



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 767 (as reported without amendment)
Sponsor: Senator Rick Jones
Committee: Judiciary

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RATIONALE

The death of a high school athlete has led to suggestions that the Revised School Code should provide immunity for a school employee who uses an automated external defibrillator (AED) in an emergency. In March 2011, Fennville High School basketball player Wes Leonard collapsed and died moments after making a game-winning shot. According to a *Grand Rapids Press* article posted on the mlive.com website, Leonard died from a heart attack due to dilated cardiomyopathy ("Autopsy determines Fennville star athlete Wes Leonard died from heart attack", 3-4-11). This condition is caused by an enlarged heart that becomes weakened and cannot pump blood efficiently, thereby affecting the performance of other organs and body systems. Some people believe that if an AED had been readily available, and school employees had been encouraged to use the device, the boy's death might have been avoided.

CONTENT

The bill would amend the Revised School Code to provide limited civil immunity to a school employee who rendered emergency care using an automated external defibrillator in the course of his or her duties.

Under the Code, a person may not receive an initial teaching certificate unless he or she has successfully completed a course in first aid and cardiopulmonary resuscitation (CPR) and instruction in foreign body airway obstruction management, and holds valid certification in those topics (unless the person has physical limitations that make it

impracticable to complete the instruction and obtain the certification).

A person who meets these requirements and who performs first aid, CPR, or foreign body airway obstruction management on another person in the course of his or her employment as a teacher is not liable in a civil action for damages resulting from an act or omission occurring in that performance, except an act or omission constituting gross negligence or willful and wanton misconduct.

Under the bill, a school employee who rendered emergency services to another individual using an AED in the course of his or her employment or at an extracurricular school activity would not be liable in a civil action for damages resulting from an act or omission occurring in that performance, except an act or omission that constituted gross negligence or willful and wanton misconduct.

The Code specifies that it does not create a duty to act on the part of a teacher who holds first-aid, CPR, and airway obstruction management certification. The bill would extend this to a school employee rendering emergency services using an AED.

MCL 380.1531d

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Judiciary Committee by a representative of the American Heart Association (AHA), witnesses to a cardiac emergency must be prepared to act quickly with the four links in what the AHA calls the "chain of survival". Those links are: calling 9-1-1; performing CPR; using an AED; and securing professional medical care. School employees should be as ready as possible to deal with emergencies in a timely manner. As illustrated by the death of the Fennville basketball player, students are not immune to cardiac arrest, and these tragedies can take place at school and during school-related events. The bill would help reduce the risk of such tragedies by strengthening the third link in the chain of survival: AED use. Providing immunity for school employees who rendered emergency care using an AED could encourage schools to make the devices readily available and reduce any likelihood that a school employee would resist using an AED when a cardiac emergency occurred.

Response: The current liability protection in the Revised School Code for performing first aid, CPR, or foreign body airway obstruction management applies to a person who has successfully completed a course, and holds a valid certification, in those emergency services. Perhaps the bill should require some sort of training in the use of an AED as well.

Opposing Argument

The bill would be redundant with current law. For more than 12 years, the Good Samaritan law has offered to any individual the same liability protections proposed by the bill for school employees (MCL 691.1504). Public Act 173 of 1999 amended that law to provide that an individual who has no duty to do so and who, in good faith, voluntarily renders emergency services to another individual using an AED, is not liable in a civil action for damages resulting from an act or omission in rendering the emergency services, unless the act or omission constitutes gross negligence or willful and wanton misconduct. School employees already are covered under the immunity granted by the Good Samaritan law.

Response: School employees might be more aware of their legal protections from liability for use of an AED if the immunity were granted under the Revised School

Code. Indeed, the same section of the Good Samaritan law that offers immunity for AED use also grants immunity for performing CPR, yet the Revised School Code includes an immunity provision for certain school employees who perform CPR. Every effort should be made to encourage the placement of AEDs in schools and the preparation of school employees to use the devices.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would result in indeterminate savings for local school districts to the extent that it provided protections above current governmental immunity law.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.