

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 493
SPONSOR(S): Gardiner
TIED BILLS:

Automated External Defibrillators

IDEN./SIM. BILLS: SB 1168, SB 2128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>7 Y, 1 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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 electric shock to restore a normal rhythm in victims of cardiac arrest.

The bill specifies that a person who "possesses" an AED must:

1. properly maintain and test the AED and to provide employee training in cardiopulmonary resuscitation and AED proficiency by the American Heart Association, the American Red Cross, or a similar organization if an employee of the person possessing the AED would be expected to be in a position to use the AED on a person thought to be having a heart attack;
2. notify [rather than register] the location of the AED with the local emergency services medical director.

The bill removes from current law several express provisions shielding a person who acquires an AED from civil liability when the harm caused to someone did not result from a failure to comply with the statutory standards of notice of placement, testing/maintenance, and appropriate training. However, the acquirer of the AED would remain immune from liability under the more general standard of protection currently provided to the user of an AED; that is, both the acquirer of the device and user would only be liable for harm "caused by that person's willful criminal conduct, gross negligence, reckless disregard or misconduct, or a flagrant indifference to the rights or safety of the victim who was harmed."

The bill creates a sales tax exemption on AED purchases by a business for use on the premises of the owner.

The bill provides an effective date of July 1, 2007.

Fiscal

The most recent Revenue Estimating Conference (REC) numbers available are from Fiscal Year 2004-2005 and indicate a combined state and local tax revenue reduction of approximately \$2.4 million for Fiscal Year 2006-07. It is not expected that the FY 2004-2005 REC impact would have decreased; rather, the negative impact to General Revenue may be even greater than the previously estimated \$2.4 million.

See III. D. of this analysis: STATEMENT OF THE SPONSOR

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Automated external defibrillator

An AED is defined as a lifesaving 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 without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

An AED is a small, lightweight device used to assess a person's heart rhythm. If necessary, it administers an electric shock to restore a normal rhythm in victims of sudden cardiac arrest. Built-in computers assess the patient's heart rhythm, judge whether defibrillation is needed, and then administer an appropriate level of shock. Audible or visual prompts guide the user through the process.

Section 401.2915, F.S., specifies that it is the intent of the Legislature that an AED may be used by any person for the purpose of saving the life of a person in cardiac arrest.

Training

The statement of intent of s. 401.2915, F.S., also specifies "the Legislature intends to encourage training in lifesaving first aid and set standards for and encourage the use of [an AED]." This section provides that in order to ensure public health and safety a person who "uses" an AED must:

1. 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 and
2. activate the emergency medical services system as soon as possible upon use of an AED.

This section also provides that a person who "possesses" an AED is encouraged to register with the local emergency medical services director of the existence and location of the AED.

The bill

removes provisions 1. and 2., above, regarding the "use" of an AED and specifies that the "possession" of an AED requires that person or other "entity" to:

1. properly maintain and test the AED and
2. provide "employee" training in cardiopulmonary resuscitation and AED proficiency by the American Heart Association, the American Red Cross, or a similar organization if the employee

would be reasonably expected to be in a position to use the AED on a person thought to be having a heart attack;

The bill

encourages a person who possesses an AED to notify [rather than register] the location of the AED with the local emergency services medical director.

Tort Liability

Section 401.2916, F.S., requires the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device of the scope and limitations of the immunity from liability provided under s. 768.1325, F.S.

Section 768.1325 (3), F.S., provides, in part, that a person who “acquires” an AED is immune from civil liability if the harm was not a result of the failure of the person who acquires the AED to:

1. 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;
2. properly maintain and test the device; or
3. provide appropriate training in the use of the device to an employee or agent of the person who acquires the AED 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 an employee or agent who would have been reasonably expected to use the device 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 device and 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.

The bill

removes the provisions of 1., 2., and 3., above, from s. 768.1325(3), F.S. The bill removes from current law several express provisions shielding a person who acquires an AED from civil liability when the harm caused to someone did not result from a failure to comply with the statutory standards of notice of placement, testing/maintenance, and appropriate training. However, the acquirer of the AED would remain immune from liability under the more general standard of protection currently provided to the user of an AED; that is, both the acquirer of the device and user would only be liable for harm “caused by that person’s willful criminal conduct, gross negligence, reckless disregard or misconduct, or a flagrant indifference to the rights or safety of the victim who was harmed.”

Sales tax exemption

The state sales tax rate of 6 percent is typically imposed on the cost or price of tangible personal property or a service at the moment it is sold to a purchaser. The seller or dealer is generally required to collect the sales tax from the purchaser at the time of the sale. The dealer must remit the sales taxes collected to the Department of Revenue.

The bill

creates a sales tax exemption on AED purchases when bought by a business for use on the premises of the owner.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.08(2), F.S., to exempt an AED purchase by a business from application of the sales tax.

Section 2. Amends s. 401.2915, F.S, to require maintenance and testing of an AED and require appropriate training.

Section 3. Amends s. 768.1325, F.S., to revise civil liability requirements for use of an AED.

Section 4. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The most recent impact figures estimated a \$1.9 million reduction in state revenues for FY 2006-2007 as a result of the tax exemption proposed in this legislation.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The most recent impact figures estimated a \$0.5 million reduction in local sales tax revenues for FY 2006-2007 as a result of the tax exemption proposed in this legislation.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It cannot be determined how the proposed sales tax exemption will affect the purchase of AED units. However, increased sales will positively impact private sector revenue.

D. FISCAL COMMENTS:

The best fiscal impact information available is from the FY 2004-2005 REC, which indicated that the proposed legislation would result in decreased statewide revenue collections of \$2.4 million in FY 2006-2007. That impact has likely increased in the past two years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take actions 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:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

D. STATEMENT OF THE SPONSOR

The intent of HB 493 is to encourage the purchase and use of automated external defibrillators in our communities by:

- Expanding current sales tax exemptions to include automated external defibrillators to lessen expenses incurred by their purchase; and
- Expanding immunity for purchasers of automated external defibrillators when used in a reasonable manner, by eliminating specific conditions required to obtain immunity.

To clarify the intent of the bill, however, I am presenting a strike all amendment that provides the following:

- Expands the sales tax exemption to anyone who wishes to purchase an automated external defibrillator, not just businesses; and
- Preserves current law regarding immunity from civil liability.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, the Committee on Business Regulation adopted a strike all amendment and passed the bill out of committee. The amendment:

expands the sales tax exemption to anyone who wishes to purchase an automated external defibrillator, not just businesses;

preserves current law regarding immunity from civil liability; and

retains provisions of the bill requiring a person who possesses an AED to provide maintenance and testing and requiring appropriate training.