

STORAGE NAME: h3707s1.ca

DATE: March 31, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: C/S for HB 3707

RELATING TO: Residential Swimming Pool Safety Features

SPONSOR(S): Committee on Community Affairs

COMPANION BILL(S): SB 1172

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
 - (2) CRIME & PUNISHMENT
 - (3) HEALTH CARE STANDARDS & REGULATORY REFORM
 - (4) GOVERNMENTAL RULES AND REGULATIONS
 - (5)
-

I. SUMMARY:

The bill creates the "Florida Residential Swimming Pool Safety Act." The intent of the bill is to protect young children from drowning. The bill requires all new residential swimming pools to be equipped with a least one of four pool safety features. The four options are pool barriers, exit alarms on doors with pool access, approved safety cover, and self-latching & closing devices on doors with pool access. New residential pools must comply with at least one option in order to pass final inspection and receive a certificate of completion.

The bill provides pool barrier criteria if this option is chosen.

The bill also provides that a violation of the provisions of the bill is a misdemeanor of the second degree. However, a fine may not be imposed if the person complies within 45 days of the citation and attends a drowning prevention education program. If the education program is not offered within 45 days of the issuance of the citation, this requirement is waived.

The bill requires the Department of Health to adopt rules necessary to implement and administer the bill's provisions and to develop a drowning prevention education program.

The bill provides certain exemptions.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

It is estimated that there are over 1 million residential pools in Florida and that approximately 23,000 new residential swimming pools are built or sold each year.

According to the U.S. Consumer Product Safety Commission, an estimated 260 children under five years of age drown each year in residential swimming pools and spas nationwide. An estimated 2,000 children in that age group are treated with submersion injuries in hospital emergency rooms. The costs from near-drowning injuries can range from \$2,000 to \$80,000, and sometimes even as high as \$150,000 for severe brain damage. Sixty-five percent of the drownings or near-drownings happen in a pool owned by the child's family. An additional thirty-three percent of the incidents happened in a pool owned by friends or relatives. Seventy-seven percent of the swimming pool accident victims were missing for five minutes or less before they were found drowned or submerged.

The Department of Health reports that approximately 75 children drown each year in private swimming pools in Florida. According to the Bureau of Emergency Medical Services, half of the approximately 75 children would have been saved if the residential pool had been fenced. DOH reports that in 1996 drowning was the leading cause of death for children 0-4 years old.

State Minimum Building Codes

Chapter 553, F.S., provides for building construction standards for the state. Section 553.73(2), F.S., requires units of local government and state agencies that have code enforcement authority to adopt one of the State Minimum Building Codes as its building code. However, a local jurisdiction may adopt, under certain conditions, more stringent requirements than are imposed by the State Minimum Building Code. The State Minimum Building Code consists of four model codes:

- The *Standard Building Code*, 1988 edition, which is published by the Southern Building Code Congress International (SBCCI);
- The Council of American Building Officials (CABO) *One and Two Family Dwelling Code* (OTFDW), 1986 edition;
- The *South Florida Building Code*, 1988 edition, which has been adopted by Dade County and Broward County; and
- The *EPCOT Building Code*, 1982 edition, which was developed and adopted by the Reedy Creek Improvement District, the local government which controls the property surrounding and including Walt Disney World in Orange and Osceola counties.

Dade and Broward counties use amended versions of the *South Florida Building Code*. The *Standard Building Code* has been adopted by the remaining 65 Florida counties and all cities in those counties.

The Standard Swimming Pool Code, 1997 Edition

Section 315.2.1-10 of the *Standard Swimming Pool Code*, 1997 Edition, requires, in part, that all outdoor residential swimming pools be provided with a barrier at least 4 feet tall and be constructed of materials that preclude easy access. In addition, access

gates must be equipped to accommodate a locking device. Pedestrian access gates must open outwards and must be self-closing and have a self-latching device. Where a wall of a dwelling serves as part of the barrier, one of the following must apply:

- all doors with direct access to the pool must be equipped with an alarm that sounds when the door and screen are open;
- the pool must have a power safety cover; or
- other means of protection are used that provide the same degree of protection as 1 and 2.

For above-ground pools, when the means of access is a ladder or steps, then the ladder or steps must be capable of being secured, locked or removed to prevent access, or the ladder or steps must be surrounded by a barrier that meets the requirements stated above. Indoor pools must be equipped with an alarmed door, power safety cover, or other means specified above.

