

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 724

INTRODUCER: Senator Hooper

SUBJECT: Residential Swimming Pool Safety

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	<u>Favorable</u>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 724 may be cited as “The Kacen’s Cause Act” and requires that a new residential swimming pool must meet at least two required pool safety feature options in order to pass final inspection and receive a certificate of completion. Current law requires that new residential swimming pools meet just one safety feature. The bill expands the requirements for pool safety features to all existing residential swimming pools by imposing a requirement that a pool owner may not transfer ownership of a swimming pool unless the pool meets at least two of the pool safety features required by s. 515.27, F.S.

The bill requires home inspectors to include pool safety features, if any, in written home inspection reports prepared for compensation pursuant to s. 468.8323, F.S.

The bill provides an effective date of July 1, 2019.

## II. Present Situation:

### Introduction

In 2000, upon finding that drowning was the leading cause of death of young children in Florida, as well as a significant cause of death for medically frail elderly persons, the Legislature enacted ch. 515, F.S., the Residential Swimming Pool Safety Act (the act).<sup>1</sup> The act provides that all new residential swimming pools, spas, and hot tubs must be equipped with at least one pool safety feature to protect children under age six, and medically frail elderly persons, defined as those who are at least 65 years of age with a medical problem that affects balance, vision, or judgment.<sup>2</sup>

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<sup>1</sup> See ch. 2000-143, Laws of Fla. (creating ch. 515, F.S., effective Oct. 1, 2000).

<sup>2</sup> Section 515.25, F.S. Such problems include, but are not limited to, a heart condition, diabetes, or Alzheimer’s disease or any related disorder.

Using 2017 surveillance data for child drownings in Florida for newborns<sup>3</sup> to age 19, the Florida Department of Health (DOH) indicates the following about children between ages one and four, with such children accounting for:

- Sixty-three percent of the 107 non-fatal hospitalizations from unintentional drowning; and
- Sixty percent of the 101 deaths from unintentional drowning.<sup>4</sup>

The DOH notes that nationally, in 2016, drowning was the leading cause of death of children between ages one and four, and Florida's rate was the highest in the United States.<sup>5</sup> Children between the ages of one and four are more likely to drown in home swimming pools, with older children most likely to drown in natural water bodies.<sup>6</sup>

In May 2018, the United States Consumer Product Safety Commission reported that 85 percent of reported drownings (from 2013 to 2015) of children younger than five years of age involved residential locations.<sup>7</sup> As to children younger than 15 years of age, approximately 54 percent of reported drownings (annual average of 190) occurred in in-ground pools, 19 percent occurred in above-ground pools (annual average of 66), and 4 percent in portable pools (annual average of 14).<sup>8</sup>

In Florida, certain certified pool alarms were added in 2016 as a method to meet the required pool safety features for new residential swimming pools.<sup>9</sup> In addition, the Legislature exempted the following entities, pools, structures, and operations from the requirements of the act:

- Sumps, irrigation canals, or irrigation flood control or drainage works constructed or operated to store, deliver, or distribute water;
- Agricultural stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures;
- Public swimming pools;<sup>10</sup>
- Any political subdivision that has adopted or adopts a residential pool safety ordinance that is equal to or more stringent than the provisions of the act (ch. 515, F.S.);
- Any portable spa with a safety cover;<sup>11</sup> and

<sup>3</sup> Most infant drownings occur in bathtubs and buckets. See [http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/\\_documents/child-drowning-2017-infographic.pdf](http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/_documents/child-drowning-2017-infographic.pdf) at p. 2 (last visited Mar. 14, 2019).

<sup>4</sup> *Id.* at p. 1

<sup>5</sup> *Id.* Florida's rate was also the highest in the nation in 2013. See <http://www.floridahealth.gov/programs-and-services/prevention/drowning-prevention/index.html> (last visited Mar. 14, 2019).

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> See the U.S. Consumer Product Safety Commission's *Pool or Spa Submersion: Estimated Nonfatal Drowning Injuries and Reported Drownings, 2018 Report* (CPSC 2018 Report), [https://www.cpsc.gov/s3fs-public/Pool\\_Spa\\_Submersion\\_Estimated\\_nonfatal\\_drowning\\_injuries\\_and\\_reported\\_drownings\\_2018\\_report\\_2018H002.pdf?hak4TSK.2PVleeVQeMkFJKJ0BSnoSP4Z](https://www.cpsc.gov/s3fs-public/Pool_Spa_Submersion_Estimated_nonfatal_drowning_injuries_and_reported_drownings_2018_report_2018H002.pdf?hak4TSK.2PVleeVQeMkFJKJ0BSnoSP4Z) (last visited Mar 14, 2019)

<sup>8</sup> *Id.*

<sup>9</sup> See ch. 2016-129, s. 14, Laws of Fla.

<sup>10</sup> Section 515.25(9), F.S., defines "public swimming pool" to mean a swimming pool operated with or without charge for the use of the general public (but not a pool located on the grounds of a private residence), as defined in s. 514.011(2), F.S. For comparison, s. 514.011(3), F.S., defines a "private pool" to mean a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units.

