

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1383/P1dn  
DAK:wlj:lp

February 18, 1999

To Senator Robson:

I am providing you this bill in preliminary form, because the drafted version differs in several ways from the material proposed and because certain questions remain for resolution. The following are issues that arose in the course of drafting:

1. In essence, the civil immunity provided in the draft to persons who use semiautomatic defibrillators rests on completion of training by those persons. The training, in turn, must be under a course that is approved by the department of health and family services (DHFS) as satisfying standards specified by DHFS by rule. Thus, the immunity cannot apply until DHFS has promulgated rules that establish the standards and the person has taken training that satisfies those standards. Therefore, it seems best that the draft have a delayed effective date to give DHFS time to promulgate the rules. I would recommend January 1 or April 1, 2000. You might also wish to require DHFS to submit proposed rules to the Legislative Council by a date that is several months before the effective date, to ensure that the rules are promulgated by the effective date. Lastly, you may wish to provide DHFS with emergency rule-making powers without the necessity of making a finding of emergency, to promulgate emergency rules prior to the permanent rules.

2. I did not draft the statement of legislative intent proposed. It is LRB policy not to draft such statements other than to sustain a possibly-unconstitutional provision or for recodification bills, neither of which circumstance is presented in this draft.

3. I substituted "person" for the term "person or entity" proposed, s. 146.50 (8g) (b) (intro.) and (c); the definition of "person" in s. 990.01 (26), stats., which applies, is broad enough to cover "entity". I also substituted "possesses" for "acquires" in ss. 146.50 (8g) (b) (intro.) and (c) and 895.48 (4) (a) 3. so as to avoid the implication that the bill only applies to persons who obtain semiautomatic defibrillators after the bill's enactment; I have presumed that you wanted the bill to apply to any person who has a semiautomatic defibrillator at the time that the bill is enacted. Lastly, I substituted "person who appears to be in cardiac arrest" for "person who is in cardiac arrest" to avoid the implication that the person using the defibrillator was making a medical diagnosis (which might constitute the unauthorized practice of medicine). Are these substitutions acceptable?

4. I am uncertain if I've captured your intent with respect to s. 146.50 (8g) (b) 3. The language proposed was "There is medical direction from a licensed physician to the

site's program to ensure compliance with requirements for training, notification and maintenance". I was unsure what a "site", its "program" and "notification" all related to because they had no antecedents. Please carefully review the drafted language. (It is unnecessary to use "licensed" with respect to "physician", because the term is so defined in s. 146.50 (1) (m), stats.) I think it odd that a physician would provide medical direction with respect to maintenance requirements, and, with respect to training, the training standards are prescribed by rule and the possessor of the defibrillator is required to ensure that the training is conducted; therefore, I'm not sure that this provision has any utility or makes sense.

5. Please carefully review s. 895.48 (4). The proposed language for the civil immunity provisions contained several problems, which I have tried to correct. The instructions were to delete the first of four proposed provisions concerning the immunity and "add [defibrillator] use to the current WI Good Samaritan law". Current law, at s. 895.48 (1), stats., provides immunity from civil liability for acts or omissions in good faith in rendering emergency care; the exception to the immunity is for health care employes or professionals who render the care for compensation, within the scope of their usual and customary employment or practice at a hospital, accident scene, enroute to a hospital or at a physician's office. In contrast, the proposed exception to the immunity in the bill is "if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering such emergency care". The difficulty lies in the fact that these terms conflict with and overlap each other to some extent. Thus, would a person who acts in good faith but who is grossly negligent or acts with wanton misconduct be liable? Would a person who is not acting in good faith but is not negligent be liable? After considering the issue, I deleted "good faith" from s. 895.48 (4) (a). The provision, then, mirrors the treatment in s. 895.482, stats. An alternative would be to retain "good faith" and "willful misconduct" but to delete "gross negligence" and "wanton misconduct". Please let me know if you prefer the alternative.

6. For s. 895.48 (4) (a) 5., the language proposed ("the person or entity responsible for the site where the [defibrillator] is located") is vague. Please review my alternative.

I will be happy to meet with you or provide any other assistance for this draft.

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