

By Senator Sullivan

22-1365-01

1 A bill to be entitled
2 An act relating to liability; creating s.
3 768.1325, F.S.; providing immunity from civil
4 liability for certain persons acquiring or
5 using automatic external defibrillator devices;
6 repealing s. 768.13(4), F.S., relating to
7 automatic external defibrillators; amending s.
8 401.2915, F.S.; deleting a requirement that
9 persons having access to automatic external
10 defibrillators obtain specified training;
11 providing an effective date.
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13 WHEREAS, over 700 lives are lost every day to sudden
14 cardiac arrest in the United States alone, and
15 WHEREAS, two out of every three sudden cardiac deaths
16 occur before a victim can reach a hospital, and
17 WHEREAS, more than 95 percent of these cardiac arrest
18 victims will die, many because of the lack of readily
19 available lifesaving medical equipment, and
20 WHEREAS, with current medical technology, up to 30
21 percent of cardiac arrest victims could be saved if victims
22 had access to immediate medical response, including
23 defibrillation and cardiopulmonary resuscitation, and
24 WHEREAS, once a victim has suffered a cardiac arrest,
25 every minute that passes before returning the heart to a
26 normal rhythm decreases the chance of survival by 10 percent,
27 and
28 WHEREAS, most cardiac arrests are caused by abnormal
29 heart rhythms called ventricular fibrillation, which occurs
30 when the heart's electrical system malfunctions, causing a
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1 chaotic rhythm that prevents the heart from pumping oxygen to
2 the victim's brain and body, and

3 WHEREAS, communities that have implemented programs
4 ensuring a widespread public access to defibrillators,
5 combined with appropriate training, maintenance, and
6 coordination with local emergency medical systems, have
7 dramatically improved the survival rates from cardiac arrest,
8 and

9 WHEREAS, automatic external defibrillator devices have
10 been demonstrated to be safe and effective, even when used by
11 lay people, since the devices are designed not to allow a user
12 to administer a shock until after the device has analyzed a
13 victim's heart rhythm and determined that an electric shock is
14 required, and

15 WHEREAS, increased public awareness regarding automatic
16 external defibrillator devices will greatly facilitate their
17 adoption, and

18 WHEREAS, limiting the liability of users and acquirers
19 of automatic external defibrillator devices in emergency
20 situations may encourage the use of the devices and result in
21 saved lives, NOW, THEREFORE,

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 768.1325, Florida Statutes, is
26 created to read:

27 768.1325 Cardiac Arrest Survival Act; immunity from
28 civil liability.--

29 (1) DEFINITIONS.--As used in this section, the term:

30 (a) "Perceived medical emergency" means circumstances

31 in which the behavior of an individual leads a reasonable

1 person to believe that the individual is experiencing a
2 life-threatening medical condition that requires an immediate
3 medical response regarding the heart or other cardiopulmonary
4 functioning of the individual.

5 (b) "Automatic external defibrillator device" means a
6 defibrillator device that:

7 1. Is commercially distributed in accordance with the
8 Federal Food, Drug, and Cosmetic Act;

9 2. Is capable of recognizing the presence or absence
10 of ventricular fibrillation and of determining without
11 intervention by the use of the device whether defibrillation
12 should be performed;

13 3. Upon determining that defibrillation should be
14 performed, is able to deliver an electrical shock to an
15 individual; and

16 4. In the case of a defibrillator device that may be
17 operated in either an automatic or a manual mode, is set to
18 operate in the automatic mode.

19 (c) "Harm" means damage or loss of any and all types,
20 including, but not limited to, physical, nonphysical,
21 economic, noneconomic, actual, compensatory, consequential,
22 incidental, and punitive damages or losses.

