

March 2012

HEALTH Automated External Defibrillator Program: Regulate the Use of Automated External Defibrillators by Lay Rescuers; Provide Immunity from Liability for Persons Engaged in Activities Relating to the Use of Automated External Defibrillators

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Recommended Citation

Georgia State University Law Review, *HEALTH Automated External Defibrillator Program: Regulate the Use of Automated External Defibrillators by Lay Rescuers; Provide Immunity from Liability for Persons Engaged in Activities Relating to the Use of Automated External Defibrillators*, 18 GA. ST. U. L. REV. (2012).

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HEALTH

Automated External Defibrillator Program: Regulate the Use of Automated External Defibrillators by Lay Rescuers; Provide Immunity from Liability for Persons Engaged in Activities Relating to the Use of Automated External Defibrillators

CODE SECTIONS: O.C.G.A. §§ 31-11-53.2, 51-1-29.3 (new)
BILL NUMBER: SB 51
ACT NUMBER: 225
GEORGIA LAWS: 2001 Ga. Laws 776
SUMMARY: The Act was adopted to encourage the widespread distribution and use of automated external defibrillators (AEDs) by lay persons in emergency situations involving a person in cardiac arrest. The Act regulates the use of AEDs by lay rescuers in such emergencies. The Act also provides immunity from civil liability to any person who, in good faith, uses an AED while providing emergency care. The Act immunizes property owners or operators that supply the AEDs and those professionals responsible for the supervision of or training on AED usage.
EFFECTIVE DATE: July 1, 2001

History

Sudden death is death resulting from a sudden, unexpected cardiac arrest in a person who may or may not have been diagnosed with a heart disease.¹ Nationally, approximately 220,000 people die annually from sudden death caused by cardiac arrest—more than 600 per day.² When a

1. See Am. Heart Ass'n, *2001 Heart and Stroke Statistical Update: About Sudden Death and Cardiac Arrest*, at http://www.americanheart.org/statistics/aboutsd_ca.html (last visited Apr. 22, 2001) [hereinafter AHA, *About Sudden Death and Cardiac Arrest*].

2. See *id.* For a detailed explanation describing how cardiac statistics are calculated, see Am. Heart Ass'n, *2001 Heart and Stroke Statistical Update: Understanding and Using our Biostatistics*, at <http://www.americanheart.org/statistics/understand.html> (last visited Apr. 22, 2001).

person is in cardiac arrest, brain death and permanent death begin to occur after approximately four to six minutes.³

The American Heart Association (AHA) has identified the four critical components necessary for survival after cardiac arrest; the “chain of survival” includes: (1) bystander recognition of the warning signs and dialing 911; (2) cardiopulmonary resuscitation; (3) defibrillation; and (4) access to advanced care.⁴ Defibrillation, or the process whereby an electric shock is used to restore the heart to a normal heartbeat, can reverse a heart attack in most victims if administered within a few minutes of cardiac arrest.⁵ In fact, a cardiac arrest victim’s chance of survival decreases by ten percent each minute that defibrillation is delayed.⁶ Currently, the national survival rate of sudden cardiac arrest victims is approximately five percent.⁷

The AHA and other experts believe that automated external defibrillators (AEDs) are an essential link to improving the survival rate of cardiac arrest victims.⁸ AEDs, first introduced in 1979, analyze cardiac rhythm and deliver electric current to the heart.⁹ With the advancement of technology, AEDs have become readily transportable and much more user-friendly.¹⁰ In fact, modern AEDs are nearly incapable of being used incorrectly.¹¹ The voice-activated machine instructs the user through the process of placing the electrodes on the victim.¹² If the AED detects a regular heartbeat on the victim, it will not

3. See AHA, *About Sudden Death and Cardiac Arrest*, *supra* note 1.

4. See Telephone Interview with Peter Latino, Southeastern Affiliate Advocacy Director, American Heart Association (Apr. 3, 2001) [hereinafter Latino Interview].

5. See AHA, *About Sudden Death and Cardiac Arrest*, *supra* note 1.

6. See Audio Recording of Senate Proceedings, Feb. 5, 2001 (remarks by Sen. Don Thomas), at <http://www.state.ga.us/services/leg/audio/archive.html>. [hereinafter Senate Audio].

