

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.)

BILL: CS/CS/SB 1184

SPONSOR: Health, Aging, and Long-Term Care and Comprehensive Planning Committees and Senator Campbell

SUBJECT: Community Associations

DATE: March 15, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
3.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
4.	_____	_____	<u>JU</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1184 provides that a condominium association and its authorized agent are not liable for providing information about the condominium or association to a prospective purchaser or lienholder, other than that required by law, in good faith in response to a written request, if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

This bill also provides that the required written notice to members that a homeowners' association board will consider assessments at a meeting shall be provided to all members at least 14 days prior to such meeting. The bill requires the board to provide written notice to all members at least 14 days prior to a meeting if the board intends to take action on any rules regarding the use of parcels and the notice must state that changes to such rules will be considered at the meeting.

The bill provides immunity from civil liability to community associations for any damages resulting from the use of an automated external defibrillator (AED) if the community association notifies the local emergency medical services (EMS) medical director of the most recent placement of the device within a reasonable period of time after the device was placed; properly maintains and tests the device; and provides appropriate training in the use of the device to an employee or agent of the acquirer.

The bill also prohibits an insurer from requiring a community association that acquires an AED to purchase medical malpractice liability coverage as a condition of issuing any other coverage

carried by the association. It also provides that an insurer may not exclude damages resulting from the use of the device from coverage under a general liability policy.

This bill amends sections 718.111, 720.303, and 768.1325 of the Florida Statutes.

II. Present Situation:

Condominium Associations and Requests for Records or Information

Chapter 718, F.S., governs condominium associations. Specifically, s. 718.111, F.S., provides the powers and duties of an association, including the maintenance, management, and operation of the condominium property. The association is responsible for maintaining its official records under s. 718.111(12), F.S. These official records must include:

- A copy of plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4);
- A photocopy of the recorded declaration of condominium, and each amendment thereto, for each condominium operated by the association;
- A photocopy of the recorded bylaws, and each amendment thereto, for the association;
- A certified copy of the articles of incorporation of the association or other documents creating the association and amendments thereto;
- A copy of the association's current rules;
- A book or books that contain the minutes of all meetings of the association, of the board of directors, and of unit owners for the past 7 years;
- A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The roster shall also include e-mail addresses if the unit owner consents to receiving an electronic transmission;
- All current insurance policies of the association and condominiums which it operates;
- A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility;
- Bills of sale or transfer for all property owned by the association; and
- Accounting records for the association, including separate accounting records for each condominium it operates, for the past 7 years.¹

The official records of an association must be maintained within the state. An association is required to make the official records available to a unit owner within 5 working days after the association's board or its designee receives a written request for records.² Alternatively, the association may keep a copy of the official records available for inspection or copying on the condominium property or association property. The right to inspect includes the ability of a unit owner to make or obtain copies at a reasonable expense to that owner.³ If the records are not available for inspection or copying and the association fails to provide the records within 10 working days after receiving a written request, such failure creates a rebuttable presumption that

¹ Section 718.111(12)(a), F.S.

² Section 718.111(12)(b), F.S.

³ Section 718.111(12)(c), F.S.

the association willfully violated this provision of law. The unit owner may bring an enforcement action that could result in damages. Also, the unit owner may recover reasonable attorney's fees and costs from the person in control of the records who denied the unit owner access to these records.

Certain records shall not be made available to unit owners. These records are:

- Any record protected by the lawyer-client privilege under s. 90.502, F.S., and any record protected by the work-product privilege;
- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and
- The medical records of unit owners.⁴

Section 718.111(12)(e), F.S., provides that an association or its authorized agent may not be required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents statutorily required to be made available. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing a good faith response to a request for information. However, such fee may not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the association's response. Currently, if an association provides information in good faith that is not statutorily required to a prospective purchaser or lienholder, the person providing the information may be liable for any inaccuracies in the information.

Homeowners' Associations and Notice Requirements for Board Meetings

Chapter 720, F.S., provides operating procedures for homeowners' associations while protecting the rights of association members without unduly impairing the ability of such associations to perform their functions. Section 720.303(2), F.S., specifies procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice of the board meeting must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the

⁴ Section 718.111(12)(c), F.S.

meeting. Currently, there are no additional notice requirements for board meetings if the board is considering taking action on rules that regulate the use of parcels in the community (i.e., pets, prohibited structures, etc.).

Automated External Defibrillators

Each year in the U.S., sudden cardiac arrest strikes more than 350,000 people, making it the single leading cause of death. Sudden cardiac arrest is usually caused by a condition called ventricular fibrillation. This is a condition where the normal flow of electrical impulses in the heart is disturbed and the heart muscle goes into an uncoordinated electrical activity or fibrillation. Due to the unexpectedness with which sudden cardiac arrest strikes, most of its victims die before reaching a hospital. Experts warn that a victim's chances of survival decrease by 7 to 10 percent for each minute that passes without defibrillation. The victim's best chance of survival is when defibrillation occurs within 4 minutes after the cardiac arrest.⁵ Few attempts at resuscitation succeed after 10 minutes have elapsed.⁶

An automated external defibrillator (AED) administers an electric current to the heart muscle which momentarily stuns the heart and gives it an opportunity to resume a normal rhythm; a process known as defibrillation. The device's built-in computer is able to assess the patient's heart rhythm and determine whether defibrillation is needed, and will administer the appropriate level of shock. In 1996, an AED device came on the market, the manufacturer of which refers to the product as "completely automated," with a single-button design, with non-polarized electrodes, and with step-by-step voice instructions. This device, theoretically, does not administer a shock unless it detects a lethal heart rhythm. According to the American Heart Association, a victim's chance of survival is greater than 50 percent with early defibrillation.

The number of automatic external defibrillators obtained for on-premises use by community associations has increased, in part, as the result of the American Heart Association's campaign to encourage associations or other population centers to have the device available. The results of a recent study funded by the National Heart Lung and Blood Institute, in cooperation with the American Heart Association, shows an increased survival rate for locations with AEDs.⁷ The study was designed to determine the effectiveness of deploying AEDs in public access areas with trained laypersons to improve the survival rates for victims of sudden cardiac arrest. The results of the study showed not only an increase in survival rates for public access sites with AEDs, but also that there were few adverse events and no cases of the devices delivering a shock inappropriately.⁸

⁵ See *Fact Sheets: Automatic External Defibrillators*, American College of Emergency Physicians, <http://www.acep.org/1,2891,0.html> (visited Feb. 9, 2004).

⁶ See *Cardiac Arrest: AHA Recommendation*, American Heart Association, <http://www.americanheart.org/presenter.jhtml?identifier=4481> (visited Feb. 10, 2004).

⁷ See *Use of Public Access Defibrillators Doubles Survival From Sudden Cardiac Arrest*, National Center for Early Defibrillation (Nov. 11, 2003), http://www.early-defib.org/news.asp?news_id=105 (visited Feb. 9, 2004).

⁸ See *id.*

Liability and Insurance Costs Associated with Automated External Defibrillators

Community associations that have obtained a defibrillator for on-premise use have expressed concerns relating to liability and the high cost of insurance for such devices. Part I of ch. 768, F.S., provides the state's general negligence law. 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 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.

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., in 1990. This law broadened the list of persons authorized to use an AED to include first responders. First responders include police officers, firefighters, and citizens who are trained as part of locally coordinated emergency medical services response teams. In order to qualify to use an AED, a first responder had to meet specific training requirements including certification in cardiopulmonary resuscitation or successful completion of an 8-hour basic first aid course that included cardiopulmonary resuscitation training, demonstrated proficiency in the use of an automatic or semiautomatic defibrillator, and successful completion of at least 6 hours of training in at least two sessions, in the use of an AED. The local emergency medical services (EMS) medical director or another physician authorized by the medical director must authorize the use of an AED by a first responder.

Chapter 97-34, Laws of Florida, expanded the deregulation of the use of an AED by repealing s. 401.291, F.S., and enacting s. 401.2915, F.S., to specify legislative intent that an AED may be used by any person for the purpose of saving the life of another person in cardiac arrest. Under s. 401.2915, F.S., the user of an AED is required to successfully complete an appropriate training course in cardiopulmonary resuscitation, or a basic first aid course that includes cardiopulmonary resuscitation, and 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.

In 2001, the Legislature enacted s. 768.1325, F.S., the Cardiac Arrest Survival Act (act). For purposes of the act, Florida Statutes define an AED 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 whether defibrillation should be performed; and
- After determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.⁹

⁹ Section 768.1325(2)(b), F.S.

The act provides that any person who uses or attempts to use an AED on a victim of a perceived medical emergency,¹⁰ without objection of the victim, is immune from civil liability for any harm resulting from the use or attempted use of the device. Further, any person who acquired the device is immune from liability if the harm did not result from the failure to:

- Notify the local EMS medical director of the most recent placement of the device within a reasonable period of time;
- Properly maintain and test the device; or
- Provide appropriate training to the employee or agent who used the device on the victim.¹¹

However, this immunity 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 victim's safety or rights;
- The person is a licensed or certified health professional who used the AED while acting within the scope of his or her license or certification;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care, and the harm was caused by an employee or agent of the entity;
- The person is an acquirer of the device who leased the device for compensation to a health care entity without selling the device to the entity; or
- The person is the manufacturer of the device.¹²

Notwithstanding the immunity provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act, it has been reported that some insurance companies are requiring community associations to purchase medical malpractice liability coverage in addition to a general liability policy if the association has acquired an AED. In general, medical malpractice liability coverage is expensive and may discourage some associations from acquiring this life-saving device.

III. Effect of Proposed Changes:

Section 1. Amends s. 718.111(12), F.S., making editorial changes and providing that a condominium association and its authorized agent are not liable for providing information about the condominium or association to a prospective purchaser or lienholder, other than that required by law, in good faith in response to a written request, if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Section 2. Amends s. 720.303(2), F.S., to provide that if a homeowners' association board will consider assessments at a meeting, written notice, including a statement that assessments will be considered, is to be provided to all members at least 14 days prior to the meeting. Similarly, this

¹⁰ A perceived medical emergency, for purposes of the act, means circumstances where an individual's behavior leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response relating to the heart or other cardiopulmonary function [s. 768.1325(2)(a), F.S.].

¹¹ Section 768.1325(3), F.S.

¹² Section 768.1325(4), F.S.

section requires the board to provide written notice to all members at least 14 days prior to a meeting if the board intends to adopt, amend, or revoke any rules regarding the use of parcels in the community and the notice must state that changes to such rules will be considered at the meeting.

Section 3. Amends s. 768.1325, F.S., to provide that a community association organized under chs. 617, 718, 719, 720, 721, or 723, F.S.,¹³ is immune from civil liability if it acquires an automated external defibrillator (AED) as long as any harm caused by using the device is not due to the failure of the community association to (1) notify the local emergency medical services (EMS) medical director of the most recent placement of the device within a reasonable period of time after the device was placed; (2) properly maintain and test the device; and (3) 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 agent.

Further, this section prohibits an insurer from requiring a community association organized under chs. 617, 718, 719, 720, 721, or 723, F.S., that acquires an AED to purchase medical malpractice liability coverage as a condition of issuing any other coverage carried by the association. It also provides that an insurer may not exclude damages resulting from the use of such device from coverage under a general liability policy issued to an association.

Section 4. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may assist prospective purchasers and lienholders attempting to obtain information that is not required by law, but necessary to a transaction, that is currently

¹³ These chapters govern not for profit corporations, condominiums, cooperatives, homeowners' associations, vacation clubs and timeshares, and mobile home parks, respectively.

not being provided by a condominium association or its agent because of liability concerns.

The bill may result in less litigation by providing immunity for a condominium association or its authorized agent who provides information to a prospective purchaser or lienholder which is not required by law.

Insurance companies may experience higher costs associated with liability exposure because of the prohibition against the exclusion of damages that result from the use of an AED from coverage under a general liability policy. Also, there may be higher costs that result from an association not having to purchase medical malpractice liability coverage. However, at least one insurance company has indicated that liability exposure is even higher for public access sites that do not have an AED on the premises to treat sudden cardiac arrest.

The associations affected by the bill may experience a reduction in the cost of insurance because the bill prohibits insurers from requiring the associations to purchase medical malpractice liability coverage in addition to a general liability policy. Also, these associations may experience a reduction in liability exposure because of this prohibition against excluding certain damages from coverage under a general liability policy.

C. Government Sector Impact:

The bill does not have any fiscal impact on local governments or the Department of Business and Professional Regulation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.