

SUBJECT: Liability immunity for using automated external defibrillator devices

COMMITTEE: Public Health — favorable, with amendment

VOTE: 7 ayes — Gray, Coleman, Capelo, Glaze, Maxey, McClendon, Uresti

0 nays

2 absent — Delisi, Hilderbran

WITNESSES: *(On original version:)*

For — Michael D. Berg, Austin/Travis EMS System; Ward Casscells, M.D., and James H. Duke, Jr., M.D., American Heart Association; Bill Clayton, Hewlett Packard; Pamiel Johnson Gaskin; Sallie Johnson; Esther Tangen, American Association of Retired People; Craig Alan Walker, Texas Ambulance Association

Against — Donald J. Bowen, Texas Trial Lawyers Association

BACKGROUND: The American Heart Association estimates that 19,000 Texans die every year of sudden cardiac arrest outside of hospitals. Half of those people die from ventricular fibrillation, a specific type of heartbeat irregularity during cardiac arrest.

Automated external defibrillators are devices that monitor the heart and shock a patient to restart the heart when its electrical activity has stopped. These devices differ from the defibrillators that doctors and paramedics use in that they are semi-automated. They can assess a patient's heartbeat and give instructions if an electric shock is needed. An automated external defibrillator does not require the user to interpret the patient's cardiac rhythm and will not discharge electricity unless it detects ventricular fibrillation.

DIGEST: HB 580, as amended, would add to Health and Safety Code, Subtitle B, Title 9 (the Good Samaritan Law) a new Chapter 779 on automated external defibrillators. The bill would exempt from civil liability a physician who authorized the acquisition of an automated external defibrillator, a person who provided training in the use of a defibrillator, and the person or entity responsible for the defibrillator unless the act performed with the device was

wilfully or wantonly negligent. The person or entity responsible for the defibrillator would have to follow all requirements outlined in the bill to be immune from liability.

HB 580 also would amend Civil Practice and Remedies Code, sec. 74.001(a), which exempts from liability a person who in good faith administers emergency care outside of a hospital, to include in the exemption the use of an automated external defibrillator.

HB 580 would require a person or entity that acquired an automated external defibrillator to ensure that each user of the device received standard training in cardiopulmonary resuscitation and in the use of an automated external defibrillator. A licensed physician would have to be involved in the training to ensure compliance. The Texas Department of Health (TDH) would have to give or approve the training and consider the national guidelines for automated external defibrillator training approved by the American Heart Association, the American Red Cross, or another nationally recognized association.

HB 580 would require a person or entity that owned or leased an automated external defibrillator to maintain and test the device according to the manufacturer's guidelines. A person or entity that used an automated external defibrillator in providing care to a person in cardiac arrest would have to "promptly notify" the local emergency medical services (EMS) provider of the use of the device. A person or entity that obtained an automated external defibrillator would have to notify the local EMS provider of the existence, location, and type of device.

HB 580 would require each person or entity that acquired an automated external defibrillator, other than a licensed practitioner, to ensure that the device had been prescribed by a licensed physician. If a person acquired the device for the purpose of sale or lease, HB 580 would require the person to comply with Health and Safety Code, sec. 483.041, which regulates possession of a dangerous drug.

HB 580 would exempt hospitals licensed under Chapter 241 of the Health and Safety Code from compliance with this chapter.

HB 580 would take effect September 1, 1999, and would apply to a person or

entity that possessed an automated external defibrillator on that date or that acquired one of the devices on or after that date.

SUPPORTERS
SAY:

Recent technology has automated external defibrillators so that they are relatively easy to use for people who have at least minimal training. This type of defibrillator gives instructions and will not deliver an electric shock unless it detects the presence of ventricular fibrillation.

HB 580 would shield from liability persons who use automatic defibrillators at the scene of an emergency. “Good Samaritans” who take steps to render aid should be praised for trying to save lives, not penalized with a lawsuit.

The bill would encourage businesses to obtain these devices for on-site emergency situations. Experts believe that the number of deaths from cardiac arrest could be reduced greatly if the defibrillator were more readily available. However, under current law, businesses are hesitant to implement the device because they fear being sued.

HB 580 would require a person who obtains an automated defibrillator — most likely a business owner — to comply with all requirements in the bill to receive immunity from liability. This would include ensuring that each user of the automated defibrillator received standard training and maintaining and testing the defibrillator according to the manufacturer’s guidelines.

OPPONENTS
SAY:

Defibrillators are an important life-saving device and should be more widely available. However, they are still complicated medical devices that deliver electrical shocks to restart human hearts. The federal Food and Drug Administration recognizes automated external defibrillators as “prescription devices” because they are still complex enough to require the supervision of a physician.

HB 580 would grant immunity from liability too broadly. Immunity should be granted only to those who are trained and who use the machine in accordance with the training standards. Nineteen states have implemented similar proposals and all have included this provision. The current version of the bill would provide immunity to anyone who used the device “in good faith” as well as to those with training. Immunity should not be granted without the responsibility that comes with using this medical device.

Training for emergency situations teaches the “ABC steps” — airway, breathing, cardiac. If defibrillators were more prevalent, untrained persons in an emergency situation would be more likely to skip the first two steps and grab the device. A defibrillator depends on proper placement on a patient’s body to function correctly. Using the device on a person who does not have ventricular fibrillation or misusing it could result in injury or death.

The bill should mandate recertification for continued use of the device. As technology develops and American Heart Association and American Red Cross standards change, training standards should reflect those changes.

HB 580 would not provide a timeline in which the owners of automated external defibrillators would have to notify local EMS providers that they possessed the device, the type of device, or its location. Nor would the bill require the EMS provider to record this information.

NOTES:

The committee amendments would:

- ! require a person or entity that acquired an automated external defibrillator to ensure that the device had been prescribed by a licensed physician, and if the person acquired the device for the purpose of sale or lease, to comply with Health and Safety Code regulations on possession of a dangerous drug;
- ! exempt licensed hospitals from this chapter;
- ! require TDH to conduct or approve training on automated external defibrillators and to consider the training guidelines of the American Heart Association, American Red Cross, or another nationally recognized association;
- ! change “person” to “person or entity” in all references to those who acquired automated external defibrillators; and
- ! require a person who used an automatic external defibrillator to “promptly notify” rather than “contact” the local EMS provider.

A committee amendment also would change the section on liability exemptions to say that persons who acquired an automated defibrillator would

be exempt from liability only if they followed all the requirements in this chapter.

The companion bill, SB 122 by Nelson, passed the Senate by voice vote on April 7.