HouseAnalysis
HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 CS Automated External Defibrillators
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	9 Y, 0 N, w/CS	Ciccone	Brown-Barrios
2) Criminal Justice Committee	8 Y, 0 N, w/CS	Ferguson	Kramer
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

An Automatic External Defibrillator (AED) is a small, lightweight device used to assess a person's heart rhythm, and, if necessary, administer an electric shock to restore a normal rhythm in victims of sudden cardiac arrest. AEDs are designed to be used by people without medical backgrounds, such as police, firefighters, flight attendants, security guards, and lay rescuers.

HB 93 defines the term *automated external defibrillator* as referenced in s. 768.1325(2) (b), Florida Statutes, and also defines the term *defibrillation*. HB 93 also creates a misdemeanor offense for tampering with or rendering an AED inoperable; however, this section will not apply to the owner of an AED or the owner's agent.

HB 93 requires the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device that the liability immunity under s. 768.1325, Florida Statutes, is contingent upon proper equipment maintenance, testing and user training.

Depending on the method of communication, a minimal fiscal impact may be incurred by the Department of Health to implement the educational campaign required in HB 93.

The effective date of HB 93 is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – HB 93 creates criminal penalties for intentional or willful conduct.

B. EFFECT OF PROPOSED CHANGES:

Cardiac Arrest:

The American Heart Association (AHA) describes a cardiac arrest as:

> Cardiac arrest is the sudden, abrupt loss of heart function. It is also called sudden cardiac arrest or unexpected cardiac arrest. Sudden death (also called sudden cardiac death[1]) occurs within minutes after symptoms appear. The most common underlying reason for patients to die suddenly from cardiac arrest is coronary heart disease. Most cardiac arrests that lead to sudden death occur when the electrical impulses in the diseased heart become rapid (ventricular tachycardia) or chaotic (ventricular fibrillation) or both. This irregular heart rhythm (arrhythmia) causes the heart to suddenly stop beating.

According to the AHA, brain death and permanent death start to occur within 4 to 6 minutes after someone experiences cardiac arrest. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a process called defibrillation. The AHA states that a victim's chances of survival are reduced by 7 to 10 percent with every passing minute without defibrillation, and few attempts at resuscitation succeed after 10 minutes.

An Automated External Defibrillator (AED) is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. The AHA estimates that more than 95 percent of cardiac arrest victims die before reaching the hospital. In cases where defibrillation is provided within 5 to 7 minutes, the survival rate from sudden cardiac arrest can be up to 49 percent.

Section 401.2915, F.S., provides the minimum requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an automated external defibrillator;
- A person or entity in possession of an automated external defibrillator is encouraged to register with the local emergency medical services medical director the existence and location of the automated external defibrillator; and
- A person who uses an automated external defibrillator is required to activate the emergency medical services system as soon as possible upon use of the automated external defibrillator.

1990 Legislation

In 1990, 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. This law broadened the list of persons authorized to use an AED to include "first responders." First responders included

[1] Heart Rhythm Society . *See* http://www.hrspatients.org/patients/heart_disorders/cardiac_arrest/

police officers, firefighters and citizens who are trained as part of locally coordinated emergency medical service response teams. At that time, to use an AED, a first responder had to meet specific training requirements, including;

- Certification in CPR.
  Or—
- Successful completion of an eight hour basic first aid course that included CPR training.
- Demonstrated proficiency in the use of an automatic or semiautomatic defibrillator.
- Successful completion of at least six hours of training, in at least two sessions, in the use of an AED.

At the time, the creation of s. 401.291, F.S., was intended to increase the availability of automatic external defibrillators and thereby reduce the death rate from sudden cardiac arrest in Florida. It is undocumented as to whether the intended effect was ever achieved; however, the law was repealed on October 1, 1992.

Deregulating AED

Chapter 97-34, Laws of Florida, repealed s. 401.291, F.S., thereby deregulating the use of an AED. The bill created s. 401.2915, F.S. (see above).

Tort Liability

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an automated external defibrillator device in a perceived medical emergency. Under s. 768.1325(2) (b), F.S., "automated external defibrillation" device is defined as a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

Section 768.1325 (3) provides exceptions, in that, any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability. In addition, any person who acquired the device for a community organization is immune from civil liability if the harm was not due to the failure of such acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the device within a reasonable period of time after the device was placed;
- Properly maintain and test the device; or
- Provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:

  1. The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or
  2. The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

Effect of Bill

HB 93 amends s. 401.2915, F.S., to define the term automated external defibrillator as a lifesaving device that:

- Is commercially distributed as a defibrillation device in accordance with the Federal Food, Drug, and Cosmetic Act;

- Is capable of recognizing the presence or absence of ventricular fibrillation and is capable of determining, without intervention by the use of the device, if defibrillation should be performed; and
- Is capable of delivering an electrical shock to an individual, upon determining that defibrillation should be performed.

This definition conforms to the definition in s. 768.1325(2) (b), F.S.

HB 93 also defines defibrillation as the administration of a controlled electrical charge to the heart to restore a viable cardiac rhythm.

HB 93 provides it is a first degree misdemeanor for any person who intentionally or willfully:

a) Tampers with or otherwise renders an automated external defibrillator inoperative except during such time as the automated external defibrillator is being serviced, tested, repaired, or recharged, except pursuant to court order.

b) Obliterates the serial number on an automated external defibrillator for purposes of falsifying service records.

Paragraph (a) does not apply to the owner of the automated external defibrillator or the owner's agent. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000.

HB 93 directs the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device that his or her immunity from liability under s. 768.1325, F. S., for harm resulting from the use or attempted use of the device, does not apply if he or she fails to properly maintain and test the device or provide appropriate training in the use of the device.

C. SECTION DIRECTORY:

Section 1. Amends s. 401.2915, F.S., to define terms and provide criminal penalties.

Section 2. Requires the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device that the liability immunity under s. 768.1325, Florida Statutes, is contingent upon proper equipment maintenance, testing and user training.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Department of Health is uncertain as to cost to the department to implement the educational campaign outlined in HB 93. A minimal cost would be incurred if the department were to use the state's website to provide information regarding equipment maintenance, testing and user training.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because HB 93 does not appear to: require counties or municipalities to spend funds or to take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rulemaking authority to implement HB 93.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On November 9, 2005, the House Health Care General Committee passed House Bill 93 with one amendment which referenced the definition of an Automatic External Defibrillator (AED) currently in s. 768.1325(2)(b) F.S.

The House Health Care General Committee passed House Bill 93 with this amendment as House Bill 93 with committee substitute.

On January 11, 2006, the Criminal Justice Committee passed House Bill 93 with two amendments. The bill made it a misdemeanor for any person to render an AED inoperable. The first amendment provided that this does not apply to the owner of the AED or the owner's agent. The second amendment deleted the provision authorizing local governments to adopt an ordinance to license, permit, or inspect AEDs and providing enforcement of such local ordinances.

This analysis reflects HB 93 as amended.