<sup>11</sup> The pool cover must comply with ASTM F1346-91 (Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs), issued by the American Society for Testing and

- Small, temporary pools without motors (*i.e.*, kiddie pools).

### **Requirements for Pool Safety Features for New Residential Swimming Pools**

Section 515.27(1), F.S., provides the requirements a new residential swimming pool must meet in order to pass its final inspection and receive a certification of completion. At least one of the following pool safety features must be in place:

- The pool must be isolated from access to a home by an enclosure that meets certain pool barrier requirements (discussed below);
- The pool must be equipped with an approved safety pool cover;<sup>12</sup>
- All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm with a minimum sound pressure rating of 85 decibels at 10 feet;<sup>13</sup>
- All doors providing access from the home to the pool must have a self-closing, self-latching device, and the release mechanism must be more than 54 inches above the floor; or
- There is a pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water, and the alarm meets and is independently certified to meet safety specifications for residential pool alarms.<sup>14</sup> Personal swimming protection alarm devices (e.g., alarm devices that attach to a child and are triggered if a child exceeds a certain distance or becomes submerged in water), do not meet the pool alarm requirement.

### **Residential Swimming Pool Barrier Requirements**

The term “barrier” is defined in s. 515.25(2), F.S., to mean a fence, dwelling wall, or nondwelling wall, or any combination, which completely surrounds a swimming pool and obstructs access to the pool, especially access from the residence or from the yard outside the barrier.

Section 515.29(1), F.S., provides a residential swimming pool barrier must:

- Be at least 4 feet high on the outside;
- Not have any gaps or components that could allow a child under the age of six to crawl under, squeeze through, or climb over the barrier;
- Be placed around the pool’s perimeter, separate from any fence, wall, or other enclosure surrounding the yard, unless the fence, wall, or other enclosure or any portion on the perimeter of the pool, is being used as part of the barrier, and meets all other barrier requirements; and

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Materials (ASTM). See <https://www.astm.org/Standards/F1346.htm> (last visited Mar. 14, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

<sup>12</sup> An “approved safety pool cover” means a manually or power-operated pool cover that meets all of the standards of the American Society for Testing and Materials, in compliance with standard F1246-91. See s. 515.25(1), F.S.

<sup>13</sup> The exit alarm must make continuous alarm sounds when any door or window with access to the pool area is opened or left ajar; at a level of 85 decibels (85 dbA, using A-weighted sounds), the alarm would sound louder than a passing freight train passing 100 feet away, which has a typical sound level of 80 dbA. See s. 515.25(4), F.S., and [https://www.osha.gov/dts/osta/otm/new\\_noise/index.html#decibels](https://www.osha.gov/dts/osta/otm/new_noise/index.html#decibels) (last visited Mar. 14, 2019).

<sup>14</sup> The alarm must meet and be certified to ASTM Standard F2208, titled “Standard Safety Specification for Residential Pool Alarms” issued by the ASTM. See <https://www.astm.org/Standards/F2208.htm> (last visited Mar. 14, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

- Be placed sufficiently away from the water's edge to prevent a child under the age of six or a medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

Gates that provide access to residential swimming pools must:

- Open outward away from the pool and be self-closing; and
- Be equipped with a self-latching locking device, with a release mechanism on the pool side of the gate, placed that it cannot be reached by a child under the age of six, either over the top or through any opening or gap.<sup>15</sup>

A dwelling wall may be part of barrier if the wall has no door or window opening providing access to the pool, but a barrier may not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.<sup>16</sup>

For an aboveground residential swimming pool, the barrier may be the pool's structure itself or may be mounted on top of the pool's structure, but any such barrier must meet all barrier requirements in s. 515.29, F.S., as described above.<sup>17</sup> In addition, any ladder or steps accessing an aboveground pool must be able to be secured, locked, or removed to prevent access or must themselves be surrounded by a barrier meeting all safety requirements.<sup>18</sup>

### **Penalties for Noncompliance with Requirements for Safety Features for New<sup>19</sup> Residential Swimming Pools**

Section 515.27(2), F.S., provides that a person who fails to equip a new residential swimming pool with at least one of the required pool safety features commits a second degree misdemeanor.<sup>20</sup> No penalty may be imposed if, within 45 days after arrest or issuance of a summons or a notice to appear, the person equips the pool with one of the required safety features and has attended a drowning prevention education program, if such a program is offered within 45 days of the citation.<sup>21</sup>

The drowning prevention education program required by s. 515.31, F.S., was adopted by rule of the DOH in 2001 for persons in violation of the pool safety requirements is the 1995 American Red Cross Community Water Safety Course.<sup>22</sup> An updated course is available from the

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<sup>15</sup> Section 515.29(3), F.S.

<sup>16</sup> Sections 515.29(4) and (5), F.S.

<sup>17</sup> Section 515.29(2), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Chapter 2000-143, Laws of Fla., established the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act" with an effective date of October 1, 2000. Penalties apply to residential swimming pools built after that date.

<sup>20</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>21</sup> See s. 515.27(2), F.S.

