

By: Gallego

H.B. No. 808

A BILL TO BE ENTITLED

AN ACT

relating to the availability of automated external defibrillators at certain athletic clubs; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 779.001, Health and Safety Code, is amended to read as follows:

Sec. 779.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Automated [~~,"automated~~] external defibrillator" means a heart monitor and defibrillator that:

(A) [~~(1)~~] has received approval from the United States Food and Drug Administration of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;

(B) [~~(2)~~] is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(C) [~~(3)~~] on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

(2) "Athletic club" means an entity that:

(A) provides sports or exercise equipment, facilities, or instruction to its customers or members or to the guests of its customers or members; and

1 (B) provides sports or exercise equipment,
2 facilities, or instruction to or has enrolled at least 125
3 customers or members.

4 SECTION 2. Chapter 779, Health and Safety Code, is amended
5 by adding Section 779.009 to read as follows:

6 Sec. 779.009. ATHLETIC CLUBS; LIMITATION ON LIABILITY;
7 CIVIL PENALTY. (a) An athletic club shall make available at each
8 facility or location an automated external defibrillator.

9 (b) An athletic club shall make reasonable efforts to ensure
10 that at least one athletic club employee trained in the proper use
11 of an automated external defibrillator is present during staffed
12 business hours at each facility or location.

13 (c) An athletic club or other person is not liable for civil
14 damages arising from the use, attempt to use, or failure to use an
15 automated external defibrillator on the premises of an athletic
16 club unless the athletic club or person acts in a manner that is
17 wilful or wanton or constitutes gross negligence. The limitation
18 on liability provided by this subsection is not exclusive and a
19 person may raise any other defense to liability available under
20 law.

21 (d) An athletic club that violates Subsection (a) is subject
22 to a civil penalty that may not exceed \$200 for the first violation.
23 An athletic club's failure to correct a violation under Subsection
24 (a) not later than 45 days after receiving notice of the first
25 violation constitutes a subsequent violation.

26 (e) Each subsequent violation of Subsection (a) is subject
27 to a civil penalty that may not exceed \$500. Each day of a

1 subsequent violation constitutes a separate violation for purposes
2 of the penalty assessment.

3 (f) The attorney general or a district, county, or city
4 attorney may institute an action in district court to collect a
5 civil penalty from an athletic club that violates this section. The
6 party bringing the suit may recover reasonable expenses incurred in
7 obtaining the penalty, including investigation costs, reasonable
8 attorney's fees, witness fees, and deposition expenses.

9 (g) The court shall consider the following in determining
10 the amount of the penalty:

11 (1) the athletic club's history of any previous
12 violations under this section;

13 (2) the seriousness of the violation;

14 (3) any hazard posed to the public health and safety by
15 the violation; and

16 (4) demonstrations of good faith by the athletic club.

17 (h) Venue for a suit brought under this section is in the
18 municipality or county in which the violation occurred or in Travis
19 County.

20 (i) A civil penalty recovered in a suit instituted by a
21 local government under this section shall be paid to that local
22 government.

23 SECTION 3. Section 779.009(c), Health and Safety Code, as
24 added by this Act, applies only to a cause of action that accrues on
25 or after September 1, 2010. A cause of action that accrued before
26 September 1, 2010, is governed by the law in effect at the time the
27 cause of action accrued, and that law is continued in effect for

1 that purpose.

2 SECTION 4. This Act takes effect September 1, 2010.