23 (2) IMMUNITY.--Notwithstanding any other provision of
24 law to the contrary, and except as provided in subsection (3),
25 any person who uses or attempts to use an automatic external
26 defibrillator device on a victim of a perceived medical
27 emergency is immune from civil liability for any harm
28 resulting from the use or attempted use of such device, or any
29 act or failure to act in providing or arranging further
30 medical treatment; in addition, any person who acquired the
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1 device is immune from such liability, if the harm was not due
2 to the failure of such acquirer of the device:

3 (a) To notify local emergency response personnel or
4 other appropriate entities of the most recent placement of the
5 device within a reasonable period of time after the device was
6 placed;

7 (b) To properly maintain and test the device; or

8 (c) To provide appropriate training in the use of the
9 device to an employee or agent of the acquirer when the
10 employee or agent was the person who used the device on the
11 victim, except that such requirement of training does not
12 apply if:

13 1. The employee or agent was not an employee or agent
14 who would have been reasonably expected to use the device; or

15 2. The period of time elapsing between the engagement
16 of the person as an employee or agent and the occurrence of
17 the harm (or between the acquisition of the device and the
18 occurrence of the harm in any case in which the device was
19 acquired after such engagement of the person) was not a
20 reasonably sufficient period in which to provide the training.

21 (3) INAPPLICABILITY OF IMMUNITY.--Immunity under
22 subsection (2) does not apply to a person if:

23 (a) The harm involved was caused by that person's
24 willful or criminal misconduct, gross negligence, or reckless
25 misconduct or a conscious, flagrant indifference to the rights
26 or safety of the victim who was harmed;

27 (b) The person is a hospital, clinic, or other entity
28 whose primary purpose is providing health care directly to
29 patients and the harm was caused by an employee or agent of
30 the entity who used the device while acting within the scope
31 of the employment or agency of the employee or agent; or

1 (c) The person is an acquirer of the device who leased
2 the device to a health care entity (or who otherwise provided
3 the device to such entity for compensation without selling the
4 device to the entity) and the harm was caused by an employee
5 or agent of the entity who used the device while acting within
6 the scope of the employment or agency of the employee or
7 agent.

8 (4) CAUSE OF ACTION, DUTY NOT ESTABLISHED.--This
9 section does not establish any cause of action. This section
10 does not require that an automatic external defibrillator be
11 placed at any building or other location or require an
12 acquirer to make available on its premises one or more
13 employees or agents trained in the use of the device.

14 Section 2. Subsection (4) of section 768.13, Florida
15 Statutes, is repealed.

16 Section 3. Section 401.2915, Florida Statutes, is
17 amended to read:

18 401.2915 Automatic external defibrillators.--It is the
19 intent of the Legislature that an automatic external
20 defibrillator may be used by any person for the purpose of
21 saving the life of another person in cardiac arrest. In order
22 to ensure public health and safety:

23 (1) All persons who ~~have access to or~~ use an automatic
24 external defibrillator must obtain appropriate training, to
25 include completion of a course in cardiopulmonary
26 resuscitation or successful completion of a basic first aid
27 course that includes cardiopulmonary resuscitation training,
28 and demonstrated proficiency in the use of an automatic
29 external defibrillator;

30 (2) Any person or entity in possession of an automatic
31 external defibrillator is encouraged to register with the

1 local emergency medical services medical director the
2 existence and location of the automatic external
3 defibrillator; and

4 (3) Any person who uses an automatic external
5 defibrillator is required to activate the emergency medical
6 services system as soon as possible upon use of the automatic
7 external defibrillator.

8 Section 4. This act shall take effect October 1, 2001.

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SENATE SUMMARY

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Provides immunity from civil liability for persons who
use or attempt to use automatic external defibrillator
13 devices in perceived medical emergencies, as defined.
Also provides immunity to the acquirers of such devices
14 under specified circumstances. However, immunity does not
attach in cases of willful or criminal action, gross
15 negligence, or indifference to the rights or safety of
the person harmed; if the person is a hospital, clinic,
16 or similar entity; or if the person is an acquirer of a
device who leased it to a health care entity.

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