

1 A bill to be entitled
2 An act relating to residential swimming pools,
3 spas, and hot tubs; creating ch. 515, F.S., the
4 "Preston de Ibern/McKenzie Merriam Residential
5 Swimming Pool Safety Act"; providing
6 legislative findings and intent; providing
7 definitions; providing pool safety feature
8 requirements and options; providing penalties;
9 providing pool barrier requirements; providing
10 for a drowning prevention education program and
11 a public information publication; providing for
12 a fee; requiring pool contractors, home
13 builders, and developers to provide buyers with
14 certain information; providing rulemaking
15 authority; providing exemptions; providing an
16 effective date.

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18 WHEREAS, drowning is the leading cause of death for
19 young children in Florida, with 420 children ages 1-4 years
20 drowning in Florida between 1992-1997, 268 of whom drowned at
21 home and 208 of these drowned in swimming pools at home, and

22 WHEREAS, for every young child who dies from drowning,
23 four suffer brain injury from near-drowning incidents, and

24 WHEREAS, advances in medical technology are allowing
25 more near-drowning victims to survive, but many are surviving
26 with serious permanent neurological damage, and

27 WHEREAS, although supervision is one of the keys to
28 accomplishing the objective of reducing the number of
29 submersion incidents, it is well known that at times children
30 do the unexpected, catching their supervisors off guard, and
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1 WHEREAS, the United States Consumer Product Safety
2 Commission found, in a study of drowning and near-drowning
3 incidents, that the majority of victims lived in or were
4 visiting the residence where the drowning occurred, that less
5 than 2 percent of the submersions occurred when a child
6 trespassed on the property, and that most of the victims were
7 either near or in the residence immediately prior to the
8 incident and reached the pool unnoticed, and

9 WHEREAS, in addition to the incalculable human cost of
10 these tragic incidents, drownings of young children result in
11 significant losses in productivity and near drownings of young
12 children result in costly emergency medical responses, costly
13 stays in intensive care units, and, sometimes, costly lifetime
14 medical equipment and health care support, to the extent that
15 the health care costs, loss of lifetime productivity, and
16 legal and administrative expenses associated with drownings of
17 young children in Florida each year are estimated to be \$73.5
18 million and the lifetime cost for care and treatment of a
19 young child who has suffered brain disability due to a
20 near-drowning incident is estimated to be \$4.5 million, and

21 WHEREAS, Florida has a large population of persons age
22 65 and older, and drowning is a significant cause of death in
23 this older age group as well, with 448 such elderly persons
24 drowning between 1992-1997, 195 of whom had medical problems
25 such as Alzheimer's disease, confusion, balance or vision
26 impairment, heart problems, or diabetes and 145 of whom
27 drowned in swimming pools; and, in cases where it was
28 documented, 52 percent of these older Floridians fell into the
29 swimming pool and were not intending to be in the water when
30 they drowned, and

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1 WHEREAS, constant adult supervision of young children
2 and medically frail elderly persons is the primary element in
3 an integrated approach to drowning prevention, and

4 WHEREAS, in the event of a lapse in such supervision, a
5 pool safety feature that limits or delays access to the
6 residential swimming pool, spa, or hot tub is a critical
7 component in the prevention of drownings, and

8 WHEREAS, it is the intent of the Legislature that all
9 new residential swimming pools, spas, and hot tubs have at
10 least one pool safety feature to supplement and complement the
11 requirement for constant adult supervision of young children
12 and medically frail elderly persons around such aquatic
13 environments, and

14 WHEREAS, it is also the intent of the Legislature that
15 the Department of Health be responsible for producing for the
16 public a publication that provides information on drowning
17 prevention and the responsibilities of pool ownership and also
18 for developing a drowning prevention program for the public
19 and for persons violating pool safety requirements, NOW,
20 THEREFORE,

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22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Chapter 515, Florida Statutes, consisting
25 of sections 515.21, 515.23, 515.25, 515.27, 515.29, 515.31,
26 515.33, 515.35, and 515.37, is created to read:

27 515.21 Short title.--This chapter may be cited as the
28 "Preston de Ibern/McKenzie Merriam Residential Swimming Pool
29 Safety Act."

