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Bill Analysis
Legislative Service Commission

H.B. 482

126th General Assembly
(As Introduced)

Reps. Kilbane, Flowers, Hartnett, Koziura, Setzer, Otterman, Williams, Yuko, Perry

BILL SUMMARY

- Requires an owner of a physical fitness facility, not later than July 1, 2007, to have at least one automated external defibrillator placed in the facility and to require at least one facility employee to be present at the facility during its operating hours who has successfully completed an appropriate training course in the use of an automated external defibrillator.
- Grants a person qualified immunity from civil and criminal liability for performing automated external defibrillation in good faith using an automated external defibrillator placed in a physical fitness facility, regardless of whether the person has obtained appropriate training on how to perform automated external defibrillation or successfully completed a cardiopulmonary resuscitation course.
- Extends the liability protection described in the preceding dot point to the owner and employees of the physical fitness facility, the organization or other entity that offered or approved training to the employees in the use of an automated external defibrillator, and any medical personnel who assisted in performing the automated external defibrillation.

CONTENT AND OPERATION

Requirements for physical fitness facilities regarding automated external defibrillators

The bill requires that, not later than July 1, 2007, the owner of a "physical fitness facility" must perform both of the following actions (R.C. 3701.86(A); see "Definitions," below, for definitions of terms in quotation marks):

(1) Have at least one "automated external defibrillator" placed within the facility;

(2) Require at least one person employed at the facility to be present at the facility during the facility's operating hours who has successfully completed an appropriate training course in the use of an automated external defibrillator that is offered or approved by the American Heart Association or another nationally recognized organization (by reference to R.C. 3701.85(B)(1), not in the bill; see "Existing law: powers and duties of persons possessing automated external defibrillator," below).

The owner of a physical fitness facility must ensure that the maintenance, testing, and use of an automated external defibrillator located in the facility is performed in compliance with R.C. 3701.85 (see "Existing law: powers and duties of persons possessing automated external defibrillator," below) (R.C. 3701.86(B)).

Qualified civil and criminal immunity

The bill generally provides that no person may be held liable in civil damages for injury, death, or loss to person or property, or held criminally liable, for performing automated external defibrillation (see **COMMENT 1**) in good faith using an automated external defibrillator that is placed in a physical fitness facility as described above, regardless of whether the person has obtained appropriate training on how to perform automated external defibrillation or successfully completed a course in cardiopulmonary resuscitation. (See **COMMENT 2**.) This liability protection also applies to the owner and employees of the physical fitness facility in which an automated external defibrillator was used, the organization or other entity that offered or approved training to employees of that physical fitness facility in the use of an automated external defibrillator as described in R.C. 3701.85 (i.e., the American Heart Association or another nationally recognized organization; see "Existing law: powers and duties of persons possessing automated external defibrillator," below), and any medical personnel who assisted in performing automated external defibrillation.

The civil and criminal immunity described in the preceding paragraph does not apply in the case of willful or wanton misconduct, when there is no good faith attempt to activate an emergency medical services system in accordance with R.C. 3701.85 (see "Existing law: powers and duties of persons possessing automated external defibrillator," below), or when the owner of a physical fitness facility fails to place an automated external defibrillator within the facility as required under the bill. (R.C. 3701.86(C).)

Definitions

"Automated external defibrillator" means a specialized defibrillator that is approved for use as a medical device by the United States Food and Drug Administration for performing automated external defibrillation, as defined in R.C. 2305.235 (see Footnote 1) (R.C. 3701.86(D)(1), by reference to R.C. 3313.717, not in the bill).

"Physical fitness facility" means a facility that satisfies both of the following criteria: (1) a facility that requires a person to obtain a membership in order for the person to use the facility for physical exercise, including, but not limited to, an athletic club, health spa, or gymnasium that requires membership, and (2) a facility that serves at least 50 members; if the physical fitness facility is part of a chain of physical fitness facilities, then the facility and those associated facilities must serve at least 50 members in the aggregate.

"Physical fitness facility" does not include any of the following facilities: (1) an exercise facility operated by a public or nonpublic primary or secondary school or a public or nonpublic institution of higher education, (2) an exercise facility located in a hospital or in a hotel or motel, (3) an exercise public facility, (4) an outdoor exercise facility, or (5) an exercise facility that does not employ persons to instruct, train, or assist the facility's members concerning physical exercise. (R.C. 3701.86(D)(2).)

