan protection that exempts from liability anyone who renders emergency treatment with an AED to save someone's life. Also signed into law as part of that same enactment was the Rural Access to Emergency Devices Act (SF 2528), which authorizes $25 million in federal funds to help rural communities purchase automatic external defibrillators and train lay rescuers.

The federal law also states that: "(w)ith respect to a class of persons for which this section provides immunity from civil liability, this section supercedes the law of the State only to the extent that in such class the immunity for civil liability arising from the use of such persons of a (AED) devices in emergency situations (within the meaning of the State law or regulation involved)."

C. EFFECT OF PROPOSED CHANGES:

For details, see the SECTION-BY-SECTION ANALYSIS that follows.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 768.1325, F.S., relating to the Cardiac Arrest Survival Act and immunity from civil liability, as follows:

Subsection (1) specifies that this section may be cited as the "Cardiac Arrest Survival Act."

Subsection (2) defines the terms relevant to this act: "perceived medical emergency," "automatic external defibrillator device," and "harm."

Subsection (3) specifies that notwithstanding any other provision of law to the contrary and except as provided in subsection (4), any person who uses or attempts to use an AED device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from use of such device, or any act or failure to act in providing or arranging further medical treatment. In addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of the acquirer of the device to: properly and timely notify local emergency response personnel or other appropriate entities of device placement; properly maintain and test the device; or provide appropriate training to appropriate employees or agents of the acquirer, with exceptions for likelihood of device use and the timing of device use and timing of training.

Subsection (4) indicates that immunity provided under subsection (3) does not apply to a person if: the harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of a victim who was harmed; the person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; the person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the

scope of the employment or agency of the employee or agent; or the person is the manufacturer of the device.

Subsection (5) specifies that this section does not establish any cause of action, nor does this section require that an AED device be placed at any building or other location or require an acquirer to make available on its premises one or more employees or agents trained in the use of the device.

Section 2. Repeals subsection (4) of s. 768.13, F.S., which provides immunity from civil liability for the use of an automatic external defibrillator under certain circumstances, as part of the "Good Samaritan Act."

Section 3. Amends subsection (1) of s. 401.2915, F.S., relating to use of automatic external defibrillators and training requirements for device use, to delete training requirements for persons who have access to such devices, limiting training to those who use the device.

Section 4. Provides an October 1, 2001, effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The existing provision of the "Good Samaritan Act" grants immunity from civil liability for use of an AED by specific persons, including persons "licensed to practice medicine," s. 768.13(4), F.S. The bill repeals this language, and replaces the language with a new section of law, s. 768.1325, F.S., which does not appear to address licensed medical practitioners. The language of paragraph (b) of subsection (4) of this new section specifically states that immunity from liability does not apply to the person if "the person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients…." It is unclear from this language whether the intent is to provide immunity for those persons licensed to practice medicine. As used here, "entity" could be a facility or a practitioner. It should also be noted that the federal law after which the language of new s. 768.1325, F.S., is modeled specifies that licensed or certified health professionals are among those to whom the Good Samaritan immunity exemption does not apply.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

When the Committee on Health Promotion heard this bill on April 12, 2001, the Committee approved without objection a "strike-everything" amendment and reported the bill unanimously favorable. The amendment:

- Makes reference to "*automated* external defibrillator devices" rather than "*automatic* external defibrillator devices."

- Specifies in the immunity provision that those who acquire automated external defibrillator devices notify "the local emergency medical services director" of device placement within a reasonable period of time, rather than specifying that such notice be to "appropriate medical

response personnel or other appropriate entities." (This revision is consistent with existing provisions in s. 401.2915, F.S.)

- Directs the Secretary of the Department of Health, in conjunction with the Secretary of the Department of Management Services, to adopt rules to establish guidelines relating to the appropriate placement and deployment of automated external defibrillator devices in buildings owned or leased by the state, and specifies factors to be considered in placement and deployment guidelines and decisions.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:	Staff Director:
Phil E. Williams	Phil E. Williams