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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 325
 (S) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Civil Liability for Defibrillator Use BRU _____
 Component _____
 Sponsor Senator Therriault
 Requester Senate HESS Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE Phone 465-6600
 Division _____ Date/Time _____
 Approved by: /s/ Senator Green, Chair Date 2/26/02
 Agency _____

Senate Bill 325, "An Act relating to civil liability for use of an automated external defibrillator; and providing for an effective date."

Sectional Analysis

Section 1

AS 09.65.087(a) Civil liability for use of an automated external defibrillator

- Replaces 09.65.090(e)
- Removes civil liability for those who use or attempt to use an automated external defibrillator (AED) device on the victim of a perceived medical emergency.
- Removes existing requirement that users of the devices be "properly trained" in recognition of the ease of use of new devices.
- Maintains civil liability for failure to notify the appropriate emergency medical services agency.

AS 09.65.087(b)

- Removes civil liability resulting from use or attempted use of an AED for those who acquire or provide the AED.
- Maintains civil liability for those who acquire or provide an AED for failure to:
 - notify the local emergency medical response authority within 30 days following placement of the device
 - properly maintain and test the device
 - provide a means of notifying the local emergency medical response authority that an emergency exists
 - provide appropriate training to the employee or agent who used the device on a victim, except when:
 - the employee or agent is not someone who would have been reasonably expected to use the device
 - less than six months have elapsed between the time the person was hired and the occurrence of harm or, if the device was acquired after the person was hired, less than six months have elapsed between the acquisition and the occurrence of harm
 - the device is placed in a location where those who acquired it would not regularly have an employee or agent present
 - the device is placed in a location that provides public access to the device by persons who volunteer and are not employees or agents of those who acquired or provided the device
- Maintains the current definition of "appropriate training" as having completed an AED training course from the American Heart Association, the American Red Cross, or another AED training course approved by the Department of Health and Social Services.

Section 2

Deletes AS 09.65.090(e) and (f)

SITE: ANCHORAGE LIO

COMMITTEE: SHESS

DATE: Feb 27, 2002

SUBJECT OF MEETING:

SB 325

UPDATE #:



DO YOU WANT

P R I N T YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

**TO TESTIFY?
Y OR N**

| | | | |
|------------------------|----------------------------------|---------------|----------------|
| Pam Beale | | AHA | Y=SB325 |
| Email address: | | | |
| F X Nolan | <i>Chief Em. Med. Serv. Anch</i> | MOA/AFD/AHA | Y=SB325 |
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| Ronnie Sullivan | | So Region EMS | Y=SB325 |
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| Email address: | | | |

Will
assess
in
jurisdiction

The Department of Health and Social Services propose that Senate Bill 325 be amended to add a Section (d) as follows:

(d) In this section, "person" has the following meanings:

1. the meaning given in AS 01.10.060 (8);
2. a municipality; or
3. a state agency.

intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effective dates. — Section 29, ch. 26, SLA 1997,

which enacted this section, took effect on August 7, 1997.

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Sec. 09.65.090. Civil liability for emergency aid. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) A member of an organization that exists for the purpose of providing emergency services is not liable for civil damages for injury to a person that results from an act or omission in providing first aid, search, rescue, or other emergency services to the person, regardless of whether the member is under a preexisting duty to render assistance, if the member provided the service while acting as a volunteer member of the organization; in this subsection, "volunteer" means a person who is paid not more than \$10 a day and a total of not more than \$500 a year, not including ski lift tickets and reimbursement for expenses actually incurred, for providing emergency services.

(c) The immunity provided under (b) of this section does not apply to civil damages that result from providing or attempting to provide any of the following advanced life support techniques unless the person who provided them was authorized by law to provide them:

- (1) manual electric cardiac defibrillation;
- (2) administration of antiarrhythmic agents;
- (3) intravenous therapy;
- (4) intramuscular therapy; or
- (5) use of endotracheal intubation devices.

(d) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

(e) A person who uses an automated external defibrillator to treat another person in cardiac arrest is not liable for civil damages as a result of an act or omission in treating the other person if the person was properly trained to use the device and activates the emergency medical services system by notifying the appropriate emergency medical services agency.

