STORAGE NAME: h3707s1.grr
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HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 3707

RELATING TO: Residential Swimming Pool Safety Features

SPONSOR(S): Committee on Community Affairs; Rep. Wasserman-Schultz

COMPANION BILL(S): SB 1172

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
(2) CRIME AND PUNISHMENT YEAS 7 NAYS 1
(3) HEALTH CARE STANDARDS & REGULATORY REFORM (W/D)
(4) GOVERNMENTAL RULES AND REGULATIONS
(5)

I. SUMMARY:

The bill creates the "Florida Residential Swimming Pool Safety Act." **The bill requires all new residential swimming pools to be equipped with a least one of four pool safety features.**

- A pool barrier.
- An exit alarm on doors with pool access.
- An approved safety cover.
- Self-closing and self-latching doors with pool access.

Certificate of Completion can not be issued without compliance.

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.

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.

Certain public pools, "kiddie pools" and others are exempt from the law.

The effective date is October 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Pools Are Leading Cause Of Death For Young Children

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.

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.

Related Legislation

Under the 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:

New Pools Must Be Child Safe

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.

Hottubs, Above-ground Pools & Non-portable Spas Are Included

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. Aboveground pools, on-ground pools, hot tubs, and nonportable spas are included

Safety Feature Must Be OF Specified Type

Safety feature must be one of four specified types:

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

A certificate of completion can not be issued for the pool unless it is in compliance.

The Pool Barrier Option

If the pool barrier option is chosen, the barrier must meet the following requirements:

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

Other Barrier Specifics Are Provided

- 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, 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.

Contractors Disclosure

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

Penalties

Failure to install a specified safety feature is punishable as a 2nd-degree misdemeanor (max., 60 days jail and $500 fine). However, no fine may be imposed if the owner installs a specified safety feature and attends a drowning prevention course within 45 days of issuance of the citation. The course is not required if it is not available within 45 days.

Department Of Health Authorized to Adopt Rules

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.

Exemptions

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. <u>Lower Taxes:</u>

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 opportunity to 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. The bill will make it more expensive and difficult 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. A violation of the new law, as proposed by the committee substitute, would constitute negligence, per se, thereby making it easier to establish liability. See, Jesus v. Seaboard Coast Line Railroad Co., 281 So. 2d 198 (Fla. 1973).

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:

ss. 515.21; 51523; 515;25; 515;27; 515.29; 515.31; 515;33; 515.35; and 515;37 are created.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates the Florida Residential Swimming Pool Safety Act as provided in Effect of Proposed Changes.

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 the building inspection checklist will have been amended to provide for the inspection of the pool area to ensure the pool or pool area is 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, intensive care treatment, lifetime medical equipment, and loss of lifetime productivity associated with drowns and near-drowns. DOH estimates that the costs associated with toddler drownings in Florida annually is estimated at $74 million. The fencing industry may benefit financially from the requirements.

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

   None.

D. FISCAL COMMENTS:

See, as detailed above.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

V. COMMENTS:

Below are listed concerns raised during consideration of the bill before the Committee on Community Affairs:

- The sponsor's intent that mesh fencing should be a type of barrier that complies with the provisions of the 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.

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*.

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.

Ambiguous Penalty

A violation of the Act is punished as a 2nd-degree misdemeanor, yet the bill provides that a fine may not be imposed if the pool owner complies within 45 days. However, a 2nd-degree misdemeanor is punishable by 60 days in jail. The bill does not provide that there shall not be imposed any jail term resulting from a conviction under this act.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs adopted a strike-everything amendment that was incorporated into a committee substitute. Please see section II.B., Effect of Proposed Changes, for discussion.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Legislative Research Director:
Laura L. Jacobs	Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Legislative Research Director:
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AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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