

STORAGE NAME: h0385e.cp

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 385

RELATING TO: Residential Swimming Pool Safety

SPONSOR(S): Representative Wasserman-Schultz and others

COMPANION BILL(S): SB 1220 (I)

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 6 NAYS 1
- (2) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (3) CRIME AND PUNISHMENT YEAS 4 NAYS 1
- (4) HEALTH AND HUMAN SERVICES APPROPRIATIONS
- (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 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 and self-latching doors with pool access.

In order to pass final inspection and receive a certificate of completion, pools must be in compliance with the provisions of this bill.

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, develop a drowning prevention education program and to make available a public information publication.

The bill provides an exception from the act's requirements for any political subdivision that has adopted or adopts a residential pool safety ordinance, provided that the ordinance is equal to or more stringent than the act's provisions.

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

The effective date is October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

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.

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 for near drownings. 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 are 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 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 1998 Legislature passed CS/CS/HB 4181 which authorizes the adoption and subsequent updates of a statewide unified building code to be called the Florida Building Code. In addition, the law re-constitutes 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.

The bill 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 state-wide unified building code as developed by the Florida Building Commission.

Chapter 553, Florida Statutes, may be repealed in the year 2001 when all statutes relating to Building Codes are repealed.

Recently, the Special Occupancy Technical Advisory Committee (TAC) of the Florida Building Commission adopted *The Standard Swimming Pool Code, 1997 Edition* to be included in the new unified Florida Building Code.

The Standard Swimming Pool Code, 1997 Edition (Code)-- Section 315 of the *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. 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 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.

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 *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.

B. EFFECT OF PROPOSED CHANGES:

New Pools Must Be Safe

The Florida Residential Swimming Pool Safety Act creates Chapter 515, Florida Statutes. The intent of the bill is to protect young children and medically frail elderly persons from drowning or near-drowning in residential swimming pools. The bill requires all new residential swimming pools to be equipped with a pool safety feature.

Hot Tubs, 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. Above-ground 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.

A certificate of completion is issued by the local building inspector. Once construction of the pool is completed, the building code inspector inspects the pool to determine that it meets building code requirements and other local ordinances. If all requirements are met, then the certificate of completion is issued. If the pool is non-compliant, then the certificate is withheld until it becomes compliant. A person may not use the pool until the certificate of completion is issued. This certificate is similar to the one which is given when a new home is inspected.

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 on the outside;
- 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 for the child or medically frail elderly person to avoid immediately falling into the water.

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, be self-closing, and be equipped with a self-latching locking device. This locking device must have its release mechanism located on the pool side and outside the reach of a child.
- The barrier cannot be located near any permanent structure, equipment, or other object which may be used to climb the barrier.

Contractors Disclosure

The bill requires licensed home builders and pool contractors to give home buyers and buyers of residential swimming pools a document reflecting pool safety requirements and information on drowning prevention.

Penalties

Failure to install a specified safety feature in a new pool is punishable as a second-degree misdemeanor (maximum 60 days jail and \$500 fine). However, no penalty 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 penalty apply to contractors as well as owners who build a new pool and fail to equip it with a specified safety feature. The course is not required if it is not available within 45 days. The fee for attending the course shall not exceed \$100.

Department Of Health Authorized to Adopt Rules

The bill requires the Department of Health to adopt rules establishing fees for the drowning prevention education programs. The Department of Health is also required to develop the information required by licensed pool contractors and home builders to submit to potential home and pool buyers.

Exemptions

The bill provides exemptions from the pool barrier requirements for public pools, irrigation flood control or drainage works, stock ponds, storage tanks, livestock operations, political subdivisions with stricter pool safety 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?

The department has the authority to adopt rules to set fees for drowning prevention education programs and set forth the information required to be provided by licensed pool contractors and licensed home builders or developers.

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

N/A

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

N/A

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?

N/A

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?

N/A

4. Individual Freedom:

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

N/A

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

N/A

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 drownings or near-drownings 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 need 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?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates Chapter 515, F.S.

E. SECTION-BY-SECTION ANALYSIS:

The bill's preamble recognizes that "constant supervision is the primary element in an integrated approach to drowning prevention" for young children and frail elders. To complement supervision, the bill supports delaying or limiting access to residential swimming pools to decrease near-drownings and drownings.

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 and a significant cause of death for medically frail elderly persons 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; requires that the Department of Health be responsible for producing a publication informing the public on drowning prevention; requires the Department of Health to develop a drowning education program and drowning prevention publication; and provides intent that all *new* swimming pools be equipped with at least one safety feature.

Section 515.25 -- Provides definitions.

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; 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; prohibits barriers from being located near structures, equipment or objects that may be used for climbing the barrier.

Section 515.31 -- Requires the Department of Health to develop a drowning prevention education program and a publication explaining the responsibilities of pool ownership; authorizes department to charge a fee for program participation.

