

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE.

The meeting was called to order by Chairperson Jim Morrison at 1:35 p.m. on March 13, 2003, in Room 143-N of the Capitol.

All members were present except Representatives Landwehr, Holland, Patterson, Hill, and Goico, all of whom were excused.

Committee staff present:

Bill Wolff, Kansas Legislative Research Department  
Rena Jefferies, Kansas Revisor of Statutes' Office  
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Chris Davlantes, Emergency Room Physician, Olathe Medical Center  
Tuck Duncan, Topeka Attorney, American Medical Response  
Chris Collins, Director of Government Affairs, Kansas Medical Society

Others attending: See Attached Guest List

The minutes for the 3-12-03 meeting were unanimously approved.

Representative Flaharty chaired the hearing on **SB 132**. She welcomed Dr. Chris Davlantes, an Emergency Room physician from the Olathe Medical Center, who, representing the American Heart Association, spoke in support of the bill, saying the only treatment for certain kinds of heart attacks is an automated external defibrillator (AED). (Attachment 1) He cited statistics to illustrate the value of such devices, stating that widespread distribution of this equipment could save the lives of an additional 50,000 individuals nationwide. Noting that a Good Samaritan might fear liability, he said the bill will alleviate such fears.

Answering questions, Dr. Davlantes said each unit costs about \$2500. He said there have been no successful lawsuits against a person using an AED; however, there have been several cases of litigation for not having one available. Staff noted that no fiscal note was listed, since the Department of Administration is mandated only to develop guidelines for placement of the devices, not to purchase them.

Kevin Walker, American Heart Association, commented on an amendment suggested by Kansas Medical Society, which adds language to clarify the original intent of the bill. (See amendment at the end of Attachment 3)

Tuck Duncan, a Topeka attorney speaking for John Hayworth, Kansas Director of Operations, American Medical Response, spoke in support of the bill, noting the bill's focus on training, maintenance and placement. (Attachment 2)

## CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at on March 13, 2003, in Room 143-N of the Capitol.

Answering a question regarding any contraindications of the device, Mr. Duncan said a person is legally safer to take positive action and use an AED; lawsuits are more likely for acts of omission. Dr. Davlantes stated that the device will deliver a shock to the heart only when one is needed.

Chris Collins, Director of Governmental Affairs, Kansas Medical Society, testified in support of the bill. She said the KMS encourages widespread availability of the devices, adding that physicians are slightly uneasy with the change in immunity for physicians. (Attachment 3)

Carolyn Mittendorf (Kansas State Nurses Association) and David Lake (Kansas Board of Emergency Medical Services) submitted written testimony. (Attachments 4 and 5)

Gary White, an attorney serving as Vice President of Kansas Trial Lawyers Association, said he had worked with all the originating principals of the bill, stating that the KTLA supports the concept of the bill and desires only to clarify one small point.

The hearing was closed for **SB 132**.

The Chair reminded members of their sub-committee assignments, noting a change replacing Representative Landwehr with Representative Williams. (Attachment 6) He said that **SB 225** would receive a briefing on March 18 and a hearing on March 20, with possible sub-committee deliberations on March 21 and 24. (Attachment 7)

The meeting was adjourned at 2:15 p.m. The next meeting is scheduled for Monday, March 17, at 1:30 p.m.



**American Heart Association  
Testimony in Support of SB 132  
House Health and Human Services Committee  
Thursday, March 13, 2003 – 1:30 pm**

Thank you for the opportunity to appear before you today in support of SB 132. I am Dr. Chris Davlantes. I am an emergency room physician at Olathe Medical Center and a volunteer for the American Heart Association.

Each year, more than 250,000 Americans die of sudden out-of-hospital cardiac arrest and many of these victims demonstrate ventricular fibrillation. Survival from sudden cardiac arrest in adults depends directly on the speed of defibrillation; every minute of delay in defibrillation reduces the chances of survival by 7 to 10%.

