SUBJECT: Liability immunity for using automated external defibrillator devices

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Gray, Coleman, Glaze, Maxey, McClendon, Uresti

0 nays

3 absent — Capelo, Delisi, Hilderbran

SENATE VOTE: On final passage, April 7 — voice vote

WITNESSES: *(On House companion bill, HB 580:)*
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. Half of those people die from ventricular fibrillation, a specific type of heartbeat irregularity.

Automated external defibrillators are devices that monitor the heart and shock a patient to restart the heart when 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 the device detects ventricular fibrillation.

The Civil Practice and Remedies Code, sec. 74.001(a), exempts from liability a person who in good faith administers emergency care outside of a hospital.

DIGEST:

CSSB 122 would add to Health and Safety Code, Subtitle B, Title 9 (the Good Samaritan Law) a new Chapter 779 on use of 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 a person or entity that acquired the defibrillator and met the requirements of this bill. CSSB 122 also would amend Civil Practice and Remedies Code, sec. 74.001(a), to exempt from liability a person who in good faith administered emergency care using an automated external defibrillator outside of a hospital.

Wilfully or wantonly negligent conduct involving the device would not be exempted from liability under the bill. Any person or entity acquiring the device and negligently failing to comply with the requirements of the bill would be liable for civil damages.

CSSB 122 would require defibrillator owners to make sure that all users received standard training in cardiopulmonary resuscitation and in use of the defibrillator. The devices would have to be prescribed or delivered by a licensed practitioner. A licensed physician would have to be involved in the training those who would use the device. Training would have to be provided or approved by the Texas Department of Health, considering the training guidelines of the American Heart Association, the American Red Cross, or another nationally recognized association.

CSSB 122 would require individuals or entities with automated external defibrillators to:

- "promptly notify" the local emergency medical services (EMS) provider when the device had been used in providing care to a person in cardiac arrest;
- notify the local EMS provider of the existence, location, and type of device upon acquiring the device; and
- maintain and test the device according to the manufacturer's guidelines, whether it was owned or leased.

If a person acquired the device for the purpose of sale or lease, CSSB 122 would require the person to comply with Health and Safety Code, sec. 483.041, which regulates possession of a dangerous drug.

CSSB 122 would exempt hospitals licensed under Chapter 241 of the Health and Safety Code from compliance with this chapter.

The bill 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:

CSSB 122 would shield from liability persons who use automated external 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 defibrillators were more readily available. However, under current law, businesses are hesitant to provide the devices because they fear being sued.

Automated external defibrillators are relatively easy to use by people who have minimal training. This type of defibrillator gives instructions and will not deliver an electric shock unless it detects the presence of ventricular fibrillation.

CSSB 122 would require a person who obtained an automated defibrillator — including 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, plus regularly 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.

CSSB 122 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" — checking to see if the airway clear, checking breathing, and then checking cardiac function. 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 the device, could result in injury or death.

The bill should mandate recertification for continued use of the device. As technology develops and national standards change, training standards should reflect those changes.

SB 122 would not provide a time line by 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 substitute would:

- state that any person or entity that acquired an automated external defibrillator and negligently failed to comply with requirements in this bill would be liable for civil damages;

- require a person or entity that acquired an automated external defibrillator to ensure that the device had been prescribed by a licensed practitioner;

- 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.

The companion bill, HB 580 by Janek et al., almost identical to CSSB 122, passed the House on April 12 and was reported favorably, without amendment, by the Senate Health Services Committee on May 14.