

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

House Bill No. 2092

HOUSE BILL NO. 2092 - By: KIRBY of the House.

An Act relating to torts; amending 76 O.S. 2001, Section 5A, as amended by Section 1, Chapter 127, O.S.L. 2004 (76 O.S. Supp. 2008, Section 5A), which relates to immunity from civil liability for medical care or treatment by use of an automated external defibrillator; modifying exemption from civil liability for good-faith use of automated external defibrillators; modifying qualifications for immunity; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 76 O.S. 2001, Section 5A, as amended by Section
2 1, Chapter 127, O.S.L. 2004 (76 O.S. Supp. 2008, Section 5A), is amended to read as
3 follows:

4 Section 5A. A. 1. Any person ~~who is qualified pursuant to this subsection and~~ who,
5 in good faith and without expectation of compensation, renders emergency care or
6 treatment outside of a medical facility by the use of an automated external defibrillator
7 shall be immune from civil liability for personal injury which results from the use of the
8 device, except for acts of gross negligence or willful or wanton misconduct in the use of
9 such device.

10 2. ~~A person is qualified pursuant to this subsection upon successful completion of~~
11 ~~appropriate training in the use of automated external defibrillators and cardiopulmonary~~
12 ~~resuscitation. Appropriate training shall consist of a course in the use of automated~~

1 external defibrillators and cardiopulmonary resuscitation. Such courses shall be
2 approved pursuant to rules promulgated by the State Board of Health and shall be
3 subject to approval or disapproval in the discretion of the Commissioner of Health.
4 These rules may include appropriate periodic retraining at intervals established by the
5 Commissioner by rule.

6 3. Course directors and trainers who have completed the training required by the
7 State Department of Health for teaching courses in the use of automated external
8 defibrillators and cardiopulmonary resuscitation shall be immune from civil liability for
9 personal injury which results from the use of the device, except for acts of gross
10 negligence or willful or wanton misconduct in the teaching of such training courses.

11 B. A prescribing physician who, in good faith and without expectation of
12 compensation, writes a prescription for the use of an automated external defibrillator to
13 render emergency care or treatment shall be immune from civil liability for personal
14 injury which results from the use of the device, except for acts of gross negligence or
15 willful or wanton misconduct in the prescribing of the device.

16 C. An entity or individual which that owns, leases, possesses, or otherwise controls
17 an automated external defibrillator and maintains the automated external defibrillator
18 according to the instructions of the manufacturer shall be immune from civil liability for
19 personal injury which results from the use of the device, except for acts of gross
20 negligence or willful or wanton misconduct, ~~if the entity:~~

1 ~~1. Requires its own authorized agents who may use the automated external~~
2 ~~defibrillator to be qualified pursuant to subsection A of this section if not available to the~~
3 ~~public; or~~

4 ~~2. Maintains and stores its automated external defibrillator with a usage detection~~
5 ~~device which automatically signals first responders or designated qualified employees of~~
6 ~~the entity if made available to the public; and~~

7 ~~3. Maintains and tests its automated external defibrillator according to the~~
8 ~~manufacturer's instructions.~~

9 D. An entity or individual ~~which that~~ owns, leases, possesses or otherwise controls
10 an automated external defibrillator shall communicate to the proper first responder the
11 locations and placements of the automated external defibrillator owned, leased,
12 possessed or otherwise controlled by the entity or individual.

13 E. For purposes of this section:

14 1. "Automated external defibrillator" means a medical device consisting of a heart
15 monitor and defibrillator which:

- 16 a. has received approval of its premarket notification, filed pursuant to
17 21 U.S.C., Section 360(k), from the United States Food and Drug
18 Administration,
19 b. is capable of recognizing the presence or absence of ventricular
20 fibrillation or rapid ventricular tachycardia, and is capable of
21 determining, without intervention by an operator, whether
22 defibrillation should be performed, and

1 c. upon determining that defibrillation should be performed,
2 automatically charges and requests delivery of an electrical impulse to
3 an individual's heart;

4 2. "Entity" means public and private organizations including, but not limited to, the
5 State of Oklahoma and its agencies and political subdivisions, a proprietorship,
6 partnership, limited liability company, corporation, or other legal entity, whether or not
7 operated for profit;

8 3. "First responder" means an individual certified by the State Department of
9 Health to perform emergency medical services in accordance with the Oklahoma
10 Emergency Response Systems Development Act and in accordance with the rules and
11 standards promulgated by the State Board of Health; and

12 4. "Prescribing physician" means a person licensed to practice medicine in the state
13 pursuant to Chapters 11 and 14 of Title 59 of the Oklahoma Statutes.

14 SECTION 2. This act shall become effective November 1, 2009.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS.