

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 243 Automated External Defibrillators
SPONSOR(S): Healthcare Council; Anderson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Quality</u>	<u>11 Y, 0 N</u>	<u>Owen</u>	<u>Lowell</u>
2) <u>Healthcare Council</u>	<u>17 Y, 0 N, As CS</u>	<u>Owen</u>	<u>Gormley</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

An Automated External Defibrillator (AED) is a small, lightweight device used to assess a person's heart rhythm and, if necessary, administer an electronic shock to restore a normal heart rhythm in a victim of cardiac arrest.

The bill encourages, rather than requires, persons who use an AED to obtain appropriate training and encourages persons who possess an AED to notify, rather than register with, the local emergency medical services director of the location of the device.

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 to be eligible to obtain immunity. Finally, the bill expands the situations in which providing training is not required to obtain immunity by adding a device that is equipped with audible, visual, or written instructions on its use.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2008.

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

The bill amends s. 401.2915, F.S., to revise the requirements for the use of an 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 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 a condition of immunity that requires any person who acquires an AED and makes it available for use to notify the local emergency medical services director of the most recent placement of the device. The bill also modifies an additional condition of immunity that requires a person who acquires an AED and makes it available for use to provide appropriate training. The bill 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.

C. SECTION DIRECTORY:

Section 1. Amends s. 401.2915, F.S., relating to automated external defibrillators.

Section 2. Amends s. 768.1325, F.S., relating to the Cardiac Arrest Survival Act; immunity from civil liability.

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.

On March 25, 2008, the Healthcare Council adopted one substitute amendment to the amendment adopted on January 22, 2008. The strike-all amendment:

- Revises the requirements for the use of an AED to encourage, rather than require, users of an AED to obtain appropriate training;
- Revises the requirements for obtaining immunity from civil liability by requiring a person to both acquire *and* make the AED available for use to claim immunity, if the other statutory conditions are satisfied; and
- Deletes the requirement that a person who acquires and makes an AED available must notify the local emergency services director of the most recent placement of the device to be eligible for immunity; and
- Modifies the requirement that a person who acquires and 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.

The bill was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.