<sup>22</sup> See Fla. Admin. Code R. 64E-21.001 (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> (last visited Feb. 28, 2019).

American Red Cross.<sup>23</sup> The DOH also adopted by rule the 1994 U.S. Consumer Product Safety Commission publication Number 362, Safety Barrier Guidelines for Residential Home Pools.<sup>24</sup>

### **Required Information to be Furnished by Contractors to Buyers who Build a Residential Swimming Pool**

Florida law requires a licensed pool contractor contracting with a buyer to build a residential swimming pool, or a licensed home builder or developer contracting with a buyer to build a house with a swimming pool, to give the buyer:

- A document containing the requirements of the Residential Swimming Pool Safety Act (ch. 515, F.S.); and
- A copy of the publication adopted by the DOH that provides information on drowning prevention and the responsibilities of pool ownership.<sup>25</sup>

### **Required Information in Home Inspection Reports**

A home inspector who has completed a home inspection for compensation from a client must provide a written report stating:

- As to the systems and components that were inspected, those systems and components that are significantly deficient or are near the end of their service lives, in the inspector's professional opinion, and if not obvious, a reason why the system or component is significantly deficient or near the end of its service life.
- Any systems and components that were present at the time of the inspection but were not inspected, and a reason they were not inspected.<sup>26</sup>

## **III. Effect of Proposed Changes:**

**Section 1** of the bill provides for the citation of the act as “The Kacen’s Cause Act.” Kacen, a nearly three-year-old boy tragically drowned in the family’s swimming pool after opening a sliding glass door and bypassing an inadequate pool fence. His mother established a nonprofit foundation to educate others and pursue changes to pool safety laws.<sup>27</sup>

<sup>23</sup> See <https://www.nspf.org/training> or <https://www.redcross.org/get-help/how-to-prepare-for-emergencies/types-of-emergencies/water-safety/home-pool-safety.html> (last visited Mar. 14, 2019).

<sup>24</sup> See Fla. Admin. Code R. 64E-21.001(2) (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> and <https://www.cpsc.gov/s3fs-public/362%20Safety%20Barrier%20Guidelines%20for%20Pools.pdf> (last visited Mar. 14, 2019).

<sup>25</sup> See s. 515.33, F.S. Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code and issue permits. The Orange County Residential Swimming Pool Permit requires a Residential Swimming Pool Safety Affirmation Form signed by both the contractor and property owner designating safety options to be installed before the time of the Pool Barrier/Safety Device inspection, *available at* <https://www.orangecountyfl.net/Portals/0/resource%20library/permits%20-%20licenses/Residential%20Swimming%20Pool%20Safety%20Affirmation.pdf> (last visited Mar. 15, 2019).

<sup>26</sup> See s. 468.8323, F.S. A home inspector is not required to provide estimates for repair costs of an inspected property. Chapter 45 of the Residential Florida Building Code on Private Swimming Pools requires that a final electrical and barrier code inspection must be completed prior to filling the pool with water (R4501.19).

<sup>27</sup> See <https://www.kacenscause.com/> (last visited Feb. 28, 2019), which notes the term “K.A.C.E.N.S. C.A.U.S.E.” stands for “Keeping Adults and Children Educated Nationwide: Creating Awareness on Unsafe Swimming Environments.”

**Section 2** amends s. 468.8323, F.S., relating to home inspection reports, to require the reporting of any existing pool safety features, as described in s. 515.27(1), F.S., if there is a swimming pool at the home.

**Section 3** amends s. 515.27, F.S., relating to residential pool safety features, to increase the minimum number of required pool safety features for such pools from one to two.

The bill expands the requirements for pool safety features to all residential swimming pools by prohibiting transfer of ownership of a pool unless it has at least two pool safety features. Specifically, the bill provides that a residential swimming pool owner may not transfer ownership of a pool unless the pool meets at least two of the required safety features.

**Section 4** amends cross-references to conform to changes in the bill.

The bill includes technical conforming provisions to meet bill drafting conventions.

The bill provides an effective date of July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Under the requirements of the bill, an owner of a residential property must specify in the construction plans for a swimming pool that the project must include at least two pool safety features in order to pass inspection (rather than one), which may increase construction costs.

An owner of an existing residential property with a swimming pool must ensure that there are at least two of the required pool safety features in place before transferring ownership of the property, to avoid delayed or failed transfers, and penalties for noncompliance. Compliance with the required pool safety features will increase the cost to affected owners of properties for sale. Realtors and others involved with the transfer of properties may also need to include the requirements for pool safety features imposed by the bill in procedures and requirements for real estate closings.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The following issues were raised at the Committee on Innovation, Industry, and Technology for consideration by the introducer: provide consequences of failure to comply with the pool feature requirements when a residential property with a pool is transferred by a seller, how to address the issue of out-of-state owners and foreclosure sales, and the transfer of a property for which a home inspection is not performed or is a cash transaction.

The bill sponsor may want to consider revising lines 60 – 62 to clarify that a *property owner with a residential swimming pool* may not transfer ownership of a *property* unless the residential swimming pool meets the new requirements.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.8323, 515.27, and 515.31.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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