Public Access to Defibrillation (PAD) is an important public health initiative and the major goal of PAD programs is to increase the survival from out-of-hospital sudden cardiac arrest by shortening the time to defibrillation.

Automated external defibrillators (AEDs) are extremely accurate computerized defibrillators. When properly attached to an adult victim through adhesive electrodes, AEDs analyze the victim's cardiac rhythm, charge to an appropriate energy level, and, when directed by the operator, deliver a defibrillation shock through the electrodes.

The recent development of AEDs that are highly sophisticated, accurate, inexpensive and virtually maintenance-free enables AEDs to be used in the home, workplace, public buildings and even on airplanes.

We support SB 132 for several reasons. First, it provides basic immunity protections to acquirers, physicians and trainers involved in the placement of AEDs. While the AEDs are becoming more popular and less expensive, the devices are still relatively new to the general public.

Overall, the fear of liability is the greatest hindrance to placing AEDs. The basic immunity protections offered by this bill will assist in more placements of AEDs while ensuring that training and proper protocols for the use of the device are being followed.

The second component of this bill that the American Heart Association believes to be important is the issue of notification upon purchase of an AED. The devices are safe and have saved many lives. Unfortunately, there is little information available regarding the placement of the devices so a notification system will help advise local authorities of the availability of AEDs in their communities and assist in having an AED available when needed.

A simple registration or notification system such as is proposed by SB 132 can aid in the use of the AED should the need arise. When an AED is purchased, the acquirer must notify local authorities of the location of the device. The authorities can then code this information into their 911 databases and dispatchers can then assist callers in locating the device. With the chance of survival decreasing 7 to 10% per minute, the first few minutes while waiting for medical response teams to arrive can mean the difference between life and death.

Finally, the bill requires the Secretary of Administration to develop guidelines for the placement of AEDs at state facilities. This is important for several reasons. The Heart Association believes the state should take a strong lead in setting an example with the placement of AEDs. Additionally, the Heart Association believes that several state buildings – including the Docking and Curtis buildings are strong candidates for AED placements because of building size and number of employees.

The Heart Association encourages the State to develop the guidelines to ensure that prompt medical attention is available and that the guidelines established are coordinated with existing emergency response plans. We are more than happy to assist the Secretary of Administration with the development of guidelines.

AEDs are safe and extremely effective. Within the past month, AEDs were used at a high school basketball game in Kansas City and at a Johnson County restaurant to successfully revive someone overcome by sudden cardiac arrest. By passing this bill, you can help pave the way for additional AED placements that may soon save the life of someone else.

I urge you to support SB 132, and will be happy to answer any questions you might have.

March 13, 2003

TO: Representative Morrison, Chair and members of the Health and Human Services Committee

From: John Hayworth, Kansas Director of Operations, American Medical Response

RE: Proponent testimony for SB 132

Chairperson Morrison and members of the committee, I want to thank you for this opportunity to provide testimony in support of SB 132.

First I would like to introduce myself. I am the Director of Operations for American Medical Response – Kansas. We are the sole provider of paramedic Emergency Medical Services in Shawnee, Wabaunsee, and Osage Counties and one of several providers in Johnson County.

I submit testimony today wearing several hats, the second of which is that of the Chairman of the local American Heart Association's Public Access Defibrillation Committee. One of the first things the committee looked at was where defibrillators were currently located. It was frustrating to find that, in this state, there is no entity to go to that has knowledge of where the defibrillators are located in our communities.

As an EMS provider it has been frustrating to arrive on the scene of an emergency to find well-intentioned people that, through time and a lack of professional support, had issues with remembering how to operate a device, what process to follow, and when and how to access the lifesaving systems. This bill, although it requires nothing of EMS administrators, allows the administrators to know who in the community have AED's. If that administrator chooses to do so, it opens the door for them to offer to assist individuals or organizations that have AED in making sure that they are ready in the event of an emergency.

