By the Committee on Judiciary and Senator Sullivan

308-1876-01

A bill to be entitled

An act relating to automated external defibrillators; creating s. 768.1325, F.S.; creating the Cardiac Arrest Survival Act; providing definitions; providing immunity from liability for certain persons who use automated external defibrillators under certain circumstances; providing exceptions; repealing s. 768.13(4), F.S., relating to the Good Samaritan Act, to delete reference to the use of an automatic external defibrillator in certain emergency situations; amending s. 401.2915, F.S.; revising a provision of law relating to automatic external defibrillators to conform to the act; directing the Department of Health, with assistance from the Department of Management Services, to adopt rules to establish guidelines on the appropriate placement and deployment of automated external defibrillator devices in certain buildings owned or leased by the state; specifying factors to be considered in device placement and deployment; providing an effective date.

WHEREAS, over 700 lives are lost every day to sudden cardiac arrest in the United States alone, and

WHEREAS, two out of every three sudden cardiac deaths occur before a victim can reach a hospital, and

WHEREAS, more than 95 percent of these cardiac arrest victims will die, many because of the lack of readily available lifesaving medical equipment, and

WHEREAS, with current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation, and

WHEREAS, once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chances of survival by 10 percent, and

WHEREAS, most cardiac arrests are caused by an abnormal heart rhythm called ventricular fibrillation, which occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body, and

WHEREAS, communities that have implemented programs ensuring widespread access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have dramatically improved the survival rates from cardiac arrest, and

WHEREAS, automated external defibrillator devices have been demonstrated to be safe and effective, even when used by laypersons, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required, and

WHEREAS, increased public awareness regarding automated external defibrillator devices will greatly facilitate their adoption, and

WHEREAS, limiting the liability of users and acquirers of automated external defibrillator devices in emergency situations may encourage the use of the devices and result in saved lives, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.1325, Florida Statutes, is created to read:

768.1325 Cardiac Arrest Survival Act; immunity from civil liability.--

(1) This section may be cited as the "Cardiac Arrest Survival Act."

(2) As used in this section:

(a) "Perceived medical emergency" means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(b) "Automated external defibrillator device" means a defibrillator device that:

1. Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act.

2. Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the use of the device whether defibrillation should be performed.

3. Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

4. In the case of a defibrillator device that may be operated in either an automatic or a manual mode, is set to operate in the automatic mode.

(c) "Harm" means damage or loss of any and all types, including, but not limited to, physical, nonphysical,

economic, noneconomic, actual, compensatory, consequential, incidental, and punitive damages or losses.

(3) Notwithstanding any other provision of law to the contrary, and except as provided in subsection (4), any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device, or for any act or failure to act in providing or arranging further medical treatment. In addition, any person who acquired the device is immune from such liability if the harm was not due to the failure of such acquirer of the device to:

(a) 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;

(b) Properly maintain and test the device; or

(c) 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 victim, except that such requirement of training does not apply if:

1. The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

2. 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 device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

(4) Immunity under subsection (3) does not apply to a person if:

(a) The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(b) 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;

(c) The person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device 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 device while acting within the scope of the employment or agency of the employee or agent; or

(d) The person is the manufacturer of the device.

(5) This section does not establish any cause of action. This section does not require that an automated external defibrillator device be placed at any building or other location or require an acquirer to make available on its premises one or more employees or agents trained in the use of the device.

Section 2. Subsection (4) of section 768.13, Florida Statutes, is repealed.

Section 3. Section 401.2915, Florida Statutes, is amended to read:

401.2915 Automated ~~Automatic~~ external defibrillators.--It is the intent of the Legislature that an

automated ~~automatic~~ external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to ensure public health and safety:

(1) All persons who ~~have access to or~~ use an automated ~~automatic~~ external defibrillator 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 automated ~~automatic~~ external defibrillator;

(2) Any person or entity in possession of an automated ~~automatic~~ external defibrillator is encouraged to register with the local emergency medical services medical director the existence and location of the automated ~~automatic~~ external defibrillator; and

(3) Any person who uses an automated ~~automatic~~ external defibrillator is required to activate the emergency medical services system as soon as possible upon use of the automated ~~automatic~~ external defibrillator.

Section 4. By January 1, 2003, the Secretary of Health shall adopt rules to establish guidelines on the appropriate placement of automated external defibrillator devices in buildings or portions of buildings owned or leased by the state, and shall establish, by rule, recommendations on procedures for the deployment of automated external defibrillator devices in such buildings in accordance with the guidelines. The Secretary of Management Services shall assist the Secretary of Health in the development of the guidelines. The guidelines for the placement of the automated external defibrillators shall take into account the typical number of employees and visitors in the buildings, the extent of the

need for security measures regarding the buildings, special circumstances in buildings or portions of buildings such as high electrical voltages or extreme heat or cold, and such other factors as the secretaries determine to be appropriate. The Secretary of Health's recommendations for deployment of automated external defibrillators in buildings or portions of buildings owned or leased by the state shall include:

(1) A reference list of appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation;

(2) The extent to which such devices may be used by laypersons;

(3) Manufacturer-recommended maintenance and testing of the devices; and

(4) Coordination with local emergency medical services systems regarding the incidents of use of the devices.

In formulating these guidelines and recommendations, the secretary may consult with all appropriate public and private entities, including national and local public health organizations that seek to improve the survival rates of individuals who experience cardiac arrest.

Section 5. This act shall take effect October 1, 2001.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR SB 1966

Provides that s. 768.1325, F.S., may be cited as the "Cardiac Arrest Survival Act".

Changes the terminology from "automatic external defibrillator device" to "automated external defibrillator device" throughout the bill.

Limits the bill's immunity provisions so that manufacturers of automated external defibrillator devices are excluded from immunity from civil liability.

Requires the secretary of health to adopt rules that establish guidelines on the placement, and procedures for deployment, of automated external defibrillator devices in buildings owned or leased by the state.