Existing law: powers and duties of person possessing automated external defibrillator

Existing law, not changed by the bill, requires a person who possesses an automated external defibrillator to do all of the following: (1) require expected users to complete successfully a course in automated external defibrillation¹ and cardiopulmonary resuscitation that is offered or approved by the American Heart Association or another nationally recognized organization, (2) maintain and test the defibrillator according to the manufacturer's guidelines, and (3) consult with a physician regarding compliance with the requirements of (1) and (2) in this paragraph (R.C. 3701.85(B)--not in the bill).

¹ "Automated external defibrillation" means the process of applying a specialized defibrillator to a person in cardiac arrest, allowing the defibrillator to interpret the cardiac rhythm, and, if appropriate, delivering an electrical shock to the heart to allow it to resume effective electrical activity (R.C. 3701.85(A)(1), by reference to R.C. 2305.235(A)(1)--both sections not in the bill).

A person who possesses an automated external defibrillator² may notify an emergency medical services organization³ of the location of the defibrillator. A person who has obtained appropriate training on how to perform automated external defibrillation and has successfully completed a course in cardiopulmonary resuscitation may perform automated external defibrillation, regardless of whether the person is a physician, registered nurse, licensed practical nurse, or emergency medical service provider.⁴ When automated external defibrillation is not performed as part of an emergency medical services system or at a hospital as defined in R.C. 3727.01, an emergency medical services system must be activated as soon as possible. (R.C. 3701.85(C) and (D).)

Existing law: civil and criminal immunity regarding automated external defibrillation

Under existing law, not changed by the bill, no person may be held liable in civil damages for injury, death, or loss to person or property, or held criminally liable, for performing automated external defibrillation⁵ in good faith, regardless of whether the person has obtained appropriate training on how to perform automated external defibrillation or successfully completed a course in cardiopulmonary resuscitation. This civil and criminal immunity does not apply in the case of willful or wanton misconduct or when there is no good faith attempt to activate an emergency medical services system in accordance with R.C. 3701.85 (see "**Existing law: powers and duties of persons possessing automated external defibrillator**," above). (R.C. 2305.235(D).)

Except in the case of willful or wanton misconduct, no physician may be held liable in civil damages for injury, death, or loss to person or property for providing a prescription for an automated external defibrillator approved for use as a medical device by the United States Food and Drug Administration or consulting

² R.C. 3701.85 does not define "automated external defibrillator."

³ "Emergency medical service organization" means a public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services (R.C. 3701.85(A)(2), by reference to R.C. 4765.01—both sections not in the bill).

⁴ "Emergency medical service provider" means a person who is an "emergency medical technician-basic," "emergency medical technician-intermediate," "emergency medical technician-paramedic," or "first responder" as defined in R.C. 4765.01 (R.C. 3701.85(A)(3)).

⁵ See Footnote 1 for definition.

with a person regarding the use and maintenance of a defibrillator (R.C. 2305.235(B)).

Except in the case of willful or wanton misconduct, no person may be held liable in civil damages for injury, death, or loss to person or property for providing training in automated external defibrillation and cardiopulmonary resuscitation (R.C. 2305.235(C)).

COMMENT

1. The bill does not define "automated external defibrillation." Existing R.C. 2305.235 and 3701.85, not in the bill (see "Existing law: powers and duties of persons possessing automated external defibrillator" and "Existing law: civil and criminal immunity regarding automated external defibrillation," above), define "automated external defibrillation" (see Footnote 1).

2. Existing law (see "Existing law: civil and criminal immunity regarding automated external defibrillation," above) provides qualified civil and criminal immunity to *any person* for performing automated external defibrillation (in any place) in good faith, regardless of whether the person has obtained appropriate training on how to perform automated external defibrillation or successfully completed a course in cardiopulmonary resuscitation. Notwithstanding the bill, it appears that this qualified civil and criminal immunity under existing law would apply to a person for performing automated external defibrillation in good faith using an automated external defibrillator placed in a physical fitness facility, regardless of whether the person has obtained appropriate training on how to perform automated external defibrillation or successfully completed a course in cardiopulmonary resuscitation. Under both the bill and existing law, the immunity does not apply in case of willful or wanton misconduct or when there is no good faith attempt to activate an emergency medical system in accordance with R.C. 3701.85. The bill states that its grant of immunity for performing the automated external defibrillation in good faith using an automated external defibrillator that is placed in a physical fitness facility does not apply if the owner of the physical fitness facility fails to place an automated external defibrillator within the facility. (R.C. 3701.86(C).)

HISTORY

ACTION	DATE
Introduced	01-24-06

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