

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Use of an AED

The American Heart Association (AHA) describes cardiac arrest as “the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease. It’s also called sudden cardiac arrest or unexpected cardiac arrest. Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear.”

According to the AHA, brain death and permanent death start to occur within four to six minutes after someone experiences cardiac arrest. 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 process called defibrillation. The AHA states that a victim’s chances of survival are reduced by seven to ten percent with every passing minute without cardiopulmonary resuscitation and defibrillation, and few attempts at resuscitation succeed after ten minutes.

An automated external defibrillator (AED) is an electronic device that can shock a person’s heart back into rhythm when he or she is having a cardiac arrest. The AHA estimates that more than 95 percent of cardiac arrest victims die before reaching the hospital. In situations where defibrillation is provided within five to seven minutes, the survival rate from sudden cardiac arrest can be up to 49 percent.

Section 401.2915, Florida Statutes, requires any person who uses an AED to:

- Obtain appropriate training, including completion of a course in cardiopulmonary resuscitation or completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED; and
- Activate the emergency medical services system as soon as possible upon use of the AED.

In addition, this section encourages any person or entity in possession of an AED to register the existence and location of the AED with the local emergency medical services medical director.

Tort Liability

Section 768.13, F.S., the Good Samaritan Act, among other provisions, provides immunity from any civil damages for a person who renders emergency care, without objection of the injured victim, as long as the person has acted as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from civil liability for a person who uses or attempts to use, without the objection of the victim, an AED in a perceived medical emergency. In addition, any person who acquired the device, including a community association, is immune from civil liability, if the harm was not due to the failure of the acquirer of the AED to:

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

- Provide adequate 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 victim, except that the training requirement does not apply if:
 - The employee or agent was not someone who would have been reasonably expected to use the device.
 - The period of time elapsing between the person's employment date and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm was not a reasonably sufficient period in which to provide the training.

However, s. 768.1325(4), F.S., states that the immunity does not apply to a person if:

- The harm 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 their license or certification and within the scope of their employment or agency;
- The person is a hospital, clinic, or other health care 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;
- The person is an acquirer of the AED who leased the device to a health care entity 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; or
- The person is the manufacturer of the device.

Effect of Proposed Changes

House Bill 243 broadens the scope of those who are required to receive training in the use of an AED by removing provisions requiring a person who uses an AED to obtain proper training that includes demonstrated proficiency in the use of an AED and, instead, requiring any "person or entity in possession" of an AED to 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 bill encourages a person or entity in possession of an AED to notify, rather than register with, the local emergency medical services medical director of the location of the device.

The bill broadens the civil immunity provided under the Cardiac Arrest Survival Act, s. 768.1325(3), F.S., by first removing the requirement that the victim of the perceived medical emergency not object to the use of the AED. Second, the bill removes several provisions that specify instances in which the acquirer of the AED is not immune from civil liability. These provisions specify that the harm must not be due to the failure of acquirer of the device to:

- Notify the local emergency medical services director of the most recent placement of the device.
- Properly maintain and test the device; or
- Provide adequate 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 victim, except that such requirement of training does not apply if:
 - The employee or agent was not someone who would have been reasonably expected to use the device.
 - The period of time elapsing between the person's employment date and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm was not a reasonably sufficient period in which to provide the training.

However, the bill does not amend s. 768.1325(4), F.S., which, as previously discussed, provides additional instances in which a person is not immune from civil liability.

C. SECTION DIRECTORY:

Section 1. Amends s. 401.2915, F.S., revising provisions relating to maintenance and training requirements and notice to the local emergency medical services medical director.

Section 2. Amends s. 768.1325, F.S., revising requirements for civil immunity for use or attempted use of a defibrillator on a victim of a perceived medical emergency.

Section 3. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is a potential impact to private businesses that possess an AED. The bill requires these entities to provide training to any employees or agents who are reasonably expected to be users of the AED. The exact economic impact to the private sector is unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The intention of this bill is to limit liability to Good Samaritans trying to resuscitate individuals using an Automated External Defibrillator (AED) which will encourage more usage, thus saving more lives.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 22, 2008, the Health Quality Committee adopted one amendment to the bill. The amendment removes the reference to "the American Heart Association or the American Red Cross, or a substantially similar program from another provider" when directing a person or entity in possession of an AED to provide CPR and AED proficiency training to its employees or agents.

The bill was reported favorably with recommended Council Substitute.