

AMENDED IN SENATE APRIL 27, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 658

Introduced by Senator Hill

February 27, 2015

An act to amend Section 1714.21 of the Civil Code, and to amend Section 1797.196 of the Health and Safety Code, relating to automated external defibrillators.

LEGISLATIVE COUNSEL'S DIGEST

SB 658, as amended, Hill. Automated external defibrillators.

Existing law exempts from civil liability any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an ~~an automatic~~ *automated* external defibrillator (AED) at the scene of an emergency, except in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment. Existing law also exempts from civil liability a person or entity that acquires an AED for emergency use, a physician who is involved with the placement of the AED, and any person or entity responsible for the site where the AED is located if specified conditions are met, including maintenance and regular testing of the AED and having a written plan that describes the procedures to be followed in case of an emergency that may involve the use of the AED.

This bill would remove the conditions required for the exemption from civil liability of a person or entity that acquires an AED for emergency use and any person or entity responsible for the site where the AED is located. The bill would provide an exemption from civil liability for a physician and surgeon or other health care professional

that is involved in the selection, placement, or installation of an AED. The bill would require a person or entity, other than a health facility as defined, that acquires an AED to, among other things, comply with specified regulations for the placement of the device and ensure that the AED is maintained and ~~annually tested.~~ *tested as specified.* The bill *would require a building owner to annually notify the tenants as to the location of the AED units and provide information to tenants about who they can contact if they want to voluntarily take AED or CPR training and post instructions for the use of the AED.* The bill would also specify that a medical director or physician and surgeon is not required to be involved in the acquisition or placement of an AED. The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1714.21 of the Civil Code is amended
2 to read:
3 1714.21. (a) For purposes of this section, the following
4 definitions shall apply:
5 (1) “AED” or “defibrillator” means an automated ~~or automatic~~
6 external defibrillator.
7 (2) “CPR” means cardiopulmonary resuscitation.
8 (b) Any person who, in good faith and not for compensation,
9 renders emergency care or treatment by the use of an AED at the
10 scene of an emergency is not liable for any civil damages resulting
11 from any acts or omissions in rendering the emergency care.
12 (c) A person or entity who provides CPR and AED training to
13 a person who renders emergency care pursuant to subdivision (b)
14 is not liable for any civil damages resulting from any acts or
15 omissions of the person rendering the emergency care.
16 (d) (1) A person or entity that acquires an AED for emergency
17 use pursuant to this section is not liable for any civil damages
18 resulting from any acts or omissions in the rendering of the
19 emergency care by use of an AED.
20 (2) A physician and surgeon or other health care professional
21 that is involved in the selection, placement, or installation of an
22 AED pursuant to Section 1797.196 of the Health and Safety Code

1 is not liable for civil damages resulting from acts or omissions in
2 the rendering of emergency care by use of that AED.

3 (e) The protections specified in this section do not apply in the
4 case of personal injury or wrongful death that results from the
5 gross negligence or willful or wanton misconduct of the person
6 who renders emergency care or treatment by the use of an AED.

7 (f) This section does not relieve a manufacturer, designer,
8 developer, distributor, installer, or supplier of an AED or
9 defibrillator of any liability under any applicable statute or rule of
10 law.

11 SEC. 2. Section 1797.196 of the Health and Safety Code is
12 amended to read:

13 1797.196. (a) For purposes of this section, “AED” or
14 “defibrillator” means an automated—~~or automatic~~ external
15 defibrillator.

16 (b) (1) In order to ensure public safety, a person or entity that
17 acquires an AED shall do all of the following:

18 (A) Comply with all regulations governing the placement of an
19 AED.

20 (B) Notify an agent of the local EMS agency of the existence,
21 location, and type of AED acquired.

22 (C) Ensure that the AED is maintained and—~~annually~~ tested
23 according to the operation and maintenance guidelines set forth
24 by the manufacturer.

25 (D) *Ensure that the AED is tested at least annually and after*
26 *each use.*

27 (2) *When an AED is placed in a building, the building owner*
28 *shall do both of the following:*

29 (A) *At least once a year, notify the tenants as to the location of*
30 *the AED units and provide information to tenants about who they*
31 *can contact if they want to voluntarily take AED or CPR training.*

32 (B) *Next to the AED, post instructions, in no less than 14-point*
33 *type, from the manufacturer on how to use the AED.*

34 ~~(2)~~

35 (3) A medical director or other physician and surgeon is not
36 required to be involved in the acquisition or placement of an AED.

