

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 564

INTRODUCER: Judiciary Committee, Health Regulation Committee, and Senators Constantine and King

SUBJECT: Automated External Defibrillators

DATE: March 7, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.	Treadwell	Maclure	JU	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill revises the requirements for the use of an automated external defibrillator (AED) in cases of cardiac arrest. Under the bill, any person who uses an AED is encouraged, rather than required, to obtain appropriate training. Any person or entity in possession of an AED is encouraged to notify the local emergency medical services medical director of the location of the AED, rather than register the existence and location of the AED with the local emergency medical services medical director.

The bill also revises requirements under which a person who acquires an AED may obtain immunity from civil liability for harm resulting from the use of an AED. The bill provides that the immunity applies to a person who acquires the AED *and* makes the device available for use. Furthermore, the bill eliminates a requirement that those who acquire and make available an AED must notify the local emergency medical services medical director of the most recent placement of the device. Finally, an employer or principal who acquired an AED may still enjoy immunity if he or she did not provide appropriate training to his or her employee or agent provided that the device is equipped with audible, visual, or written instructions on its use.

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

II. Present Situation:

Automated External Defibrillators

The American Heart Association 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

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 the American Heart Association, 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.²

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. It can recognize a rhythm that requires a shock. It can advise the rescuer when a shock is needed. The AED uses voice prompts, lights, and text messages to tell the rescuer the steps to take. According to the American Heart Association, with early defibrillation of a person in cardiac arrest, the person’s possibility of survival jumps to more than 50 percent.³

Florida law provides requirements for the use of an AED in cases of cardiac arrest, as follows:

- A user of an AED 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.⁴

Immunity under the Cardiac Arrest Survival Act

The Cardiac Arrest Survival Act (the Act), provides immunity from civil liability for a person who uses or attempts to use an AED in a perceived medical emergency.⁵ The Act defines “automated external defibrillator device” to mean a defibrillator device that:

¹ The American Heart Association, <http://www.americanheart.org/presenter.jhtml?identifier=4481> (last visited on February, 26, 2008).

² *Id.*

³ The American Heart Association, <http://www.americanheart.org/presenter.jhtml?identifier=4483> (last visited on February, 26, 2008).

⁴ Section 401.2915(2), F.S.

⁵ Section 768.1325, F.S.

- 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.⁶

The Act provides immunity from civil liability to persons acquiring an AED unless any harm 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.⁷

In addition, immunity under the Act 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.⁸

⁶ Section 768.1325(2)(b), F.S.

⁷ Section 768.1325(3), F.S.

⁸ Section 768.1325(4), F.S.

Immunity under the Good Samaritan Act

The Good Samaritan Act also provides immunity to any person that gratuitously renders medical care or treatment in direct response to an emergency.⁹ More specifically, 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.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 401.2915, F.S., to revise the requirements for the use of an automated external defibrillator (AED) in cases of cardiac arrest. Under the bill, all persons who use an AED are encouraged, rather than required, to obtain appropriate training. Additionally, persons who possess an AED are encouraged to notify the local emergency medical services medical director

⁹ Section 768.13, F.S.

¹⁰ *Id.*

of the location of the AED, rather than register the existence and location of the AED with the local emergency medical services medical director.

The bill also amends the Cardiac Arrest Survival Act, s. 768.1325, F.S., to revise the requirements under which the acquirer of an AED may obtain immunity from civil liability. Under the bill, a person is eligible for immunity based on acquiring the AED *and* making the device available for use, rather than based (under current law) solely on acquiring the AED. The bill eliminates an immunity requirement that any person who acquires an AED and makes it available for use must notify the local emergency medical services director of the most recent placement of the device. The bill also modifies the requirement that a person who acquires an AED and makes it available for use must provide appropriate training in order to enjoy immunity. The proposed change waives the training requirement if the device is equipped with audible, visual, or written instructions on its use, including any visual or written instructions posted on or adjacent to the device.

The effective date of the bill is July 1, 2008.

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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 6, 2008:

The committee substitute revises the requirements for the use of an automated external defibrillator to encourage, rather than require, users of an AED to obtain appropriate training. The committee substitute does not require any person or entity in possession of an AED to maintain and test the device and provide specified training. The committee substitute revises the requirements for obtaining immunity from civil liability for the use of AED by deleting a requirement that a person who acquires an AED must notify the local emergency medical services director of the most recent placement of the device. The committee substitute modifies the requirement that a person who makes an AED available must provide appropriate training, to waive the training requirement if the device is equipped with audible, visual, or written instructions on its use.

CS/CS by Judiciary on March 5, 2008:

This committee substitute differs from CS/SB 564 by revising the conditions under which a person who acquires an AED may qualify for immunity from civil liability. Under this committee substitute, the person must both acquire *and* make the AED available for use in order to claim immunity, if the other statutory conditions are satisfied. (The prior committee substitute had stricken from current law the condition that the person be the acquirer of the AED and had instead used solely the condition of making an AED available for use.)

The committee substitute removes from the bill language that would have changed the conditions under which the acquirer of an AED can claim immunity if it leased the device to a health care entity or otherwise received compensation for use of the device.

B. Amendments:

None.