7. See *id.*

8. See generally AHA, *About Sudden Death and Cardiac Arrest*, *supra* note 1; Senate Audio, *supra* note 6 (remarks by Sen. Don Thomas); Latino Interview, *supra* note 4.

9. See Am. Heart Ass’n, *Automatic External Defibrillators for Public Access Defibrillation: Recommendations for Specifying and Reporting Arrhythmia Analysis Algorithm Performance, Incorporating New Waveforms, and Enhancing Safety*, at <http://www.americanheart.org/scientific/statements/1997/039/01.html> (last visited Apr. 22, 2001).

10. The first out-of-hospital AED weighed 110 pounds; modern AEDs weigh less than 10 pounds. See Am. Heart Ass’n, *Cardiopulmonary Resuscitation (CPR) Statistics*, at http://www.americanheart.org/Heart_and_Stroke_A_Z_Guide/cprs.html (last visited Apr. 22, 2001).

11. See Senate Audio, *supra* note 6 (remarks by Sen. Don Thomas); see also Telephone Interview with Sen. Don Thomas, Senate District No. 54 (Apr. 3, 2001) [hereinafter Thomas Interview].

12. See Senate Audio, *supra* note 6 (remarks by Sen. Don Thomas).

shock; therefore, a user cannot shock a person with an AED unless the person is in cardiac arrest or ventricular fibrillation.¹³

In 1993, the AHA created the Task Force on Automatic External Defibrillation, which researched and evaluated the need for the availability of AEDs on a broad, nationwide scale.¹⁴ The Task Force concluded that AEDs are one of the most promising methods for achieving rapid defibrillation, and that current technology and training advocate the widespread use and distribution of AEDs to local communities.¹⁵ As a result, states throughout the country have enacted legislation to encourage the distribution and use of AEDs in their communities.¹⁶

In 1998, the Georgia General Assembly passed legislation that introduced and regulated Georgia's Automated External Defibrillator Program ("the Program").¹⁷ The legislation was geared toward emergency medical technicians and other emergency service personnel.¹⁸ The Program aided in getting AEDs distributed to emergency medical facilities throughout the state.¹⁹

The AHA and the sponsors of SB 51 are now focusing on wide distribution of AEDs for use by lay people.²⁰ The ultimate goal is to place AEDs in shopping malls, sports arenas, airports, fire stations, work places, police vehicles, and all other locations where large

13. *See id.* Ventricular fibrillation occurs when the heart has not completely stopped, but is in irregular rhythm. *See id.*

14. *See* Am. Heart Ass'n, *Public Access Defibrillation: A Statement for Healthcare Professionals From the American Heart Association Task Force on Automatic External Defibrillation*, at <http://www.americanheart.org/Scientific/statements/1993/21932222.html> (last visited Apr. 22, 2001).

15. *See id.*

16. *See* ARIZ. REV. STAT. ANN. § 36-2263 (West 2000); ARK. CODE ANN. § 17-95-605 (Michie 1999); CAL. CIVIL CODE § 1714.21 (West 2000); COLO. REV. STAT. ANN. § 13-21-108.1 (West 2000); IDAHO CODE § 5-377 (Michie 2000); KY. REV. STAT. ANN. § 311.668 (Banks-Baldwin 2000); MD. CODE ANN., EDUC. § 13-517 (2000); MICH. COMP. LAWS ANN. § 691.1504 (West 2000); MISS. CODE ANN. § 73-25-37 (2000); MO. ANN. STAT. § 190.092 (West 2000); MONT. CODE ANN. § 50-6-505 (2000); NEB. REV. STAT. § 71-51,102 (2000); N.C. GEN. STAT. § 90-21.15 (2000); N.D. CENT. CODE § 32-03.1-02.3 (1999); OKLA. STAT. ANN. tit. 76 § 5A (West 2000); OR. REV. STAT. § 30.801 (1999); 42 PA. CONS. STAT. ANN. § 8331.2 (West 2000); R.I. GEN. LAWS § 9-1-34 (2000); S.C. CODE ANN. § 44-76-40 (Law. Co-op. 2000); TENN. CODE ANN. § 63-6-218 (2000); UTAH CODE ANN. § 26-8a-601 (2000); VA. CODE ANN. § 32.1-111.14:1 (Michie 2000).