To put on a final hat today, I will speak on the behalf of the Kansas EMS Administrator's Society. I can tell you that the organization completely supports any help that they can receive in understanding where the AED's are located in the communities that we serve.

I respectfully request that you act favorably on this bill.

Attachment 2  
HHS 3-13-03



## American Medical Response

401 SW Jackson  
Topeka, KS 66603  
(785) 233-2400

To: House Health and Human Services Committee  
From: John Hayworth Operations Director  
R.E. "Tuck" Duncan, General Counsel  
RE: SB 132

SB 132 is an important advance in providing for the emergent medical needs of Kansans. We enthusiastically support this bill. The bill provides as follows:

*(2) No person or entity which owns, leases, possesses or otherwise controls an automated external defibrillator and provides such automated external defibrillator to others for use shall be held liable for any civil damages as a result of such use where the person or entity which owns, leases, possesses or otherwise controls the automated external defibrillator has developed, implemented and follows guidelines to ensure proper maintenance and operation of the device and reasonably expects the automated external defibrillator to be used by a qualified person.*

In order to encourage the expanded use of these devices this qualified immunity is vital. Provided there is proper maintenance and operation of a device by a person qualified to use same, there is no reason not to provide qualified immunity.

*(3) No person licensed to practice medicine and surgery who authorizes the use of an automated external defibrillator in connection with the conduct of a public defibrillation education program shall be held liable for civil damages as the result of the use of an automated external defibrillator as part of such program if the person licensed to practice medicine and surgery in conjunction with any entity which owns, leases, possesses or otherwise controls the automated external defibrillator used as part of the program has developed, implemented and follows guidelines to ensure proper maintenance and operation of the device, proper training in the use of the device and integration of the training with the local emergency medical services system.*

Again, in order to encourage the expanded use of these devices the qualified immunity set forth above is important.

*(4) No person or entity which teaches or provides a training program for cardiopulmonary resuscitation that includes training in the use of automated external defibrillators shall be held liable for any civil damages as a result of such training or use if such person or entity has provided such training in a manner consistent with the usual and customary standards for the providing of such training.*



Likewise, in order to encourage the expanded use of these devices and proper training of their use, the qualified immunity set forth above is imperative.

*(c) Pursuant to the provisions of this subsection, persons or entities which purchase or otherwise acquire an automated external defibrillator shall notify the emergency medical service which operates in the geographic area of the location of the automated external defibrillator. Persons or entities acquiring an automatic electronic defibrillator shall notify the emergency medical service providing local service on forms developed and provided by the emergency medical services board.*

From the perspective of an emergency medical service, knowing where these devices are located is important to an integrated EMS program. This will be a valuable tool in an EMS service's responding to medical emergencies.

*(d) The secretary of administration shall develop guidelines for the placement of automated external defibrillators in state-owned facilities.*

*The guidelines shall include, but not be limited to:*

*(1) Which state-owned facilities should have automated external defibrillators readily available for use;*

*(2) recommendations for appropriate training courses in cardiopulmonary resuscitation and automated external defibrillators use;*

*(3) integration with existing emergency response plans;*

*(4) proper maintenance and testing of the devices;*

*(5) coordination with appropriate professionals in the oversight of training; and*

*(6) coordination with local emergency medical services regarding placement and conditions of use.*

*Nothing in this subsection shall be construed to require the state to purchase automated external defibrillators.*

We believe it is important that there be a single policy governing the placement of these devices in public buildings. Local governments might also be encouraged to utilize similar guidelines.

Therefore, for the reasons set forth above we respectfully request that you recommend favorably for passage SB 132.





**TO:** House Health and Human Services Committee

**FROM:** Christina Collins  
Director of Government Affairs

**DATE:** March 13, 2003

**RE:** SB 132: Automated External Defibrillators

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony today in support of SB 132. We applaud the efforts of the American Heart Association's Kansas affiliate in its efforts to educate Kansas businesses on the value of installing automated external defibrillators and maintaining them in a responsible manner. You have already no doubt heard from several conferees on the design safety of AED's, their ease of use and about the many lives of Kansans that have been saved by these devices.