37 (c) (1) When an AED is placed in a public or private K–12
38 school, the principal shall ensure that the school administrators
39 and staff annually receive a brochure, approved as to content and
40 style by the American Heart Association or the American Red

1 Cross, that describes the proper use of an AED. The principal shall
2 also ensure that similar information is posted next to every AED.
3 The principal shall, at least annually, notify school employees as
4 to the location of all AED units on the campus. The principal shall
5 designate the trained employees who shall be available to respond
6 to an emergency that may involve the use of an AED during normal
7 operating hours. As used in this subdivision, “normal operating
8 hours” means during the hours of classroom instruction and any
9 school-sponsored activity occurring on school grounds.

10 (2) This section does not prohibit a school employee or other
11 person from rendering aid with an AED.

12 (d) A manufacturer or retailer supplying an AED shall provide
13 to the acquirer of the AED all information governing the use,
14 installation, operation, training, and maintenance of the AED.

15 (e) A violation of this section is not subject to penalties pursuant
16 to Section 1798.206.

17 (f) Nothing in this section or Section 1714.21 of the Civil Code
18 may be construed to require a building owner or a building manager
19 to acquire and have installed an AED in any building.

20 (g) For purposes of this section, “local EMS agency” means an
21 agency established pursuant to Section 1797.200.

22 (h) This section does not apply to facilities licensed pursuant
23 to subdivision (a), (b), (c), or (f) of Section 1250.

SENATE COMMITTEE ON HEALTH

Senator Ed Hernandez, O.D., Chair

BILL NO: SB 658
AUTHOR: Hill
VERSION: April 6, 2015
HEARING DATE: April 8, 2015
CONSULTANT: Vince Marchand

SUBJECT: Automated external defibrillators

SUMMARY: Repeals various requirements relating to persons or entities who acquire automated external defibrillators (AEDs), including requirements that employees complete training and that the AEDs be checked every 30 days, and makes the civil liability immunity in existing law for persons or entities who acquire an AED no longer conditional upon meeting specified requirements.

Existing law:

1. Provides, in the Civil Code, immunity from civil liability for the acts or omissions of any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency.
2. Provides, in the Civil Code, immunity from civil liability for any acts or omissions in the rendering of emergency care by the use of an AED for a person or entity that acquires an AED for emergency use, if that person or entity has complied with certain specified requirements in the Health and Safety Code.
3. Provides, in the Civil Code, immunity from civil liability for a physician who is involved with the placement of an AED, and any person or entity responsible for the site where an AED is located, if that physician, person or entity has complied with all of the requirements in specified provisions of the Health and Safety Code that apply to that physician, person or entity.
4. Provides, in the Health and Safety Code, immunity from civil liability for a person or entity that acquires an AED for any acts or omissions in the rendering of emergency care if that person or entity meets various requirements, including:
 - a. Ensures that the AED is checked for readiness after each use and at least once every 30 days;
 - b. Ensures that any person who renders emergency care or treatment by using an AED activates the emergency medical services system as soon as possible and reports the use to the licensed physician and to the local EMS agency;
 - c. Ensures that for every AED unit acquired up to five units, no less than one employee per AED unit, and one employee for every additional five units, complete a training course in cardiopulmonary resuscitation (CPR) and AED use, as specified.
 - d. Ensure that tenants in a building where an AED is placed receive a brochure describing the proper use of an AED and are notified once a year of the location of AEDs.

5. Permits the Emergency Medical Services Authority (EMSA) to establish minimum standards for the training and use of AEDs.

This bill:

1. Repeals the requirement, in the Civil Code, that a person or entity who acquires an AED for emergency use must comply with certain specified requirements in order to have immunity from civil liability resulting from the use of the AED, thereby making this civil liability protection unconditional.
2. Recasts a provision of law in the Civil Code that provides immunity from civil liability to a physician who is involved with the placement of an AED, and any person or entity responsible for the site where an AED is located, if that physician, person, or entity has met certain specified requirements, by narrowing the immunity to only physicians or other healthcare professionals and by deleting the requirement that conditions this immunity on meeting certain requirements, thereby making this civil liability protection unconditional.
3. Repeals a provision in the Health and Safety Code that provides immunity from civil liability to a person or entity who acquires an AED if that person or entity meets certain requirements, and instead revises this provision to require persons or entities who acquire an AED to meet a reduced set of requirements (the reductions are described in 4) which no longer would have any effect on civil liability immunity.
4. Repeals, or in some cases revises, certain requirements for persons or entities that acquire AEDs, as follows:
 - a. Repeals the requirement that for every AED unit acquired up to five units, no less than one employee per AED unit, and one employee for every additional five units, complete a training course in CPR and AED use that complies with regulations adopted by EMSA.
 - b. Repeals a requirement that acquirers of AED units have trained employees who should be available to respond to an emergency that may involve the use of an AED unit during normal operating hours.
 - c. Repeals the requirement that there be a written plan that describes the procedures to be followed in the event of an emergency that may involve the use of an AED, and that this plan include immediate notification of 911 and trained office personnel at the start of AED procedures.
 - d. Repeals the requirement that the AED be checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days, and that records of these checks be maintained;
 - e. Repeals the requirement that the person or entity who acquired an AED ensure that any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activate the emergency medical services system as soon as possible, and reports any use of the AED to the licensed physician and to the local EMS agency.
 - f. Repeals the requirement that building owners where an AED is placed ensure that tenants annually receive a brochure, approved by the American Heart Association or American Red Cross, which describes the proper use of an AED, that similar information is posted

next to any installed AED, and that tenants are notified of the location of AED units at least once a year.

- g. Revises the requirement that an agent of the local EMS agency be notified of the existence, location and type of AED acquired by requiring this notification to be done by the person or entity who acquired the AED, rather than the existing law requirement that this notification be done by the person or entity that supplied the AED.
 - h. Only requires the AED to be maintained and annually tested according to the operation and maintenance guidelines set forth by the manufacturer, and repeals the additional requirements that the maintenance and testing also comply with guidelines set forth by the American Heart Association, the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.
5. Specifies that a medical director or other physician is not required to be involved in the acquisition or placement of an AED.
 6. Specifies that the requirements relating to persons or entities acquiring AEDs do not apply to licensed hospitals or skilled nursing facilities.
 7. Specifies that a provision of existing law that governs the placement of AEDs in public or private K-12 schools, which includes a requirement that the principle designate trained employees who are to be available to respond to an emergency involving the use of an AED, does not prohibit a school employee or other person from rendering aid with an AED.

FISCAL EFFECT: This bill is keyed non-fiscal.

COMMENTS:

1. **Author's statement.** According to the author, this bill increases the likelihood that AEDs will be installed in buildings throughout the state by reducing outdated requirements imposed on building owners who voluntarily install AEDs. Sudden cardiac arrest kills nearly 1,000 people per day in the US and ends the lives of 350,000 people annually. It can happen to anyone, anytime, anywhere and at any age. The single most effective intervention during sudden cardiac arrest is the use of an AED which can safely restore the heart's normal rhythm. A study by Johns Hopkins University found that Good Samaritan access to AEDs doubles survival from sudden heart attack. Researchers found - in real-life, emergency situations - that use of AEDs by random bystanders more than doubled survival rates among victims felled by a sudden heart stoppage due to a heart attack or errant heart rhythm.
2. **Background.** According to the American Heart Association (AHA), an AED is a lightweight, portable device that delivers an electric shock through the chest to the heart. The shock can stop an irregular rhythm and allow a normal rhythm to resume in a heart in sudden cardiac arrest. Sudden cardiac arrest is an abrupt loss of heart function. If it is not treated within minutes, it quickly leads to death. The AED has a built-in computer which assesses the patient's heart rhythm, determines whether the person is in cardiac arrest, and signals whether to administer the shock. Audible cues guide the user through the process.

According to the AHA, each year in the U.S., there are approximately 359,400 Emergency Medical Services (EMS)-assessed cardiac arrests outside of a hospital setting and on average,

less than 10 percent of victims survive. Early defibrillation, along with CPR, is the only way to restore the victim's heart rhythm to normal in a lot of cases of cardiac arrest. For every minute that passes without CPR and defibrillation, however, the chances of survival decrease by 7 to 10 percent. The 2013 Update of AHA's Heart Disease and Stroke Statistics shows that 23 percent of out-of-hospital cardiac arrests are "shockable" arrhythmias, or those that respond to a shock from an AED, making AEDs in public places highly valuable. Yet, AHA states there are not enough AEDs and persons trained in using them and performing CPR to provide this life-saving treatment, resulting in lost opportunities to save more lives. Communities with comprehensive AED programs that include CPR and AED training for rescuers have achieved survival rates of nearly 40 percent for cardiac arrest victims. AHA states on its website that it supports placing AEDs in targeted public areas such as sports arenas, gate communities, office complexes, doctor's offices, shopping malls, etc. When AEDs are placed in the community or a business or facility, AHA strongly encourages that they be part of a defibrillation program which includes notification to the local EMS office when an AED is acquired, that a licensed physician or medical authority provides medical oversight to ensure quality control, and that persons responsible for using the AED are trained in CPR and how to use an AED.