30 515.23 Legislative findings and intent.--The
31 Legislature finds that drowning is the leading cause of death

1 of young children in this state and is also a significant
 2 cause of death for medically frail elderly persons in this
 3 state, that constant adult supervision is the key to
 4 accomplishing the objective of reducing the number of
 5 submersion incidents, and that when lapses in supervision
 6 occur a pool safety feature designed to deny, delay, or detect
 7 unsupervised entry to the swimming pool, spa, or hot tub will
 8 reduce drowning and near-drowning incidents. In addition to
 9 the incalculable human cost of these submersion incidents, the
 10 health care costs, loss of lifetime productivity, and legal
 11 and administrative expenses associated with drownings of young
 12 children and medically frail elderly persons in this state
 13 each year and the lifetime costs for the care and treatment of
 14 young children who have suffered brain disability due to
 15 near-drowning incidents each year are enormous. Therefore, it
 16 is the intent of the Legislature that all new residential
 17 swimming pools, spas, and hot tubs be equipped with at least
 18 one pool safety feature as specified in this chapter. It is
 19 also the intent of the Legislature that the Department of
 20 Health be responsible for producing for the public a
 21 publication that provides information on drowning prevention
 22 and the responsibilities of pool ownership and also for
 23 developing a drowning prevention education program for the
 24 public and for persons violating the pool safety requirements
 25 of this chapter.

26 515.25 Definitions.--As used in this chapter, the
 27 term:

28 (1) "Approved safety pool cover" means a manually or
 29 power-operated safety pool cover that meets all of the
 30 performance standards of the American Society for Testing and
 31 Materials (ASTM) in compliance with standard F1346-91.

1 (2) "Barrier" means a fence, dwelling wall, or
2 nondwelling wall, or any combination thereof, which completely
3 surrounds the swimming pool and obstructs access to the
4 swimming pool, especially access from the residence or from
5 the yard outside the barrier.

6 (3) "Department" means the Department of Health.

7 (4) "Exit alarm" means a device that makes audible,
8 continuous alarm sounds when any door or window which permits
9 access from the residence to any pool area that is without an
10 intervening enclosure is opened or left ajar.

11 (5) "Indoor swimming pool" means a swimming pool that
12 is totally contained within a building and surrounded on all
13 four sides by walls of or within the building.

14 (6) "Medically frail elderly person" means any person
15 who is at least 65 years of age and has a medical problem that
16 affects balance, vision, or judgment, including, but not
17 limited to, a heart condition, diabetes, or Alzheimer's
18 disease or any related disorder.

19 (7) "Outdoor swimming pool" means any swimming pool
20 that is not an indoor swimming pool.

21 (8) "Portable spa" means a nonpermanent structure
22 intended for recreational bathing, in which all controls and
23 water-heating and water-circulating equipment are an integral
24 part of the product and which is cord-connected and not
25 permanently electrically wired.

26 (9) "Public swimming pool" means a swimming pool, as
27 defined in s. 514.011(2), which is operated, with or without
28 charge, for the use of the general public; however, the term
29 does not include a swimming pool located on the grounds of a
30 private residence.

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1 (10) "Residential" means situated on the premises of a
2 detached one-family or two-family dwelling or a one-family
3 townhouse not more than three stories high.

4 (11) "Swimming pool" means any structure, located in a
5 residential area, that is intended for swimming or
6 recreational bathing and contains water over 24 inches deep,
7 including, but not limited to, in-ground, aboveground, and
8 on-ground swimming pools; hot tubs; and nonportable spas.

9 (12) "Young child" means any person under the age of 6
10 years.

11 515.27 Residential swimming pool safety feature
12 options; penalties.--

13 (1) In order to pass final inspection and receive a
14 certificate of completion, a residential swimming pool must
15 meet at least one of the following requirements relating to
16 pool safety features:

17 (a) The pool must be isolated from access to a home by
18 an enclosure that meets the pool barrier requirements of s.
19 515.29;

20 (b) The pool must be equipped with an approved safety
21 pool cover;

22 (c) All doors and windows providing direct access from
23 the home to the pool must be equipped with an exit alarm that
24 has a minimum sound pressure rating of 85 dB A at 10 feet; or

25 (d) All doors providing direct access from the home to
26 the pool must be equipped with a self-closing, self-latching
27 device with a release mechanism placed no lower than 54 inches
28 above the floor.

29 (2) A person who fails to equip a new residential
30 swimming pool with at least one pool safety feature as
31 required in subsection (1) commits a misdemeanor of the second

1 degree, punishable as provided in s. 775.082 or s. 775.083,
2 except that no penalty shall be imposed if the person, within
3 45 days of arrest or issuance of a summons or a notice to
4 appear, has equipped the pool with at least one safety feature
5 as required in subsection (1) and has attended a drowning
6 prevention education program established by s. 515.31.
7 However, the requirement of attending a drowning prevention
8 education program is waived if such program is not offered
9 within 45 days after issuance of the citation.