(f) In this section, "properly trained" means that the individual has completed an automated external defibrillator training course from the American Heart Association, the American Red Cross, or another automated external defibrillator training course approved by the Department of Health and Social Services. (§ 1 ch 32 SLA 1967; am § 1 ch 119 SLA 1971; am § 38 ch 102 SLA 1976; am § 1 ch 90 SLA 1988; am §§ 2, 3 ch 32 SLA 1998)

Revisor's notes. — Subsections (b) and (c) were enacted as (c) and (d), respectively. Renumbered in 1988, at which time former subsection (b) was renumbered as (d). In 1994, in subsection (b), "subsection" was substituted for "paragraph" to correct a manifest error in ch. 90, SLA 1988.

Cross references. — For liability for services rendered by a physician-trained mobile intensive care paramedic, see AS 08.64.366.

For immunity from liability for emergency medical services, see AS 18.08.086.

For a statement of the purpose of the 1998 amend-

ment to paragraph (c)(1) and addition of subsections (e) and (f), see § 1, ch. 32, SLA 1998 in the 1998 Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 12, 1998, inserted "manual" in paragraph (c)(1) and added subsections (e) and (f).

Opinions of attorney general. — Department of Natural Resources firefighters probably have a duty to rescue which removes them from the protection of this section. Thus, the state is liable through them for any negligence in the performance of that duty. May 22, 1980, Op. Att'y Gen.

NOTES TO DECISIONS

Common law. — At common law there is no duty to rescue. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

The law has persistently refused to recognize the moral obligation of common decency and common humanity, to come to the aid of another human being who is in danger. Only in certain limited situations, as for example where the actor was responsible for placing the imperiled person in his endangered position, has a duty been recognized. However, once rescue operations have begun, the rescuer is held to a duty of due care. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

The purpose of this section is to induce voluntary rescue by removing the fear of potential liability which acts as an impediment to such rescue. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

Persons under preexisting duty to rescue. — This section is directed at persons who are not under some preexisting duty to rescue. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

A rescuer under a preexisting duty to rescue would not need the added inducement of immunity from civil

liability for his ordinary negligence. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

Police officers. — A holding that police officers have no duty to rescue would not comport with public conceptions of their role. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

This section, the Alaska Good Samaritan statute, does not shield a police officer from liability for ordinary negligence. *Lee v. State*, 490 P.2d 1206 (Alaska 1971), overruled on other grounds, *Munroe v. City Council*, 545 P.2d 165 (Alaska 1976).

Physicians. — This section does not extend immunity to physicians who have a preexisting duty to render emergency care. *Deal v. Kearney*, 851 P.2d 1353 (Alaska 1993).

Coast Guard assistance. — By this section, Alaska has partially immunized the conduct of one who, voluntarily and without prior obligation, renders emergency aid. The Coast Guard has no legal obligation to go to the aid of a pilot who has crashed, the Coast Guard cannot be held to a higher standard of care than would be applied to a private individual under like circumstances, and the count of plaintiff's complaint based on ordinary negligence must be dismissed. *Bunting v. United States*, 662 F. Supp. 971 (D. Alaska 1987), *aff'd*, 884 F.2d 1143 (9th Cir. 1989).

Sec. 09.65.091. Civil liability for responding to disaster. (a) A person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency during a state of emergency declared by an authorized representative of the state or local government is not liable for the death of or injury to any person or damage to any property caused by that person's actions, except when the trier of facts finds that the person acted intentionally, recklessly, or with gross negligence.

(b) This section does not affect the right of a person to receive benefits to which the person would otherwise be entitled under the workers' compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state or federal law. (§ 1 ch 4 SLA 1984)

Sec. 09.65.092. Civil liability for voluntary aircraft safety inspection. An aircraft or power plant technician or mechanic certified by the Federal Aviation Administration who participates without compensation in a voluntary aircraft safety inspection program is not liable for civil damage resulting from an act or omission arising out of an aircraft safety inspection in that program unless the act or omission constitutes gross negligence or reckless or intentional misconduct. (§ 1 ch 3 SLA 1982)

Sec. 09.65.095. Liability for administration of blood test. (ε) A civil or criminal action arising out of battery may not be brought against a health care provider for the act of taking a blood sample if the sample is taken

(1) at the request of a police officer under the circumstances specified in AS 28.35.035 or when the arresting officer has a search warrant or court order authorizing the taking of the blood sample; and

(2) without the use of excessive or unreasonable force.