The *Standard Swimming Pool Code* is published as a supplement to the *Standard Building Code* and, according to representatives from the Florida Association of Counties and the Florida League of Cities, many counties and cities in Florida have adopted the *Code*, or portions of the *Code*, for their respective jurisdictions. The *Standard Swimming Pool Code* is also published as an appendix in the *CABO One and Two Family Dwelling Code (OTFDW)*, 1993 edition, and is incorporated into the 1996 *Uniform Building Code* adopted by the International Conference of Building Code Officials (ICBO), and the *Building Officials and Code Administrators International (BOCA) National Building Code*, 1993 edition. The American National Standards Institute (ANSI) *Model Barrier Code for Residential Swimming Pools, Spas and Hot Tubs* (1996) contains the same basic safety requirements as the other model codes, with added window safety features. The *Model Barrier Code* also specifically allows screened enclosures and fences to act as barriers.

The *South Florida Building Code*, 1998 Dade County Edition, generally adopts the ANSI model code. The *South Florida Building Code*, Broward County Edition, does not address pool safety issues. However, many cities in Broward County have adopted the *Standard Swimming Pool Code*, or portions of the *Code*, for their respective jurisdictions, and the 1999 Edition will contain the essential requirements specified in this *Code*.

Governor's Building Codes Study Commission (BCSC)

In 1996, the Governor established the Governor's Building Codes Study Commission. The commission was charged to "evaluate the current effectiveness of, and through general consensus among the commission members, recommend any necessary steps to reform the Florida building code system." The commission was charged to "look at the overall inventory of building codes and standards controlling the quality of Florida's build environment, the administration of these codes and standards, and issues relating to code compliance."

In December 1997, the commission issued its findings and recommendations. One of the recommendations of the commission was that the state adopt a single, uniform building code to be used statewide. If the Governor's Building Codes Study Commission's recommendation is approved by the Legislature, Florida will have one standard for residential swimming pool construction.

Under current provisions of C/S HB 4181 by the Committee on Community Affairs and Representative Constantine, swimming pool provisions are not changed from current standards. In addition, there is a possibility that if enacted, this chapter may be repealed in the year 2001 when all statutes relating to Building Codes are repealed.

B. EFFECT OF PROPOSED CHANGES:

The "Florida Residential Swimming Pool Safety Act" creates Chapter 515, Florida Statutes. The intent of the bill is to protect young children, defined in this bill as under the age of 6, from drowning in residential swimming pools. The bill requires all new residential swimming pools to be equipped with a pool safety feature.

The bill requires at least one pool safety feature for any structure, located in a residential area intended for swimming or recreational bathing with over 2 feet of water. The following structures are included: in-ground pools, aboveground pools, on-ground pools, hot tubs, and nonportable spas.

New residential pool owners must equip their pools with at least one of the following four safety feature options:

- pool barrier,
- exit alarms on doors with pool access,
- approved safety cover, and
- self-latching & closing devices on doors with pool access.

New residential pools must comply with at least one option in order to pass final inspection and receive a certificate of completion.

The bill provides pool barrier criteria if this option is chosen. If this option is chosen, the barrier (a fence, wall or combination of both) must have the following characteristics:

- at least 4 feet high;
- must not allow any child under the age of 6 to crawl under, squeeze through, or climb over it;
- must completely surround the perimeter of the pool, and cannot be the barrier surrounding the yard unless it meets the barrier requirements;
- must be placed with sufficient distance between the barrier and the pool in order to avoid the child immediately falling in;

Additional pool barrier requirements are:

- Above-ground pools structures may be used as its own barrier as long it meets the specific barrier requirements and any means of access is secured or removed.
- A dwelling wall which is used as part of the barrier, cannot contain any door or window which opens and provides pool access. If the dwelling wall does have a door or window, it may not be used as a component of the barrier unless an additional barrier is placed between the door or window and the pool.

- Access gates to swimming pools are required to open to the outside, are equipped with a self-latching locking device, its release mechanism is located on the pool side, and it is outside the reach of a child under the age of 6.
- The barrier cannot be located near any permanent structure, equipment, or other object which may be used for climbing the barrier.

The bill requires pool contractors to give buyers a document reflecting pool safety requirements and information on drowning prevention.