3. **EMSA regulations.** In 1990, EMSA adopted a package of regulations entitled "Lay Rescuer Automated External Defibrillator Regulations." These regulations predate the civil immunity provisions that this bill revises, which were first enacted in 1999. Much of the regulations were incorporated into the later-enacted Health and Safety Code requirements that are being repealed or revised by this bill, including the employee training requirements and the requirement that the AED be checked every 30 days. However, these regulations also include a requirement that any agency, business, organization or individual who purchases an AED for use in a medical emergency (an AED Service Provider) must have a physician medical director who is required to be involved in developing an internal emergency response plan and who is responsible for ensuring compliance with training, notification and maintenance requirements. This bill includes a provision that specifies that a medical director or other physician is not required to be involved in the acquisition or placement of an AED.
4. **CDC report on public access defibrillation.** The Centers for Disease Control and Prevention (CDC) published an article in 2010 that reviewed state laws on public access defibrillation (PAD) policies, and the extent to which 13 PAD program elements, based on AHA recommendations, were mandated in each state. These 13 elements range from targeted AED site placement, CPR and AED training of anticipated rescuers, maintenance and testing, coordination with emergency medical services and oversight by medical professionals, and liability protection. The article concluded that PAD programs in many states are at risk of failure because critical elements such as maintenance, medical oversight, EMS notification, and continuous quality improvement are not required. The article recommended that policy makers consider strengthening PAD policies by enacting laws that require strategic placement of AEDs in high-risk locations or mandatory PAD registries that are coordinated with local EMS and dispatch centers. California was identified as one of the states with the highest rate of adoption of the 13 PAD elements, although no state had mandated all 13 elements. The article stated that because it only analyzed the extent to which states had enacted specific PAD elements, it was unable to associate cardiac arrest survival rates with the strength of a state policy, and stated that further research is needed to identify the most effective PAD policies for increasing AED use by lay persons and improving survival rates.

5. **Reliability of AEDs.** In January of this year, the U.S. Food and Drug Administration (FDA) announced that it was going to strengthen its review of AEDs by requiring AED manufacturers to submit premarket approval applications, which undergo a more rigorous review that was required to market these devices in the past. According to the FDA, there has been a history of malfunction issues. From January 2005 through September of 2014, the FDA received approximately 72,000 medical device reports associated with the failure of these devices, and that since 2005, manufacturers have conducted 111 recalls, affecting more than two million AEDs. The FDA stated that it did not intend to enforce the premarket approval requirement until August 3, 2016, as long as manufacturers notify the FDA of their intent to file a premarket approval application by May 4, 2015.

This bill, among other provisions, repeals a requirement that AEDs be checked for readiness at least once every 30 days, instead only requiring the AEDs to be maintained and annually tested according to the operation and maintenance guidelines set forth by the manufacturer.

6. **Double referral.** This bill is double referred. Should it pass out of this committee, it will be referred to the Senate Judiciary Committee.
7. **Related legislation.** SB 287 (Hueso), would require certain specified buildings with occupancies of 200 or more constructed on or after January 1, 2016, excluding structures owned or operated by the state or any local government building, to have an AED on the premises, and provides for civil immunity to the person or entity that supplies the AED, conditional upon meeting the requirements in existing law relating to the acquisition of an AED. *This bill is scheduled to be heard in this committee on April 15th.*
8. **Prior legislation.** AB 939 (Melendez) of 2013 proposed to provide qualified immunity for a school district and its employees who use, attempt to use, or do not use an AED to render emergency care, and stated the intent of the Legislature to encourage all public schools to acquire an AED, and permitted schools to solicit and receive nonstate funds for that purpose. *AB 939 was held on the Senate Appropriations Committee suspense file.*

SB 1436 (Lowenthal), Chapter 71, Statutes of 2012, removed the sunset date, thereby making permanent, the existing protections that provide immunity from civil damages in connection with the use of AEDs.

SB 63 (Price) of 2011 would have stated the intent of the Legislature that all public high schools acquire and maintain at least one AED and would require schools that decide to acquire and maintain an AED, or to continue to use and maintain an existing AED, to comply with specified requirements. *SB 63 was held in the Senate Appropriations Committee.*

SB 1281 (Padilla) of 2010 was similar to this bill in making the civil immunity protection unconditional, but it went farther in eliminating all requirements relating to the acquisition of AEDs. *SB 1281 failed passed in Senate Judiciary Committee.*

SB 127 (Calderon), Chapter 500, Statutes of 2010, removed the July 1, 2012 sunset date for existing requirements that every health studio acquires and maintains an AED and trains personnel in its use thereby extending these requirements indefinitely.