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 specific authority to adopt rules to implement a fee for the education program and to provide information to those described in the bill.

Section 515.37 -- Provides exemptions to the chapter.

Section 2: Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & 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 fee proceeds, 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. No estimates are available to determine the number of drowning prevention publications that will be needed each year to supply pool contractors, builders, and developers with an adequate inventory. The Department of Health estimates that the cost of each pamphlet will range between 2 cents to 44 cents, depending on the type of pamphlet and the volume purchased.

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.

The Department of Health states that the department will incur the recurring cost of mailing the pamphlets. The actual cost is indeterminate. The department will also incur costs in presenting the program, such as location costs, overhead, instructors, and handout materials.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The cost of purchasing a residential pool may increase by the cost of the selected pool safety option and may vary by residence based on the specifications of the house. 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:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

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

V. COMMENTS:

Prosecution of the newly created offense could be more straightforward if the bill provided that criminal penalties apply to **contractors and homeowners** who fail to install the safety equipment instead "a person who fails" to install the safety equipment. As the bill currently reads, a contractor who is being prosecuted or sued in civil court will claim that installing the safety equipment was the homeowner's responsibility and the homeowner will claim that the contractor is the expert in the field who should have knowledge of the law and who should be liable for implementing the law.

Page 6, line 31 of the bill refers to a citation for a violation of the criminal penalty, however, citations are not issued for criminal penalties such as the misdemeanor offense created by the bill. For criminal violation, a law enforcement officer either makes an arrest, issues a notice to appear or requests a judge to issue a summons. The bill could more correctly read: within 45 days of arrest or issuance of a summons or a notice to appear...

Unified Florida Building Code

With the recent decision by the Special Occupancy Technical Advisory Committee of the Florida Building Commission to adopt the *Code* as amended and include it in the unified Florida Building Code, it appears that if this bill is enacted into law it may be repealed in the year 2001. If the law is not repealed, then a conflict may arise between the new unified Florida Building Code and general statute which may cause some confusion among local government entities. Although the *Code* is similar to this bill's provisions, some of the differences are:

- the *Code's* pool barrier requirements contains more technical specifics and requirements than the bill, such as the maximum spacing between fencing members;
- the *Code* requires that a residential swimming pool be equipped with a barrier, unless it has an approved power safety cover, whereas the bill requires one of four pool safety requirements;
- the *Code* does not include a minimum requirement of decibels for door alarms;
- the *Code* contains no provision regarding the Department of Health's Drowning Prevention program or the requirement that a pool safety publication be created by the Department and distributed to buyers; and

- the *Code* does not contain the option of attending a drowning prevention program in order to avoid a misdemeanor charge when the pool is not equipped with a pool safety option. Instead, a Final Certificate of Completion is not issued until such time as the pool is in compliance and the pool owner may also be guilty of violating other local ordinances.

The Florida Pool & Spa Association (FPSA) believes that this act is not necessary as its purpose is accomplished by the inclusion of the *Code* in the unified Florida Building Code, and will only cause confusion. Under section 315 of the *Code*, a residential swimming pool must be equipped with a pool barrier. The *Code*'s options are similar, and at times, are more technical than this bill's provisions. The technical nature of the *Code* is preferred by contractors over the general language of the bill, as the *Code* gives more specific requirements and they have easier access to it.

FPSA does agree that some of the bill's provisions, such as the drowning prevention program and the pool safety publications, are beneficial to the public. However, it believes that their purpose would be better served if they were not directly connected to the construction of the pool, as the proposed provisions of law may be in conflict and eventually repealed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The following three amendments were adopted by the Committee on Community Affairs on March 22, 1999:

- Amendment #1 -- Removes "as required in" and inserts "established by" -- The reasoning behind this amendment is to correct a misstatement as section 515.31 does not require attendance at an education program, rather it establishes the program.
- Amendment #2 -- Inserts "The department, in lieu of developing its own program, may adopt a nationally recognized drowning prevention education program to be approved for use in local safety education programs, as provided in rule of the department." -- By allowing DOH to adopt any of a number of available public education programs, such as those developed by the National Spa and Pool Institute, the National Swimming Pool Foundations, and various other aquatic safety programs, the Department could save development and overhead costs.
- Amendment #3 -- Inserts "The department, in lieu of developing its own publication, may adopt a nationally recognized drowning prevention and responsibilities of pool ownership publication, as provided in rule of the department." -- By allowing DOH to adopt any of a number of available publications, the Department could save development and overhead costs.

Amendment by the Committee on Crime and Punishment

The bill provides that it is an affirmative defense to install a required safety feature and to attend a drowning education program within 45 days of the issuance of a citation. On April 5, 1999, the Crime and Punishment Committee adopted an amendment to replace the word citation with "arrest or issuance of a summons or a notice to appear."

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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