17. *See* 1998 Ga. Laws 661, § 1, at 661 (codified at O.C.G.A. § 31-11-53.1 (Supp. 2000)). The bill was introduced by Senators Don Thomas and Jack Hill, of Districts No. 54 and 4, respectively. *See* Thomas Interview, *supra* note 11.

18. *See* Latino Interview, *supra* note 4.

19. *See* Thomas Interview, *supra* note 11.

20. *See* Latino Interview, *supra* note 4.

numbers of people congregate.²¹ Two barriers have been identified as having prevented the widespread use of AEDs in Georgia.²² One is the training requirements under the previous Code section.²³ SB 51 would relax those training requirements.²⁴ The second obstacle has been fear of liability.²⁵ This bill was meant to eliminate that fear.²⁶ SB 51 would provide protection for the owners of property with public access who can make AEDs available for use by properly trained individuals, and protects rescuers who act in good faith.²⁷ It would further protect the various individuals and entities involved in the supervision and training of AED providers.²⁸

SB 51

Introduction

On January 24, 2001, Senators Nadine Thomas of the 10th District, Don Thomas of the 54th District, and Jack Hill of the 4th District introduced SB 51 to the Senate.²⁹ The bill proposed to amend Title 31, Section 11 of the Code by adding regulations specifically addressing lay rescuers using AEDs.³⁰ It also offered immunity from civil liability for lay rescuers who use AEDs in good faith, owners or operators of any premises who provide AEDs, and any trainers or supervisors of AED programs.³¹

21. *See id.*; *see also* Thomas Interview, *supra* note 11; Senate Audio, *supra* note 6 (remarks by Sen. Don Thomas).

22. *See* Audio Recording of House Proceedings, Mar. 12, 2001 (remarks by Rep. Jim Martin), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

23. *See id.* The training requirements were more stringent under Code section 31-11-53.1 because the technology was not as sophisticated, and the Code was geared toward emergency medical technicians who are regularly placed in a position of offering emergency care. *See id.*

24. *See* O.C.G.A. § 31-11-53.2 (2001).

25. *See* House Audio, *supra* note 22 (remarks by Rep. Jim Martin); *see also* Latino Interview, *supra* note 4.

26. *See* Latino Interview, *supra* note 4.

27. *See* O.C.G.A. § 31-11-53.2 (2001); *see also* House Audio, *supra* note 22 (remarks by Rep. Jim Martin).

28. *See* O.C.G.A. § 31-11-53.2 (2001); *see also* Latino Interview, *supra* note 4.

29. *See* SB 51, as introduced, 2001 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 51, Mar. 21, 2001.

30. *See* SB 51, as introduced, 2001 Ga. Gen. Assem.

31. *See id.*

Consideration by the Senate Health and Human Services Committee

The Senate referred the bill to its Health and Human Services Committee, which offered minor amendments to the original bill.³² The Senate Committee favorably reported the bill on February 1, 2001.³³

From Senate Health and Human Services Committee Amendment to Senate Floor Amendment

The bill then moved to the Senate floor, where Senator Bob Irvin proposed amending the bill to include the American Red Cross as recognized cardio-pulmonary resuscitation and AED trainers.³⁴ The Senate adopted the floor amendment and unanimously passed the bill on February 5, 2001.³⁵

From Senate Floor to House Judiciary Committee

The House referred the bill to its Judiciary Committee on February 7, 2001.³⁶ The Committee substituted the original bill with a version that addressed the potential liability of AED manufacturers.³⁷ Specifically, the Committee wanted to emphasize that the General Assembly did not intend for SB 51 to provide any immunity from liability to AED manufacturers.³⁸ The substitute further excluded all off-premises AED maintenance or service providers from the bill's immunity shields.³⁹

32. Specifically, the Committee amended SB 51 to require the involvement of "a licensed physician or other person authorized by the composite board" rather than "a licensed physician or medical authority." Compare SB 51, as introduced, 2001 Ga. Gen. Assem., with SB 51 (SCA), 2001 Ga. Gen. Assem.