AB 1312 (Swanson) of 2009 would have made the current requirements for health studios to purchase, maintain, and train staff in the use of AEDs applicable to amusement parks and

golf courses. This bill also proposed to extend the sunset date on this requirement from July 1, 2012 to July 1, 2014. *AB 1312 was vetoed by the Governor.*

AB 2083 (Vargas), Chapter 85, Statutes of 2006, extended the sunset date from 2008 to 2013 on the operative provisions of existing law which provide immunity from civil damages for persons or entities that acquire AEDs and comply with maintenance, testing, and training requirements.

AB 1507 (Pavley), Chapter 431, Statutes of 2005, required all health studios in the state to have automatic external defibrillators (AEDs) available with properly trained personnel until July 1, 2012.

AB 254 (Nakanishi), Chapter 111, Statutes of 2005, required the principal of a public or private K-12 school to meet certain requirements in order to be exempt from liability for civil damages associated with the use of an AED.

AB 2041 (Vargas), Chapter 718, Statutes of 2002, expanded the immunity protections for the use or purchase of an AED, and included a sunset date of 2008.

SB 911 (Figueroa), Chapter 163, Statutes of 1999, created qualified immunity from civil liability for trained persons who use in good faith and without compensation an AED in rendering emergency care or treatment at the scene of an emergency.

- 9. Support.** Philips, a maker of AEDs, states in support that California's current AED liability requirements are onerous, outdated, and do not reflect the current capabilities of AEDs in the marketplace. Building owners and those responsible for sites where AEDs are located are therefore dissuaded from purchasing and placed AEDs, out of fear they will not be granted immunity from civil liability. The California State Sheriffs' Association states in support that by eliminating outdated and burdensome requirements that must be met to confer protection from liability, the Legislature could encourage wider access to AEDs and increase their life-saving capacity. The California Business Properties Association, the Building Owners and Managers Association of California, the Commercial Real Estate Development Association, and the International Council of Shopping Centers jointly write in support that existing law may have made sense over a decade ago, but due to evolving technology and ease of AED use, have since become an anachronism and are an impediment to installation. The California Chamber of Commerce notes in support that this bill still holds a manufacturer, developer, installer, or distributor liable for potential product defects or performance, and that this bill continues to mandate that any person or entity that acquires an AED notify the local EMS agency of its placement as well as ensure that the AED is regularly maintained and tested. The American Heart Association states in support that while it believes that requirements in current law are important, it knows that sudden cardiac arrest is 100 percent fatal if not treated quickly.
- 10. Opposition.** This bill is also opposed by the Rescue Training Institute, which states that it is not a good approach to providing CPR and AED in the community by expecting a non-trained employee or bystander to retrieve, deploy, apply and utilize the AED to safely defibrillate a patient in sudden cardiac arrest. Only through approved national training programs can one learn how to confidently and competently perform CPR and utilize an AED. The Rescue Training Institute also opposes the repeal of the monthly inspection requirement and the requirement that the AED be checked after each use.

11. Oppose unless amended. Consumer Attorneys of California (CAC) opposes this bill unless it is amended to keep important training and maintenance protections. According to CAC, current law provides an AED acquirer with qualified immunity if specific requirements are complied with, which include proper maintenance and testing of the AED and assurance that trained employees are available to respond to an emergency. CAC asserts that keeping these safeguards intact is necessary to ensure that AEDs can be as effective as possible in the event of sudden cardiac arrest. CAC cites a CDC report, which states that public access defibrillation programs in many states “are at risk of failure because critical elements such as maintenance, medical oversight, emergency medical service notification, and continuous quality improvement are not required.” CAC also states that this bill deletes requirements that the AED be checked at least once every 30 days, and would instead only require a check every year. According to CAC, the most common cause for an AED malfunctioning is a dead battery, and that the existing requirement to check an AED monthly ensures that a faulty battery can be caught early and remedied.

SUPPORT AND OPPOSITION:

Support: American Heart Association
 Building Owners and Managers Association of California
 California Ambulance Association
 California Apartment Association
 California Business Properties Association
 California Chamber of Commerce
 California Hospital Association
 California Retailers Association
 California State Sheriffs’ Association
 Civil Justice Association of California
 Commercial Real Estate Development Association
 El Camino Hospital
 International Council of Shopping Centers
 Philips

Oppose: Consumer Attorneys of California (unless amended)
 Rescue Training Institute

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