Physicians are a key element in AED programs. Because these are "schedule II" devices and regulated by the FDA, a physician's prescription is required to order one. Similarly, physicians are asked to create protocols for their use. A physician's involvement with an AED almost always ends there. He or she is not responsible for ensuring that those protocols are properly implemented or that the AED is properly maintained. To be candid, physicians – like others associated with these programs – are wary of the potential liability that can be created. And that concern has had a chilling effect on physicians who want to help but must think twice about a potential lawsuit.

The bill before you today creates some limited exemptions for liability for parties involved in the use of AED's. However, the Kansas Medical Society has some concern with the proposed amendment before you today, in particular, with subsection (b)(2) which attempts to create qualified immunity for physicians involved in AED programs. The provision before you for consideration today only offers qualified immunity for physicians who participate in a program such as that created by the American Heart Association. The physician may only benefit from this limited protection when the company that controls the AED has properly maintained the AED – an action that the physician has no control over.

*Attachment 3*  
*HHS 3-13-03*

In contrast, subsection (b)(2), which provides qualified immunity for the business or entity that installs an AED protects all such businesses or entities – not just those that participate in a program like that sponsored by the American Heart Association. That business or entity may benefit from qualified immunity when it develops, implements and follows guidelines for the safe use of the AED – all issues which that business or entity may control. Likewise, subsection (b)(4) creates qualified immunity for those who teach or provide a training program in using AED's regardless of whether they participate in a program like that offered by the American Heart Association. Once again, those parties may benefit from qualified immunity if they are training appropriately – an action that trainers themselves may control.

We would respectfully ask this committee to adopt the attached amendment that places physician immunity on par with that granted to the other parties. The attached amendment clarifies that physicians may be immune from liability for civil damages for their involvement in prescribing and creating protocols for an AED even if not done in conjunction with an American Heart Association program, like that granted in (b)(4) to those who teach others to use AED's. Similarly, in our proposed amendment, the grant of immunity is linked to actions that physicians may control, namely, whether or not the protocols the physician creates is consistent with the usual and customary standards for such protocols.

It is, indeed, regrettable that we live in a litigious society where such exemptions are necessary and that fear of lawsuits prevents safety programs from being implemented. The Kansas Medical Society wholeheartedly supports the American Heart Association's promotion of such programs. We would respectfully urge this committee to pass SB 132 with the proposed amendment to encourage the proper use of AED's to save the lives of Kansans.

3  
4 **SENATE BILL No. 132**

5  
6 By Committee on Public Health and Welfare

7  
8 2-4  
9

10 AN ACT concerning automated external defibrillators; amending K.S.A.  
11 65-6149a and repealing the existing section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 65-6149a is hereby amended to read as follows: 65-  
15 6149a. (a) An automated external defibrillator may be used by any qual-  
16 ified person.

17 (b) (1) Any qualified person who gratuitously and in good faith ren-  
18 ders emergency care or treatment by the use of or provision of an auto-  
19 mated external defibrillator shall not be held liable for any civil damages  
20 as a result of such care or treatment or as a result of any act or failure to  
21 act in providing or arranging further medical treatment where the person  
22 acts as an ordinary reasonably prudent person would have acted under  
23 the same or similar circumstances.

24 (2) *No person or entity which owns, leases, possesses or otherwise*  
25 *controls an automated external defibrillator and provides such automated*  
26 *external defibrillator to others for use shall be held liable for any civil*  
27 *damages as a result of such use where the person or entity which owns,*  
28 *leases, possesses or otherwise controls the automated external defibrillator*  
29 *has developed, implemented and follows guidelines to ensure proper main-*  
30 *tenance and operation of the device and reasonably expects the automated*  
31 *external defibrillator to be used by a qualified person.*

