

By Senator Sullivan

22-158-00

See HB 25

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.