

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 86

SPONSOR: Senator Sullivan

SUBJECT: Residential swimming pools, spas and hot tubs.

DATE: January 10, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates the “Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act” requiring all new residential swimming pools to be equipped with at 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 or self-latching doors providing access to the pool.

In order to pass a building inspection and receive a certificate of completion from the local building official, the pool must comply with the safety requirements of the bill. The bill creates a second degree misdemeanor for violating the terms of the bill.

The Department of Health is required to develop or adopt a nationally recognized drowning prevention education program and develop or adopt and make available to the public a drowning prevention pamphlet.

Certain public pools, “kiddie pools”, drainage and agricultural ponds and canals are exempt from the law.

The bill provides an effective date of October 1, 2000.

This bill creates chapter 515 of the Florida Statutes.

II. Present Situation:

Pools Are the 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. In Florida, drowning is the leading cause of death for young children ages 1 to 4. Between 1992 and 1997, 420 children drowned in Florida. Of these, 268 drowned at home and 208 of these drowned in swimming pools at home. According to a study conducted by the United States Consumer Product Safety Commission, the majority of victims of drowning or

near-drowning incidents lived in or were visiting the residence where the drowning occurred, and 77 percent of the victims had been missing for five minutes or less. In addition, according to the National Safe Kids Campaign fact sheet, for every child that drowns, an additional four are hospitalized. Fifteen percent of those children admitted for near-drownings die in the hospital.

The costs from near-drowning injuries are estimated to be \$73.5 million. The lifetime cost for care and treatment of a young child who has suffered brain disability due to a near-drowning incident is estimated to be \$4.5 million.

Another vulnerable population susceptible to drowning injuries is those age 65 and older. In this older group, drowning is a significant cause of death. Between 1992 and 1997, 448 elderly persons drowned in Florida, 195 of whom had medical problems such as Alzheimer's disease, suffering from confusion, balance or vision impairment, heart problems, or diabetes.

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 the following 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 1998 Legislature passed CS/CS/HB 4181, Chapter 98-287, Laws of Florida, which authorizes the adoption and subsequent updates of a statewide unified building code to be called the Florida Building Code. In addition, the law reconstitutes the Board of Building Codes and Standards as the Florida Building Commission. The unified building code is to include provisions and requirements related to the types of materials used and construction methods and standards employed in order to meet the Florida Building Code criteria for swimming pools.

Chapter 98-287, Laws of Florida, anticipates that the Florida Building Commission will adopt a Florida Building Code which will be presented to the Florida Legislature during the 2000

legislative session. The law also repeals some of the current statutes applicable to building codes on January 1, 2001. The effective date of repeal of the relevant sections of chapter 553, Florida Statutes, is subject to legislative approval of the statewide unified building code as developed by the Florida Building Commission.

The Florida Building Commission is currently in the process of adopting a statewide unified building code. The third and most recent draft of the proposed code includes residential swimming pool enclosure safety standards. Chapter 36, section 315.2 of the proposed code 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. The proposed code is more specific than the bill regarding spacing between members used to construct a fence and the maximum mesh size of chain link fencing. 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;
- other means of protection must be installed such as self-closing doors with self-latching devices or doors with positive mechanical latching or locking devices installed at a minimum of 54 inches above the threshold.

Alternatively, section 36-315.2 of the proposed code provides an exception that a swimming pool with a power safety cover, or a spa with a safety cover complying with ASTM F 1346-91 is not required to comply with the enclosure standards of the code.

The language in section 315.2 of the proposed unified Florida Building Code is largely derived from *The Standard Swimming Pool Code, 1997 Edition*, 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 *Standard Swimming Pool Code* or portions thereof, for their respective jurisdictions.

In addition, some local governments have adopted ordinances requiring that outdoor residential pools be enclosed or fenced. Violations of such ordinances are generally enforced as code enforcement matters.

III. Effect of Proposed Changes:

The bill creates the “Preston de Ibern/McKenzie Merriam Swimming Pool Safety Act,” providing legislative findings that drowning is a leading cause of death for young children and a significant cause of death for medically frail elderly person. In addition, the bill finds that constant adult supervision is the key to reducing the number of drowning and near-drowning incidents.

The bill provides definitions, including definitions of “approved safety cover,” “barrier,” “exit alarm,” “portable spa” and “residential.” A barrier is defined to mean a fence, dwelling wall, or nondwelling wall, or combination, that completely surrounds the swimming pool and obstructs access to the swimming pool from the residence or from the yard outside of the barrier.

Residential Pool Safety Requirements

The bill requires that new residential swimming pools contain certain safety features. The requirements of the bill do not apply to:

- any system of sumps, irrigation canals or flood control or drainage works;
- stock ponds, and storage tanks used in agricultural operations;
- public swimming pools;
- any political subdivision that adopts a residential pool safety ordinance equal to, or more stringent than the bill;
- any portable spa with a safety cover that meets certain specifications; and
- kiddie pools.

The bill focuses on residential swimming pools and spas and requires that, in order to pass final inspection and receive a certificate of completion, a residential swimming pool must have one of the following safety features:

- ▶ a pool barrier that meets certain characteristics, including that the barrier is at least 4 feet high;
- ▶ an approved safety pool cover;
- ▶ an exit alarm that has a minimum sound rating; and
- ▶ doors providing access to the pool are equipped with a self-closing, self-latching device.

In addition, an acceptable residential swimming pool barrier must be at least 4 feet high, not have any gaps or openings that allow a child to climb through the barrier, be placed around the perimeter of the pool, and be placed sufficiently away from the water's edge to prevent a child or adult from immediately falling into the pool when the barrier is breached. In addition, gates that provide access to swimming pools must open outwards away from the pool and be self-closing and self-latching.

While the safety features of the proposed bill are similar to the residential pool enclosure standards proposed in the Florida Building Commission's proposed unified building code, the proposed code is more stringent because it requires that outdoor residential swimming pools must be constructed with a barrier. Under the proposed bill, the owner of an outdoor residential pool, which is constructed without a physical barrier, could comply with the safety requirements of the bill by equipping the pool with an approved safety cover; equipping doors or windows with direct access to the pool with an exit alarm or equipping access doors with a self-closing, self-latching device. Other than the pool safety cover, these options would not prevent a child who reaches a

pool from a side or back yard from falling into the pool. In contrast, the proposed unified Florida Building Code draft provides protection against a child entering the pool from both the adjoining residence and from the backyard.

Penalties

The bill creates a second degree misdemeanor where a person fails to equip a new residential swimming pool with at least one pool safety feature as provided in the bill. A second degree misdemeanor is punishable by a prison sentence of not more than 60 days or a \$500 fine as provided in ss. 775.082, 775.083, F.S. No penalty is imposed if the person charged, within 45 days, equips the pool with at least one safety feature and attends a drowning prevention education program as provided in the bill.

Drowning Prevention Education

The Department of Health is required by the bill to develop a drowning prevention education program or adopt a nationally recognized drowning prevention education program directed at persons who are in violation of the pool safety requirements of the bill. The department is granted rulemaking authority to establish the fees. The department is authorized to charge a fee not to exceed \$100 for the program. The drowning prevention program is to be funded using fee proceeds, state funds appropriated for the program and grants. In addition, the department is required to make available a public information publication on drowning prevention and the responsibilities of pool ownership.

Licensed pool contractors or a licensed home builder entering into an agreement to build a house that includes a residential swimming pool, must give the buyer a document that describes the requirements of the bill and a copy of the publication developed or adopted by the department on drowning prevention and the responsibilities of pool ownership. The department is granted rulemaking authority to promulgate rules describing the information that must be provided by licensed pool contractors and licensed home builders or developers. The department may adopt a national recognized "drawing prevention and responsibilities of pool ownership publication, as an alternative to developing its own publication.

The bill provides an effective date of October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirements of the bill will increase the cost of residential pool construction. The Florida Pool and Spa Association estimates that the cost of installing a barrier ranges from \$1,500 to \$5,000. The cost of an approved pool cover ranges from \$800-\$2000, alarms exit alarms cost from \$50-\$100 per alarm.

C. Government Sector Impact:

The Department of Health will incur costs in developing a drowning prevention education program and producing drowning prevention literature. While the department is authorized to charge a fee not to exceed \$100 for attendance at the drowning education prevention program, no specific provision is made for funding the production and distribution of drowning prevention literature.

The Department of Health estimates a non-recurring first year cost of \$3,377 for rule promulgation necessary to meet the education and information requirements of proposed sections 515.31 and 515.35, F.S. This figure does not include an estimate of the cost of distributing the pool safety pamphlet required by the bill or the cost of conducting a drowning prevention education program. The bill permits the Department of Health to use nationally recognized materials and education programs as an alternative to developing the materials in-house. Using existing materials significantly reduces the potential fiscal impact on the department.

Local governments may incur some costs associated with residential swimming pool construction inspection and the issuance of certificates of completion conducted by the local government's building inspector. Because pool construction is already an item inspected by local building inspectors, the increased cost of checking for pool safety features is nominal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is unclear as to who is responsible for charging violators of the requirements of the bill with a second degree misdemeanor. Local building code officials have the authority to cite

individuals for code violations, and through code enforcement boards to levy administrative fines and noncriminal penalties, but lack criminal enforcement responsibilities. Hence, local code enforcement officials could not charge an individual violating the requirements of the bill with a second degree misdemeanor. The imposition of the second degree misdemeanor may be more likely to occur after a drowning or near-drowning in a residential swimming pool where the pool was constructed in violation of the requirements of the bill.

In addition, the proposed bill may make it easier for an individual injured in a near-drowning or the estate of a drowning victim to sue the owners of the residential swimming pool for negligence. 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.

Accordingly, 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. 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).

VIII. Amendments:

None.