SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL:	CS/SB 976
INTRODUCER:	Health Care Committee and Senator Geller
SUBJECT:	Automated External Defibrillators
DATE:	February 9, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	**Fav/CS**
2.			JU	
3.			HA	
4.				
5.				
6.				

I. Summary:

This bill clarifies the legislative intent regarding the use of automated external defibrillators (AED) and provides a definition for the term "defibrillation." The bill creates a criminal offense for certain acts involving tampering with an AED. The bill amends the Cardiac Arrest Survival Act (s. 768.1325, F.S.) to revise the definition of the term "automated external defibrillator" to specify that an AED is a lifesaving device. The bill requires the Department of Health to implement an educational campaign to inform persons who acquire an AED that immunity from liability under s. 768.1325, F.S., does not extend to them if they fail to properly maintain and test the AED or fail to provide appropriate training in the use of the AED.

This bill amends ss. 401.2915 and 768.1325, F.S., and creates one unnumbered section of law.

II. Present Situation:

Automated External Defibrillators

The American Heart Association (AHA) provides the following description of cardiac arrest:

"Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. 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 procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

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. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Section 401.2915, F.S., provides the minimum training 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 AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency. Section 768.1325(2)(b), F.S., defines "automated external defibrillator device" to mean 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.

The immunity provided under s. 768.1325, F.S., to persons using or attempting to use an AED does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or

- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim, except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or 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 AED and the occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- 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 AED who leased the device to a health care entity, or who otherwise provided the AED 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 AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the "Good Samaritan Act," provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment

which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

III. Effect of Proposed Changes:

This bill amends s. 401.2915, F.S., to establish the Legislature's intent to encourage training in lifesaving first aid, set standards for the use of AEDs, and encourage their use. The term "automated external defibrillator" is defined as a device as defined in s. 768.1325(2)(b), F.S., which relates to immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency. The bill defines *defibrillation* as the administration of a controlled electrical charge to the heart to restore a viable cardiac rhythm.

The bill creates a criminal offense for a person who intentionally or willfully tampers with or otherwise renders an AED inoperative, except during such time as the AED is being serviced, tested, repaired, or recharged, or except pursuant to a court order; or obliterates the serial number on an AED for purposes of falsifying service records. A person who commits the offense is liable for a first-degree misdemeanor, which is punishable by imprisonment for up to 1 year and the imposition of fine of up to $1,000. The bill excludes the owner of the AED or the owner's agent from the criminal offense which prohibits a person from intentionally or willfully tampering with or otherwise rendering an AED inoperative.

The bill requires the Department of Health to implement an educational campaign to inform any person who acquires an AED that his or her immunity from liability under Florida law for harm resulting from the use or attempted use of the AED does not apply if he or she fails to properly maintain and test the device or fails to provide appropriate training in the use of the device to an agent or employee when the employee or agent was the person who used the AED on the victim, with specified exceptions.

The bill revises s. 768.1325(2)(b), F.S., which defines "automated external defibrillator device," to specify that an AED is a lifesaving device.

The bill would take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health will incur costs to implement the educational campaign to inform persons regarding the immunity from liability for AEDs under applicable Florida law that is required by the bill. The department has indicated that the fiscal impact of bill is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.