

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill creates criminal penalties for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Section 401.2915, F.S., provides that an Automated External Defibrillator (AED) may be used by any person for the purpose of saving the life of another person in cardiac arrest. Users of an AED must successfully complete an appropriate training course in CPR, or a basic first aid course that includes CPR, and must demonstrate proficiency in the use of an AED. In addition, any person or entity in possession of an AED is encouraged to register the device with the local EMS medical director, and any person who uses an AED is required to activate the EMS system as soon as possible. The bill clarifies that certain use, misuse or otherwise tampering of an automated external defibrillator constitutes a first degree misdemeanor. This bill also authorizes local governments to adopt an ordinance to require a person to obtain a license, permit or inspection certificate for AEDs. Finally, the bill requires the Department of Health to implement an education campaign to inform persons who use an AED that immunity from liability does not extend to failure to properly maintain and test the AED or failure to provide appropriate training in the use of an AED.

This additional education, training and licensing requirements in the bill are designed to increase the likelihood of proper use and an improved registry of AEDs used in Florida.

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) 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 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 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.

Effect of Bill

This bill 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.

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

The bill provides it is a first degree misdemeanor for any person who intentionally or willfully:

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

A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

The bill also provides that a local ordinance may require a person to obtain a license, permit, or inspection certificate regarding AEDs. Enforcement by the municipality may be as provided in s. 162.22, F.S. The ordinance may provide that it is an infraction or a criminal offense for any person to intentionally or willfully:

- Fails to properly service, recharge, repair, test, or inspect an automated external defibrillator.
- Uses the license, permit or inspection certificate of another person.
- Holds a permit or inspection certificate and allow another person to use said permit or inspection certificate number.
- Uses, or permits the use of, any license, permit or inspection certificate by any individual or organization other than the one to whom the license, permit or inspection certificate is issued.

Section 162.22, F.S., allows a municipality to impose penalties for violation of a municipal ordinance. Unless otherwise provided for in law, punishment for violation of a municipal ordinance may not exceed 60 days in jail and a \$500 fine (equivalent to a second degree misdemeanor).

The bill 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 the bill. 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 this bill 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 this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES