

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: SB 978

INTRODUCER: Senator Geller

SUBJECT: Automated External Defibrillators/Business Entities

DATE: January 31, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill authorizes any business entity defined under s. 606.03, F.S., to have an automated external defibrillator (AED) on the premises. Section 606.03, F.S., defines “business entity” to mean any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in Florida. The business entity must ensure that employees are properly trained in the operation and maintenance of the AED. The training must be provided by the local emergency medical services provider at no cost to the business. The use of AEDs by employees must be covered under the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act.

The bill exempts the cost of an AED purchased by a business entity from sales tax.

This bill amends sections 401.2915 and 212.08, Florida Statutes.

II. Present Situation:

Cardiac Arrest/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. 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 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.

Florida Business Coordination Act

Chapter 606, F.S., may be cited as the “Florida Business Coordination Act.” The intent of the act is to establish a master business index within the Department of State and to facilitate a reporting mechanism, which consolidates and coordinates business entity licensing and reporting requirements whenever possible. Section 606.03, F.S., defines “business entity” to mean any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in 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:

Section 1. Amends s. 401.2915, F.S., to provide that any business entity may have an AED on the premises and must ensure that employees are properly trained in the operation and maintenance of the AED. The training must be provided by the local emergency medical services provider at no cost to the business. The use of AEDs by employees must be covered under the provisions of ss. 768.13 and 768.1325, F.S., (the Good Samaritan Act and the Cardiac Arrest Survival Act, respectively).

Section 2. Amends s. 212.08(7), F.S., to exempt the cost of an AED purchased by a business entity as defined in s. 606.03, F.S., from sales tax.

Section 3. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the State Constitution provides that “[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority of the governing body of such county or municipality;

the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.” The bill requires local emergency medical services providers (governments or entities with which local governments contract to provide such services) to provide AED training to the employees of business entities with no cost to the business entity. Local governments will also incur costs for their vicarious liability, which results from any harm due to the training of business entity employees, and will incur the costs of any litigation or risk management activities that the providers organize to manage their risk in this endeavor.² To the extent that local governments will be required to spend funds or to take action, requiring the expenditure of funds the bill must comply with the requirements of s. 18, Art. VII of the State 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:

The Revenue Estimating Conference has not yet considered the impact of Senate Bill 976. For similar legislation that was filed last year, the Revenue Estimating Conference estimated that the bill would result in a recurring loss of \$1.7 million of general revenue funds annually in state sales tax and a recurring loss of \$500,000 in local sales tax collected for an annual recurring loss of \$2.2 million.

B. Private Sector Impact:

Business entities 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:

Local emergency medical services providers will bear costs associated with training the employees of any business entity that acquires an AED. Such local emergency medical services providers will also incur costs for their vicarious liability, which results from any harm due to the training of business entity employees, and will incur the costs of any

² See Black's Law Dictionary (7th ed. 1999) which defines vicarious liability as liability that a supervisory party bears for the actionable conduct of a subordinate or associate because of the relationship between the two parties.

litigation or risk management activities that the providers organize to manage their risk in this endeavor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
