

FIRST REGULAR SESSION

HOUSE BILL NO. 682

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time January 31, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1448L.03I

AN ACT

To amend chapter 190, RSMo, by adding thereto nine new sections relating to the physical fitness facility emergency services AED act, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 190, RSMo, is amended by adding thereto nine new sections, to be known as sections 190.700, 190.703, 190.706, 190.709, 190.712, 190.715, 190.718, 190.721, and 190.724, to read as follows:

190.700. 1. Sections 190.700 to 190.724 shall be known and may be cited as the "Physical Fitness Facility Emergency Services AED Act".

2. As used in sections 190.700 to 190.724, the following terms shall mean:

(1) "Automated external defibrillator" or "AED", a portable electronic device that diagnoses and treats cardiac arrest by reestablishing an effective heart rhythm;

(2) "Department", the department of health and senior services;

(3) "Director", the director of the department of health and senior services;

(4) "Medical emergency", the occurrence of a sudden, serious, and unexpected sickness or injury that would lead a reasonable person, possessing an average knowledge of medicine and health, to believe that the sick or injured person requires urgent or unscheduled care;

(5) "Physical fitness facility":

(a) Any of the following indoor and/or outdoor facilities that is:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 a. Owned or operated by a park district, municipality, or other unit of local
15 government, or by a public or private secondary school, college, university, technical or
16 trade school; and

17 b. Supervised by one or more persons, other than maintenance or security
18 personnel, employed by the unit of local government, school, college, or university for the
19 purpose of directly supervising the physical fitness activities taking place at any of these
20 indoor or outdoor facilities: a swimming pool, stadium, athletic field, track and field
21 facility, or such facilities located adjacent thereto;

22 (b) Except as provided in paragraph (c) of this subdivision, any other indoor or
23 outdoor establishment, whether public or private, that provides services or facilities
24 focusing primarily on cardiovascular exertion as defined by department rule;

25 (c) Physical fitness facility shall not include:

26 a. A facility serving less than a total of one hundred individuals, as further defined
27 by department rule;

28 b. A facility located in a hospital or in a hotel or motel;

29 c. Any facility that does not employ any full-time persons to provide instruction,
30 training, or assistance for persons using the facility.

 190.703. 1. Before January 1, 2008, each person or entity that operates a physical
2 fitness facility shall adopt and implement a written plan for responding to medical
3 emergencies that occur at the facility during the time that the facility is open for use by its
4 members or by the public. The plan shall comply with sections 190.700 to 190.724 and
5 rules adopted by the department to implement sections 190.700 to 190.724. The facility
6 shall file a copy of the plan with the department.

7 2. Whenever there is a change in the structure occupied by the facility or in the
8 services provided or offered by the facility that would materially affect the facility's ability
9 to respond to a medical emergency, the person or entity shall within sixty days update its
10 plan developed under subsection 1 of this section and shall file a copy of the updated plan
11 with the department.

 190.706. 1. By the dates specified in section 190.724, every physical fitness facility
2 shall have at least one AED on the facility premises. The department shall adopt rules to
3 ensure coordination with local emergency medical services systems regarding the
4 placement and use of AEDs in physical fitness facilities. The department may adopt rules
5 requiring a facility to have more than one AED on the premises, based on the following
6 factors:

7 (1) The size of the area or the number of buildings or floors occupied by the
8 facility;

9 (2) The number of persons using the facility, excluding spectators.

10 2. A physical fitness facility shall ensure that there is a trained AED user on staff.
11 Personnel shall receive AED and cardiopulmonary resuscitation training by the American
12 Red Cross, American Heart Association, or an equivalent nationally recognized course in
13 defibrillator use and cardiopulmonary resuscitation.

14 3. Every physical fitness facility shall ensure that every AED on the facility's
15 premises is properly tested and maintained in accordance with rules adopted by the
16 department.

190.709. The department shall adopt rules to establish programs to train physical
2 fitness facility staff on the role of cardiopulmonary resuscitation and the use of automated
3 external defibrillators. The rules shall be consistent with those adopted by the department
4 for training AED users.

190.712. The department shall inspect a physical fitness facility in response to a
2 complaint filed with the department alleging a violation of sections 190.700 to 190.724. For
3 the purpose of ensuring compliance with sections 190.700 to 190.724, the department may
4 inspect a physical fitness facility at other times in accordance with rules adopted by the
5 department.

190.715. 1. If a physical fitness facility violates sections 190.700 to 190.724 by
2 failing to adopt or implement a plan for responding to medical emergencies under section
3 190.703 or failing to have on the premises an AED or trained AED user as required under
4 subsection 1 or 2 of section 190.706, the director may issue to the facility a written
5 administrative warning without monetary penalty for the initial violation. The facility may
6 reply to the department with written comments concerning the facility's remedial response
7 to the warning. For subsequent violations, the director may impose a civil monetary
8 penalty against the facility as follows:

9 (1) At least five hundred dollars but less than one thousand dollars for a second
10 violation;

11 (2) At least one thousand dollars for a third or subsequent violation.

12 2. The director may impose a civil monetary penalty under this section only after
13 the director provides the following to the facility:

14 (1) Written notice of the alleged violation;

15 (2) Written notice of the facility's right to request an administrative hearing on the
16 question of the alleged violation;

17 (3) An opportunity to present evidence, orally or in writing or both, on the question
18 of the alleged violation before an impartial hearing examiner appointed by the director;

19 (4) A written decision from the director, based on the evidence introduced at the
20 hearing and the hearing examiner's recommendations, finding that the facility violated
21 sections 190.700 to 190.724 and imposing the civil penalty.

22 3. The attorney general may bring an action in the circuit court to enforce the
23 collection of a monetary penalty imposed under this section.

24 4. The fines shall be deposited into the "Physical Fitness Facility Medical
25 Emergency Services Fund" which is hereby created. Moneys in the fund shall be
26 appropriated by the department, together with other amounts, for the costs of
27 administering sections 190.700 to 190.724.

 190.718. The department shall promulgate rules to implement the provisions of
2 sections 190.700 to 190.724. Any rule or portion of a rule, as that term is defined in section
3 536.010, RSMo, that is created under the authority delegated in sections 190.700 to 190.724
4 shall become effective only if it complies with and is subject to all of the provisions of
5 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 190.700 to 190.724
6 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
7 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to
8 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
9 rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be
10 invalid and void.

 190.721. Nothing in sections 190.700 to 190.724 shall be construed to limit or
2 expand the exemptions from civil liability in connection with the purchase or use of an
3 automated external defibrillator or under any other provision of law. A right of action
4 does not exist in connection with the use or nonuse of an automated external defibrillator
5 at a facility governed by sections 190.700 to 190.724, except for willful or wanton
6 misconduct, provided that the person, unit of state or local government, or school district
7 operating the facility has adopted a medical emergency plan as required in section 190.703,
8 has an automated external defibrillator at the facility as required under section 190.706,
9 and has maintained the automated external defibrillator in accordance with the rules
10 adopted by the department.

 190.724. Every privately owned or operated indoor or outdoor physical fitness
2 facility shall be in compliance with sections 190.700 to 190.724 on or before July 1, 2008.

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