The Florida Senate

PROFESSIONAL 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 Regulation Committee

BILL:	SB 2128
INTRODUCER:	Senator Constantine
SUBJECT:	Sales Tax Exemption/Defibrillators
DATE:	March 22, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	**Pre-meeting**
2.			JU	
3.			FT	
4.			GA	
5.				
6.				

I. Summary:

The bill exempts the acquisition of automated external defibrillators (AED) by businesses for use on their premises from sales tax.

The bill revises the minimum training and maintenance requirements for AEDs to provide that in order to ensure public health and safety any person or entity in possession of an AED must:

- Properly maintain and test the device; and
- Provide training in cardiopulmonary resuscitation and AED proficiency from the American Heart Association or the American Red Cross, or a substantially similar program from another provider, to any of its employees or agents who are reasonably expected to be potential users of the AED.

The immunity from civil liability in the Cardiac Arrest Survival Act for a person who uses or attempts to use an AED in a perceived medical emergency is revised to delete exceptions to the immunity if the harm is due to a failure of the acquirer of an AED to provide specified training in the use of the AED or to maintain and test the AED. Under the bill, any person or entity in possession of an AED is encouraged to *notify* rather than *register* the location of the AED with the local emergency medical services medical director.

This bill amends sections 212.08, 401.2915, and 768.1325, Florida Statutes.

II. Present Situation:

Cardiac Arrest/Automated External Defibrillators

Cardiovascular disease is a leading cause of death for adults aged 40 years or more.[1] An estimated 250,000 deaths annually may be attributed to coronary artery disease in settings outside of hospitals. Individuals with an abnormal heart rhythm or who suffer from a sudden, abrupt loss of heart function may need cardiovascular pulmonary resuscitation (CPR) to maintain blood flow to the heart and brain until defibrillation occurs allowing the person's normal heart rhythm to resume. 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."[2] Time is of the essence in responding to cardiac arrest because brain death begins in just 4 minutes 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 the AHA, a victim's chances of survival are reduced by 7 percent to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

An AED is a computerized device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. According to the 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.

---

[1] See "Community Lay Rescuer Automated External Defibrillation Programs" in *Circulation*. 2006;113:1260-1270.) © 2006 American Heart Association, Inc. at < http://circ.ahajournals.org/cgi/content/short/113/9/1260> (Last visited on March 22, 2007). See the website for the American Heart Association at : <http://circ.ahajournals.org> (Last visited on March 22, 2007).

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

Federal Cardiac Arrest Survival Act

The federal Cardiac Arrest Survival Act became law in 2000.[3] The federal law directs the placing of AEDs in federal buildings and provides nationwide Good Samaritan protection that exempts from liability anyone who renders emergency treatment with an AED to save someone's life. The federal law provides that with respect to a class of persons for which this law provides immunity from civil liability, the federal law supersedes state law only to the extent that in such class the immunity for civil liability arising from the use by such persons of an AED device in emergency situations is within the meaning of the State law or regulation involved.

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. The immunity provided under s. 768.1325, F.S., 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

[3] See Public Law 106-505.

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.

Any 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. The Department of Health must implement an educational campaign to inform any person who acquires an automated external defibrillator device of the scope and limitations of the immunity from liability provided under s. 768.1325, F.S.[4]

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.

[4] See section 2, chapter 2006-206, Laws of Florida.

Sales Tax Exemptions

Chapter 212, F.S., the "Florida Revenue Act of 1949," imposes taxes on sales, use, and other transactions. Section 212.08(7), F.S., provides miscellaneous sales tax exemptions.

III. Effect of Proposed Changes:

The bill amends s. 212.08(7), F.S., to exempt the acquisition of AEDs by businesses for use on their premises from sales tax.

The bill revises the minimum training and maintenance requirements for AEDs in s. 401.2915, F.S., to provide that in order to ensure public health and safety any person or entity in possession of an AED must:

- Properly maintain and test the device; and
- Provide training in CPR and AED proficiency from the AHA or the American Red Cross, or a substantially similar program from another provider, to any of its employees or agents who are reasonably expected to be potential users of the AED.

Under the bill, any person or entity in possession of an AED is encouraged to notify rather than register the location of the AED with the local emergency medical services medical director.

The immunity from civil liability in the Cardiac Arrest Survival Act for a person who uses or attempts to use an AED in a perceived medical emergency is revised to delete exceptions to the immunity if the harm is due to a failure of the acquirer of an AED 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 bill provides an effective date of July 1, 2007.

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 Article VII, Section 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 Article I, Section 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that the as not yet considered the impact of Senate Bill 2128. For identical legislation, SB 1128, the Revenue Estimating Conference estimated that the bill would result in a recurring loss of $1.3 million of general revenue funds annually in state sales tax and a recurring loss of $200,000 in local sales tax collected for an annual recurring loss of $1.5 million.

B. Private Sector Impact:

Businesses that acquire an AED and that fail to comply with the requirements of ss. 768.13 and 768.1325, F.S., may still be liable.

C. Government Sector Impact:

The Department of Health may incur costs to revise its educational campaign to inform any person who acquires an automated external defibrillator device of the scope and limitations of the immunity from liability provided under s. 768.1325, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.