(b) In this section,

(1) "health care provider" means a nurse licensed under AS 08.68, a physician licensed under AS 08.64, and a person certified by a hospital as competent to take blood samples;

(2) "hospital" means a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital.

SITE: Kenai LIO

COMMITTEE: Senate Health,
Education &
Social Services

DATE: 2-27-02

SUBJECT OF MEETING:

SB 325 Civil Liability for
Defibrillator Use

UPDATE #:



PLEASE SIGN IN

PRINT YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

TESTIFYING?

Y or N

Shad to Kenai
Jason Elson (SB 325)

PO Box 2712 Kenai, AK 99611

**Kenai Fire Chiefs
Assoc**

Y (SB 325)

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Senate

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Senate District O

Senate Bill 325 "An Act relating to civil liability for use of an automated external defibrillator; and providing for an effective date."

Sponsor: Senator Gene Therriault

Sponsor Statement

Senate Bill 325 will help save lives in Alaska by increasing the availability of devices designed to restore a normal heartbeat when a person's heart suddenly stops.

Each year, 250,000 people die in the United States as a result of sudden cardiac arrest. The most important treatment for more than half of these patients is defibrillation, an electrical shock intended to restore a more normal cardiac rhythm. For each minute a person remains in cardiac arrest, their chances of survival decrease by approximately 7% to 10%. Nearly all emergency medical services agencies in Alaska are capable of performing defibrillation. Strategically placed Automated External Defibrillators, known as AEDs, have the potential to save lives by allowing defibrillatory shocks to be delivered prior to the arrival of the ambulance crew.

AEDs have evolved significantly over the past few years and the current generation of devices is safer, easier to use, and more maintenance free than ever before. Businesses and municipalities are interested in making AEDs more accessible in the workplace and in locations where large groups gather so that both trained staff and trained laypersons can access the devices in the event of a sudden cardiac arrest. Notable successes have been achieved with these devices in this setting, and a number of programs have placed these devices where they are accessible to the general public. Examples include O'Hare and Midway airports in Illinois and Dallas/Ft. Worth airport in Texas. The American Heart Association is recommending the training of non-medical lay persons in the use of automated external defibrillator devices.

Currently, AS 09.65.090 provides immunities from civil liability to individuals who use the device. It does not provide any immunities for those making the devices accessible for use. This has limited the expansion of AED access programs due to a perception of excessive liability that is largely due to unfamiliarity with the current state of the technology regarding ease of use and safety. It is literally impossible to shock a person who does not require it with the current devices.

SPONSOR STATEMENT

Email: Senator_Gene_Therriault@legis.state.ak.us

SB 325 corrects this deficiency so that these potentially lifesaving devices are more readily available for use and has provisions that result in the integration of the AEDs into the local emergency response system.

Specifically, the bill repeals the language regarding AEDs from AS 09.65.090 and moves it to the new 09.65.087. The previously existing requirement that users of the devices be "properly trained" has been deleted in recognition of the ease of use of the new devices and their ability to discern between shockable and nonshockable rhythms and in anticipation of even further advances in this technology.

There are several specific prerequisites to receive immunities from civil liability that are important to note. First, those who acquire or provide the device must notify the local emergency response agency of the location of the device. This is very helpful information for incoming emergency medical services personnel. Second, those who acquire or provide the device are obligated to properly maintain and test it. Third, it requires that a means of notifying the local EMS agency be available when a medical emergency occurs where the device is used. Finally, because trained rescuers can deliver the shocks more quickly than those who are not, those who acquire or provide the device for use by the agency's employees are required to provide appropriate training to those employees and agents who are reasonably expected to use the device.

Senate Bill **325** represents model legislation that takes the best from both Federal and other states' statutes regarding the use of automated external defibrillators and creates an environment that encourages the proliferation of this life saving technology in Alaska.