10 515.29 Residential swimming pool barrier
11 requirements.--

12 (1) A residential swimming pool barrier must have all
13 of the following characteristics:

14 (a) The barrier must be at least 4 feet high on the
15 outside.

16 (b) The barrier may not have any gaps, openings,
17 indentations, protrusions, or structural components that could
18 allow a young child to crawl under, squeeze through, or climb
19 over the barrier.

20 (c) The barrier must be placed around the perimeter of
21 the pool and must be separate from any fence, wall, or other
22 enclosure surrounding the yard unless the fence, wall, or
23 other enclosure or portion thereof is situated on the
24 perimeter of the pool, is being used as part of the barrier,
25 and meets the barrier requirements of this section.

26 (d) The barrier must be placed sufficiently away from
27 the water's edge to prevent a young child or medically frail
28 elderly person who may have managed to penetrate the barrier
29 from immediately falling into the water.

30 (2) The structure of an aboveground swimming pool may
31 be used as its barrier or the barrier for such a pool may be

1 mounted on top of its structure; however, such structure or
2 separately mounted barrier must meet all barrier requirements
3 of this section. In addition, any ladder or steps that are the
4 means of access to an aboveground pool must be capable of
5 being secured, locked, or removed to prevent access or must be
6 surrounded by a barrier that meets the requirements of this
7 section.

8 (3) Gates that provide access to swimming pools must
9 open outwards away from the pool and be self-closing and
10 equipped with a self-latching locking device, the release
11 mechanism of which must be located on the pool side of the
12 gate and so placed that it cannot be reached by a young child
13 over the top or through any opening or gap.

14 (4) A wall of a dwelling may serve as part of the
15 barrier if it does not contain any door or window that opens
16 to provide access to the swimming pool.

17 (5) A barrier may not be located in a way that allows
18 any permanent structure, equipment, or similar object to be
19 used for climbing the barrier.

20 515.31 Drowning prevention education program; public
21 information publication.--

22 (1) The department shall develop a drowning prevention
23 education program, which shall be made available to the public
24 at the state and local levels and which shall be required as
25 set forth in s. 515.27(2) for persons in violation of the pool
26 safety requirements of this chapter. The department may charge
27 a fee, not to exceed \$100, for attendance at such a program.
28 The drowning prevention education program shall be funded
29 using fee proceeds, state funds appropriated for such purpose,
30 and grants. The department, in lieu of developing its own
31 program, may adopt a nationally recognized drowning prevention

1 education program to be approved for use in local safety
2 education programs, as provided in rule of the department.

3 (2) The department shall also produce, for
4 distribution to the public at no charge, a publication that
5 provides information on drowning prevention and the
6 responsibilities of pool ownership. The department, in lieu of
7 developing its own publication, may adopt a nationally
8 recognized drowning prevention and responsibilities of pool
9 ownership publication, as provided in rule of the department.

10 515.33 Information required to be furnished to
11 buyers.--A licensed pool contractor, on entering into an
12 agreement with a buyer to build a residential swimming pool,
13 or a licensed home builder or developer, on entering into an
14 agreement with a buyer to build a house that includes a
15 residential swimming pool, must give the buyer a document
16 containing the requirements of this chapter and a copy of the
17 publication produced by the department under s. 515.31 that
18 provides information on drowning prevention and the
19 responsibilities of pool ownership.

20 515.35 Rulemaking authority.--The department shall
21 adopt rules pursuant to the Administrative Procedure Act
22 establishing the fees required to attend drowning prevention
23 education programs and setting forth the information required
24 under this chapter to be provided by licensed pool contractors
25 and licensed home builders or developers.

26 515.37 Exemptions.--This chapter does not apply to:

27 (1) Any system of sumps, irrigation canals, or
28 irrigation flood control or drainage works constructed or
29 operated for the purpose of storing, delivering, distributing,
30 or conveying water.

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1 (2) Stock ponds, storage tanks, livestock operations,
2 livestock watering troughs, or other structures used in normal
3 agricultural practices.

4 (3) Public swimming pools.

5 (4) Any political subdivision that has adopted or
6 adopts a residential pool safety ordinance, provided the
7 ordinance is equal to or more stringent than the provisions of
8 this chapter.

9 (5) Any portable spa with a safety cover that complies
10 with ASTM F1346-91(Standard Performance Specification for
11 Safety Covers and Labeling Requirements for All Covers for
12 Swimming Pools, Spas and Hot Tubs).

13 (6) Small, temporary pools without motors, which are
14 commonly referred to or known as "kiddy pools."

15 Section 2. This act shall take effect October 1, 1999.

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