

By Representative Wasserman Schultz

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 or 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, a heart problem, 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 its own  
16 or adopting a nationally recognized publication that provides  
17 information on drowning prevention and the responsibilities of  
18 pool ownership and also for developing its own or adopting a  
19 nationally recognized drowning prevention education program  
20 for the public and for persons violating pool safety  
21 requirements, NOW, THEREFORE,

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

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25           Section 1. Chapter 515, Florida Statutes, consisting  
26 of sections 515.21, 515.23, 515.25, 515.27, 515.29, 515.31,  
27 515.33, 515.35, and 515.37, is created to read:

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

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1           515.23 Legislative findings and intent.--The  
2 Legislature finds that drowning is the leading cause of death  
3 of young children in this state and is also a significant  
4 cause of death for medically frail elderly persons in this  
5 state, that constant adult supervision is the key to  
6 accomplishing the objective of reducing the number of  
7 submersion incidents, and that when lapses in supervision  
8 occur a pool safety feature designed to deny, delay, or detect  
9 unsupervised entry to the swimming pool, spa, or hot tub will  
10 reduce drowning and near-drowning incidents. In addition to  
11 the incalculable human cost of these submersion incidents, the  
12 health care costs, loss of lifetime productivity, and legal  
13 and administrative expenses associated with drownings of young  
14 children and medically frail elderly persons in this state  
15 each year and the lifetime costs for the care and treatment of  
16 young children who have suffered brain disability due to  
17 near-drowning incidents each year are enormous. Therefore, it  
18 is the intent of the Legislature that all new residential  
19 swimming pools, spas, and hot tubs be equipped with at least  
20 one pool safety feature as specified in this chapter. It is  
21 also the intent of the Legislature that the Department of  
22 Health be responsible for producing its own or adopting a  
23 nationally recognized publication that provides the public  
24 with information on drowning prevention and the  
25 responsibilities of pool ownership and also for developing its  
26 own or adopting a nationally recognized drowning prevention  
27 education program for the public and for persons violating the  
28 pool safety requirements of this chapter.  
29           515.25 Definitions.--As used in this chapter, the  
30 term:  
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1       (1) "Approved safety pool cover" means a manually or  
2 power-operated safety pool cover that meets all of the  
3 performance standards of the American Society for Testing and  
4 Materials (ASTM) in compliance with standard F1346-91.

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

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

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

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

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

23       (7) "Outdoor swimming pool" means any swimming pool  
24 that is not an indoor swimming pool.

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

30       (9) "Public swimming pool" means a swimming pool, as  
31 defined in s. 514.011(2), which is operated, with or without

1 charge, for the use of the general public; however, the term  
2 does not include a swimming pool located on the grounds of a  
3 private residence.

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

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

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

14 515.27 Residential swimming pool safety feature  
15 options; penalties.--

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

20 (a) The pool must be isolated from access to a home by  
21 an enclosure that meets the pool barrier requirements of s.  
22 515.29;

23 (b) The pool must be equipped with an approved safety  
24 pool cover;

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

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

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

13           515.29 Residential swimming pool barrier  
14 requirements.--

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

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

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

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

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

3 (2) The structure of an aboveground swimming pool may  
4 be used as its barrier or the barrier for such a pool may be  
5 mounted on top of its structure; however, such structure or  
6 separately mounted barrier must meet all barrier requirements  
7 of this section. In addition, any ladder or steps that are the  
8 means of access to an aboveground pool must be capable of  
9 being secured, locked, or removed to prevent access or must be  
10 surrounded by a barrier that meets the requirements of this  
11 section.

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

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

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

24 515.31 Drowning prevention education program; public  
25 information publication.--

26 (1) The department shall develop a drowning prevention  
27 education program, which shall be made available to the public  
28 at the state and local levels and which shall be required as  
29 set forth in s. 515.27(2) for persons in violation of the pool  
30 safety requirements of this chapter. The department may charge  
31 a fee, not to exceed \$100, for attendance at such a program.



1 The drowning prevention education program shall be funded  
2 using fee proceeds, state funds appropriated for such purpose,  
3 and grants. The department, in lieu of developing its own  
4 program, may adopt a nationally recognized drowning prevention  
5 education program to be approved for use in local safety  
6 education programs, as provided in rule of the department.

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

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

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

30 515.37 Exemptions.--This chapter does not apply to:  
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1       (1) Any system of sumps, irrigation canals, or  
2 irrigation flood control or drainage works constructed or  
3 operated for the purpose of storing, delivering, distributing,  
4 or conveying water.

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

8       (3) Public swimming pools.

9       (4) Any political subdivision that has adopted or  
10 adopts a residential pool safety ordinance, provided the  
11 ordinance is equal to or more stringent than the provisions of  
12 this chapter.

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

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

19       Section 2. This act shall take effect October 1, 2000.

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HOUSE SUMMARY

Substantively identical to a bill that passed the House in the 1999 Regular Session.

Creates ch. 515, F.S., the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act," to establish safety requirements for residential swimming pools, which include certain spas and hot tubs. Provides legislative findings and intent and definitions. Provides safety feature options for residential swimming pools, and provides penalties for not having at least one such safety feature. Provides pool barrier requirements. Requires the Department of Health to establish a drowning prevention education program and produce a public information publication or, in lieu thereof, to adopt a nationally recognized program or publication or both. Requires pool contractors, home builders, and developers to provide buyers with information relating to pool safety requirements, drowning prevention, and pool ownership responsibilities. Provides rulemaking authority and exemptions. See bill for details.