

STORAGE NAME: h3707s1z.ca
DATE: May 13, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3707

RELATING TO: Residential Swimming Pool Safety Features

SPONSOR(S): Committee on Community Affairs; Representatives Wasserman-Schultz; Dawson-White and others

COMPANION BILL(S): SB 1172 (s)

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 YEAS 4 NAYS 2
- (5)

I. FINAL ACTION STATUS:

HB 3707 was introduced to the Florida House of Representatives on March 3, 1998. The bill was referred to House Committees on Community Affairs, Crime & Punishment, Health Care Standards & Regulatory Reform, and Governmental Rules & Regulations. The bill was heard and temporarily deferred by the House Committee on Community Affairs on March 18, 1998. The Committee on Community Affairs adopted and passed a committee substitute for HB 3707 on March 30, 1998. The Committee on Crime & Punishment passed C/S HB 3707 with an amendment on April 14, 1998. C/S HB 3707 was withdrawn from the Committee on Health Care Standards & Regulatory Reform on April 20, 1998. The Committee on Governmental Rules & Regulations passed the amended C/S HB 3707 with an additional amendment on April 21, 1998. The amended C/S HB 3707 then went to the Governmental Responsibility Council for Council ranking. Amended C/S HB 3707 died in the Governmental Responsibility Council pending ranking on May 1, 1998.

II. 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; or
- Self-closing and self-latching doors with pool access.

A Certificate of Completion can not be issued without compliance.

The bill provides criteria if the pool barrier 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.

III. 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 happen 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 (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. The 1998 Legislature passed CS/CS/HB 4181 which provides one standard for residential swimming pool construction.

Related Legislation

Under the provisions of CS/CS HB 4181 by the Committee on Community Affairs and Representative Constantine which passed both the House and the Senate, swimming pool provisions are not changed from current standards. In addition, 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; or
- 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. Note that an amendment traveling with the bill restricts the rulemaking authority to prescribing the information to be provided by the contractor to the new pool owner.

- (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 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 makes 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.

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:

Creates ss. 515.21, 515.23, 515.25, 515.27, 515.29, 515.31, 515.33, 515.35, and 515.37, Florida Statutes.

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.

IV. 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 a one-time expense of approximately \$50,000 associated with the development of the prevention program and publication on pool ownership responsibilities.

2. Recurring Effects:

It is the sponsor's intent that no additional costs be incurred. It is the sponsor's intent that the building inspection checklist be 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 prior to the issuance of the certificate of completion.

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 costs range from \$890 to \$3,290. The Florida Pool & Spa Association (FPSA) estimates installation costs to range from \$1,500 to \$5,000. 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 potential benefit can be found in the avoidance of legal and administrative costs, costly emergency medical responses, intensive care treatment, lifetime medical equipment, and loss of lifetime productivity associated with drownings and near-drownings. DOH estimates \$74 million annually in costs associated with toddler drownings in Florida,

The fencing industry may benefit financially from the requirements of the act. Companies in this industry provide the installation of pool barriers.

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

None.

D. **FISCAL COMMENTS:**

None.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

Below are 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 pool barrier provisions of the bill 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 Committee on Crime and Punishment identified the following concern:

- 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.

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.

VII. 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 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, as introduced, requires 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, as introduced, requires 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, as introduced, was silent regarding how compliance is determined.
- 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.

An amendment to the strike everything amendment was engrossed in the bill which allows an exemption from the act for political subdivisions with existing residential pool safety ordinances which are equal or more stringent than the provisions of the chapter.

The Committee on Crime and Punishment adopted an amendment on April 14, 1998, that provided no penalty, rather than no fine, shall be imposed if the owner installs a pool safety feature within 45 days and took a drowning prevention education seminar after being found in violation of the act. The amendment traveled with the bill.

The Committee on Governmental Rules and Regulations adopted an amendment on April 21, 1998, that grants rulemaking authority to provide only the authority to prescribe the information contractors are to provide to new pool owners. The amendment traveled with the bill.

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VIII. SIGNATURES:

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