Violations of the provisions of the bill is a misdemeanor of the second degree. A misdemeanor of the second degree is punishable by a definite term not exceeding 60 days and/or a fine not exceeding \$500. The bill provides that a fine cannot be imposed if the person complies within 45 days of the citation and attends a drowning prevention education program. If the DOH education program is not offered within 45 days of the citation, this requirement is waived.

The bill requires the Department of Health to adopt rules necessary to implement and administer the bill's provisions and to develop a drowning prevention education program.

The bill provides exemptions from the pool barrier requirements for public pools, irrigation flood control or drainage works, stock ponds, livestock operations, political subdivisions with stricter pool requirements, portable spas with a complying safety cover and kiddie pools.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Department of Health must adopt rules necessary to implement and administer this bill.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Health is required to develop a drowning prevention education program and produce a publication which explains pool ownership responsibilities. Individuals purchasing a pool are obliged to equip their pool with at least one pool safety feature.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

The bill potentially could result in fees assessed by DOH for the drowning prevention education program. The bill may result in fees assessed by building inspectors.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Persons with new swimming pools will incur extra expense for their pool safety feature.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. This bill may decrease the ability of owners to either purchase a new pool, hot tub, or nonportable spa due to the potential costs this bill imposes.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. This bill may interfere with the ability to purchase pools, hot tubs, and nonportable spas.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes. A child injured from a near-drowning can sue his/her parent to the extent of the injuries caused by the parents negligence arising from non-compliance with the proposed statute. In 1982, the Florida Supreme Court in Ard v. Ard, 414 So. 2d 1066 (Fla. 1982), held that an unemancipated minor child could bring suit against a parent for damages sustained by the parent's negligence, but only to the extent of the parent's available liability insurance coverage.

The estate of a child may also sue the child's parents to the extent of the parent's liability insurance. Krouse v. Krouse, 489 So. 2d 106 (Fla. 3d DCA 1986). However, the estate may not cover for loss of future earnings.

Although children can currently sue their parents for their injuries to the extent of liability insurance, adoption of this bill may make causes of actions stemming from drowns or near-drowns much easier. Violation of the proposed statute that this bill creates is negligence per se. Negligence per se results when a statute is violated which establishes a duty to take precautions to protect a particular class of persons. Jesus v. Seaboard Coast Line Railroad Co., 281 So. 2d 198 (Fla. 1973). If negligence per se is found, then the plaintiff needs only to show causation and damages. This differs from negligence in which a plaintiff has to show a duty to the plaintiff, breach of that duty by the defendant, an injury to the plaintiff caused by the defendant's breach (causation), and damages. Paterson v. Deeb, 472 So. 2d 1210 (Fla. 1st DCA 1985), *review denied sub nom.*, Langston v. Paterson, 484 So. 2d 9 (Fla. 1986).

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

In this instance, pool contractors are obligated to provide information on the required pool safety feature options.

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates Chapter 515, Florida Statutes, and provides the following sections:

Section 515.21 -- Provides the short title of "Florida Residential Swimming Pool Safety Act"

Section 515.23 -- Provides legislative findings that drowning is the primary cause of death of young children in Florida; that most children drown in backyard pools; that the health costs, legal and administrative costs associated with drownings and near-drownings are enormous; provides intent that all *new* swimming pools be equipped with at least one safety feature.

Section 515.25 -- Provides definitions to be used.

Section 515.27 -- Provides that all new swimming pools be equipped with at least one of four safety feature options; provides options; provides the penalty of a misdemeanor in the second degree for violations, unless the person complies with the provisions of the bill within 45 days; and provides waiver of education program if not offered during compliance period.

Section 515.29 -- Provides residential swimming pool barrier characteristics; provides that above ground swimming pools may serve as barriers; provides requirements for access gates to residential pools; and provides that a dwelling wall may serve as a part of the barrier as long as there are no doors or windows with access to the pool.

Section 515.31 -- Requires the Department of Health to develop a drowning prevention education program and a document explaining the responsibilities of pool ownership.

Section 515.33 -- Requires pool contractors to distribute requirements of this chapter, drowning prevention information, and pool ownership responsibilities.

Section 515.35 -- Grants the Department of Health the authority to adopt rules necessary to implement and administer the provisions of the chapter.

Section 515.37 -- Provides exemptions to the chapter.