32 (3) ~~*No person licensed to practice medicine and surgery who author-*~~  
33 ~~*izes the use of an automated external defibrillator in connection with the*~~  
34 ~~*conduct of a public defibrillation education program shall be held liable*~~  
35 ~~*for civil damages as the result of the use of an automated external defib-*~~  
36 ~~*rillator as part of such program if the person licensed to practice medicine*~~  
37 ~~*and surgery in conjunction with any entity which owns, leases, possesses*~~  
38 ~~*or otherwise controls the automated external defibrillator used as part of*~~  
39 ~~*the program has developed, implemented and follows guidelines to ensure*~~  
40 ~~*proper maintenance and operation of the device, proper training in the*~~  
41 ~~*use of the device and integration of the training with the local emergency*~~  
42 ~~*medical services system.*~~

43 (4) *No person or entity which teaches or provides a training program*

pursuant to a prescription order authorizes the acquisition of an automated external defibrillator or participates in the development of usual and customary protocols for an automated external defibrillator by a person or entity which owns, leases, possesses or otherwise controls such automated external defibrillator and provides such automated external defibrillator to others for use shall be held liable for any civil damages as a result of such use.

1 for cardiopulmonary resuscitation that includes training in the use of  
2 automated external defibrillators shall be held liable for any civil damages  
3 as a result of such training or use if such person or entity has provided  
4 such training in a manner consistent with the usual and customary stan-  
5 dards for the providing of such training.

6 (c) Pursuant to the provisions of this subsection, persons or entities  
7 which purchase or otherwise acquire an automated external defibrillator  
8 shall notify the emergency medical service which operates in the geo-  
9 graphic area of the location of the automated external defibrillator. Per-  
10 sons or entities acquiring an automatic electronic defibrillator shall notify  
11 the emergency medical service providing local service on forms developed  
12 and provided by the emergency medical services board.

13 (d) The secretary of administration shall develop guidelines for the  
14 placement of automated external defibrillators in ~~state-owned~~ **state**  
15 **owned or occupied** facilities. The guidelines shall include, but not be  
16 limited to:

- 17 (1) Which ~~state-owned~~ **state owned or occupied** facilities should
- 18 have automated external defibrillators readily available for use;
- 19 (2) recommendations for appropriate training courses in cardiopul-
- 20 monary resuscitation and automated external defibrillators use;
- 21 (3) integration with existing emergency response plans;
- 22 (4) proper maintenance and testing of the devices;
- 23 (5) coordination with appropriate professionals in the oversight of
- 24 training; and

25 (6) coordination with local emergency medical services regarding  
26 placement and conditions of use.

27 Nothing in this subsection shall be construed to require the state to  
28 purchase automated external defibrillators.

29 (e) As used in this section, "qualified person" means a person who:  
30 (1) Has completed a course in cardiopulmonary resuscitation or a basic  
31 first aid course that includes cardiopulmonary resuscitation training and  
32 (2) has completed a course of training in the use of automated external  
33 defibrillators and (3) has demonstrated proficiency in the use of an au-  
34 tomated external defibrillator.

35 Sec. 2. K.S.A. 65-6149a is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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43



1208 SW TYLER  
TOPEKA, KANSAS 66612-1735  
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EXECUTIVE DIRECTOR

*For More Information Contact:  
Terri Roberts J.D., R.N.  
785.233.8638 troberts@ksna.net  
March 12, 2003*

## **S.B. 132 AED Placement -Liability Exposure Limitation**

*As Amended by the Senate*

### *WRITTEN TESTIMONY*

Chairperson Morrison and members of the House Health and Human Services Committee, the KANSAS STATE NURSES ASSOCIATION (KSNA) is in support of SB 132 as amended by the Senate.

AED's are used to send a electrical pulse (defibrillation) that is designed to "restart" the heart in "normal sinus rhythm" when the ventricular of the heart is in a rhythm referred to as ventricular tachycardia or ventricular fibrillation. "Shocking" the heart is the most common intervention in cases of V-Fib & V-Tach.