33. See State of Georgia Final Composite Status Sheet, SB 51, Mar. 21, 2001.

34. Compare SB 51 (SCA), 2001 Ga. Gen. Assem., with SB 51 (SCAFA), 2001 Ga. Gen. Assem. The American Red Cross strongly supports the AED program and would like it to be included in its training throughout the state. See Thomas Interview, *supra* note 11.

35. See Georgia Senate Voting Record, SB 51 (Feb. 5, 2001); State of Georgia Final Composite Status Sheet, SB 51, Mar. 21, 2001.

36. See State of Georgia Final Composite Status Sheet, SB 51, Mar. 21, 2001.

37. Compare SB 51 (SCAFA), 2001 Ga. Gen. Assem., with SB 51 (HCS), 2001 Ga. Gen. Assem. The Trial Lawyers Association wanted to limit the scope of SB 51 to ensure it accurately reflected the legislative intent. See Latino Interview, *supra* note 4.

38. Compare SB 51 (SCAFA), 2001 Ga. Gen. Assem., with SB 51 (HCS), 2001 Ga. Gen. Assem.

39. Compare SB 51 (SCAFA), 2001 Ga. Gen. Assem., with SB 51 (HCS), 2001 Ga. Gen. Assem.

From House Judiciary Committee Substitute to House Floor

The Committee favorably reported the substituted bill on February 26, 2001.⁴⁰ The House floor did not make any changes to the bill. On March 3, 2001, the House accepted the Committee substitute, and passed SB 51.⁴¹

Senate Agrees to House Substitute

The Senate agreed to the House version of the bill, and on April 27, 2001, Governor Barnes signed SB 51 into law.⁴²

The Act

The Act amends the Georgia Automated External Defibrillator Program by adding Code section 31-11-53.2. It imposes five oversight requirements on those individuals or entities that acquire an AED. First, any expected user must receive AHA, American Red Cross, or other equivalent training in cardiopulmonary resuscitation and AED operation.⁴³ Second, the AED must be properly maintained and tested in accordance with the manufacturer's guidelines.⁴⁴ Third, an authorized person must be involved to ensure compliance with the AED program.⁴⁵ Fourth, any person who renders emergency care with the AED must notify the emergency medical service system as well as the authorized person responsible for monitoring compliance with the program.⁴⁶ Finally, the individual or entity that acquires an AED must ensure that the emergency communications or vehicle dispatch center is informed of its location.⁴⁷

The Act also amends Title 51, Section 1 of the Code by adding a section that provides protection for lay rescuers who render emergency aid with an AED in good faith, as well as the owner or operator of the premises that provided the AED.⁴⁸ The Act further extends immunity to any physician or other medical professional who oversees the installation of the AED on the premises, and to any person who

40. See State of Georgia Final Composite Status Sheet, SB 51, Mar. 21, 2001.

41. See Georgia House of Representatives Voting Record, SB 51 (Mar. 3, 2001).

42. See 2001 Ga. Laws 776, § 3, at 778.

43. See O.C.G.A. § 31-11-53.2(b)(1)(A) (2001).

44. See *id.* § 31-11-53.2(b)(1)(B).

45. See *id.* § 31-11-53.2(b)(1)(C).

46. See *id.* § 31-11-53.2(b)(1)(D).

47. See *id.* § 31-11-53.2(b)(2).

48. See *id.* § 51-1-29.3(1), (2) (Supp. 2001).

conducts training for the use of the AED.⁴⁹ The Act expressly excludes AED manufacturers and AED maintenance and service providers from immunity.⁵⁰

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49. *See id.* § 51-1-29.3(3), (4). The Act excludes medical facilities from immunity because such institutions have independent regulations regarding defibrillator use. *See id.* § 51-1-29.3(3); *see also* Latino Interview, *supra* note 4.

50. *See* O.C.G.A. § 51-1-29.3(5) (Supp. 2001).