Section 2: Provides an effective date of October 1 of the year of enactment.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The bill provides that the Department of Health's drowning prevention education program be funded using state funds appropriated for this purpose and grants. However, the bill does not appropriate any general revenue dollars and grants are not identified. DOH estimates that there be a one time expense associated with the development of the prevention program and publication on pool ownership responsibilities of approximately \$50,000.

2. Recurring Effects:

The sponsor's intent is that no additional costs be incurred. It is the sponsor's intent that when the building inspectors inspect the pool for compliance with pool construction requirements, that they will have an additional box to check on their checklist for issuing a certificate of completion regarding the pool being equipped with at least one pool safety feature.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

DOH reports that 23,000 new pools are sold or constructed annually. DOH reports that fence/barrier installation, one safety feature option, costs range from \$890 to \$3,290. A representative from the Florida Pool & Spa Association (FPSA) estimates installation costs to range from \$1,500 to \$5,000.

In addition, it is estimated that an approved pool cover ranges from \$800 to \$2000, and exit alarms from \$50 to \$100.

2. Direct Private Sector Benefits:

The benefit is the avoidance of legal and administrative costs, costly emergency medical responses, stays in intensive care, lifetime medical equipment, and loss of lifetime productivity associated with drownings and near-drownings. DOH estimates that these costs associated with toddler drownings in Florida each year is estimated at \$74 million. Also, the fencing industry would benefit financially from the requirements.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The following is a list of concerns noted:

- The sponsor's intent that mesh fencing is a complying barrier should be clearly stated.

- Funds are not provided to the Department of Health for the required creation of a publication relating to pool ownership responsibilities, and a drowning prevention education program.
- Although this bill gives several options for new pool owners, it does not include a pool alarm as an option. Pool alarms are placed in the water and activate when water is displaced in the pool. The costs for a pool alarm range from \$50 to \$200. Also, the bill does not address the importance of swimming certification of children.

The Florida Pool & Spa Association's representatives stated that they do not support this bill. The Association feels that the *ANSI Model Barrier Code for Residential Swimming Pools, Spas and Hot Tubs* (1995) should be adopted. The Code's pool barrier provisions are similar to the *Standard Swimming Pool Code*, which is used by many Florida cities and counties. This bill goes beyond the requirements in the *Model Barrier Code*. Also, the Association believes that some provisions in the bill will be difficult, if not impossible, to comply with.

The following organizations support this bill: Florida Safe Kids Coalition, National Safe Kids Coalition, Florida Pediatric Society, Florida Developmental Disabilities Planning Council, Florida Medical Association, Florida Department of Health, Florida College of Emergency Physicians, Florida Teaching Hospitals, Florida Association of EMTs and Paramedics, Broward Building and Inspectors Association, and State Farm.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 24, 1998, HB 3707 was considered by the Committee on Community Affairs. On that date, the bill, amendment #1, and amendment to amendment #1 were temporarily passed. Amendments 2, 3, 4a, and 4 were not taken up.

At its March 30, 1998 meeting, the Committee on Community on Community Affairs adopted a strike everything amendment and one amendment to the strike everything amendment. Amendments 1-5 presented at the 3/24/98 meeting were temporarily passed.

The C/S differs from the original bill in the following ways:

- The name of the act is no longer the "Florida Residential Swimming Pool Safety Act" but rather the "Florida Residential Swimming Pool Safety Act."
- The C/S only requires all *new* residential swimming pools, approximately 23,000 pools, to comply with the act. The bill required all new pools and sold homes with existing pools to comply with the act, approximately 163,000 pools.
- The C/S allows new pool owners to equip their pools with at least one pool safety feature. The bill required that pools be surrounded by complying pool barriers only.
- The C/S provides definitions for the additional safety feature options.
- The C/S requires that the pool be equipped with at least one pool safety feature prior to it passing its final pool construction inspection and receiving a certificate of completion. The bill was silent regarding how compliance is determined.

STORAGE NAME: h3707s1.ca

DATE: March 31, 1998

PAGE 13

- The C/S waives the requirement of attending a drowning prevention education program if the program is not offered within 45 days of the citation issuance.

The amendment to the strike everything amendment amends one of the exemptions from the act. The amendment exempts from the act political subdivisions with existing residential pool safety ordinances which are equal or more stringent than the provisions of the chapter.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Laura L. Jacobs

Joan Highsmith-Smith