Legislation was passed several years ago which allowed for the placement of AED's for public access in Kansas. Since then, liability exposure has surfaced as a major barrier to getting AED's placed where the public has access to them. This bill eliminates liability exposure for physicians, trainers and acquirers of AED equipment . If passed, this legislation should foster increased acquisition and placement throughout the state.

The provision in the bill for notifying the local EMS of the placement of an AED will enhance access and promote community awareness.

Thank you for this opportunity to present written testimony.

ouseversionKSNAtestimony on sb132aedliability.wpd

*Attachment 4  
HHS 3-13-03*

# *m e m o r a n d u m*

DATE: March 11, 2003

TO: Representative Jim Morrison, Chair and Members  
House Committee on Health and Human Services

FROM: DAVID LAKE

RE: Senate Bill 132

Chairman Morrison and members of the committee, Thank You! for the opportunity to provide this written testimony on behalf of the Kansas Board of Emergency Medical Services in support of SB132.

This past Fall, we received a federal grant for the purpose of placing Automatic External Defibrillators (AED's) in rural Kansas and the training of personnel in their use. The money we received will allow us to place at least one hundred AED's throughout Kansas and train in excess of 1500 people. The 177 licensed ambulance services were the partners we chose in helping us determine the most appropriate locations for these devices.

The grant was made possible because of the research which showed the value of early recognition of heart attack and early defibrillation. The rural areas were our target locations because of the increased response times of emergency medical services to these locations.

To receive an AED through this grant, the community must agree to work with their ambulance service in placement, training, and upkeep. AED's are also available for placement without approval or notification of the local ambulance service. This bill will require those entities acquiring an AED to notify the local ambulance service of the acquisition and placement. That notification must occur on forms developed and provided by the Kansas Board of EMS. Only a slight modification to the forms already in use will be necessary. The value of EMS knowing the placement of AED's in their response areas can not be overstated.

I respectfully request you act favorably on this bill.

*Attachment 5*  
*HTS 3-13-03*

# Health and Human Services Sub-Committees

(Revised)

## Sub-Committee A

- Peggy Long (Chair)
- Don Hill
- Brenda Landwehr
- Frank Miller
- Roger Reitz
- Scott Schwab
- Geraldine Flaharty
- Tom Holland
- Eber Phelps
- Judy Showalter
- Jim Morrison (*ex-officio member*)

## Sub-Committee B

- Bob Bethell (Chair)
- Willa DeCastro
- Mario Goico
- Cindy Neighbor
- Doug Patterson
- Stephanie Sharp
- Nancy Kirk
- Sue Storm
- Joshua Svaty
- Jerry Williams
- Jim Morrison (*ex-officio member*)

Attachment 6

HHS 3-13-03



HOUSE HEALTH AND HUMAN SERVICES

Bill Assignments and Action

Bill Number * Indicates a fiscal note on bill	Person or Committee sponsoring bill	Committee Members Assigned to Bill	Date(s) of Hearing(s)	Disposition
*SB 199 Concerning fitting and dispensing of hearing aids	SPHW	Willa DeCastro - Joshua Svaty	3-11	3-12 be passed as amended
*SB 132 An act concerning automated external defibrillators	SPHW	Geraldine Flaharty - Stephanie Sharp	3-13	
*SB 106 Promoting the public health and welfare of all Kansans	Senate Public Health and Welfare	Bob Bethell - Cindy Neighbor	3-18	
*SB 151 An act concerning county and district hospitals (M)	SPHW	Nancy Kirk - Don Hill - Cindy Neighbor	3-19	
*Sub 204 -Prevention of lead poisoning	SPHW	Eber Phelps - Roger Reitz	3-19	
*SB 225 Licensure of Physical Therapists	SPHW	Peggy Long - Judy Showalter - Tom Holland - Scott Schwab	Briefing 3-18 Hearing 3-20 Sub-Committee 3-21 & 3-24	

*Attachment 7  
HHS 3-13-03*