

**STORAGE NAME:** h3707a.ca

**DATE:** March 27, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3707

**RELATING TO:** Residential Swimming Pool Barriers

**SPONSOR(S):** Representatives Wasserman Schultz and others

**COMPANION BILL(S):** SB 1172

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

- (1) COMMUNITY AFFAIRS
  - (2) CRIME & PUNISHMENT
  - (3) HEALTH CARE STANDARDS & REGULATORY REFORM
  - (4) GOVERNMENTAL RULES & REGULATIONS
  - (5)
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**I. SUMMARY:**

The bill creates the "Florida Residential Swimming Pool Barriers Act." The intent of the bill is to protect young children from drowning. The bill requires all *new* residential swimming pools be designed and built with a fence or barrier surrounding the entire swimming pool. The bill also requires pool barriers to be installed upon the sale of a residence with an existing pool.

The bill requires that the barrier (a fence, wall, or combination of both) must meet certain requirements.

The bill provides that above-ground pool 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.

The bill also provides that a violation of the provisions of the bill is a misdemeanor of the second degree. However, a fine may not be imposed if the person complies within 45 days of the citation and attends a drowning prevention education program.

The bill requires the Department of Health to adopt rules necessary to implement and administer the bill's provisions and to develop a drowning prevention education program.

The bill provides certain exemptions.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

It is estimated that there are over 1 million residential pools in Florida.

According to the U.S. Consumer Product Safety Commission, an estimated 260 children under five years of age drown each year in residential swimming pools and spas nationwide. An estimated 2,000 children in that age group are treated with submersion injuries in hospital emergency rooms. The costs from near-drowning injuries can range from \$2,000 to \$80,000, and sometimes even as high as \$150,000 for severe brain damage. Sixty-five percent of the drownings or near-drownings happen in a pool owned by the child's family. An additional thirty-three percent of the incidents happened in a pool owned by friends or relatives. Seventy-seven percent of the swimming pool accident victims were missing for five minutes or less before they were found drowned or submerged.

The Department of Health reports that approximately 75 children drown each year in private swimming pools in Florida. According to the Bureau of Emergency Medical Services, half of the approximately 75 children would have been saved if the residential pool had been fenced. DOH reports that in 1996 drowning was the leading cause of death for children 0-4 years old.

#### **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 Standard Swimming Pool Code, 1997 Edition**

Section 315.2.1-10 of the *Standard Swimming Pool Code*, 1997 Edition, 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 are used that provide the same degree of protection as 1 and 2.

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 *Standard Swimming Pool 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. The *Standard Swimming Pool Code* is also published as an appendix in the *CABO One and Two Family Dwelling Code* (OTFDW), 1993 edition, and is incorporated into the 1996 *Uniform Building Code* adopted by the International Conference of Building Code Officials (ICBO), and the Building Officials and Code Administrators International (BOCA) *National Building Code*, 1993 edition. The American National Standards Institute (ANSI) *Model Barrier Code for Residential Swimming Pools, Spas and Hot Tubs* (1996) contains the same basic safety requirements as the other model codes, with added window safety features. The *Model Barrier Code* also specifically allows screened enclosures and fences to act as barriers.

The *South Florida Building Code*, 1998 Dade County Edition, generally adopts the ANSI model code. The *South Florida Building Code*, Broward County Edition, does not address pool safety issues. However, many cities in Broward County have adopted the *Standard Swimming Pool Code*, or portions of the *Code*, for their respective jurisdictions, and the 1999 Edition will contain the essential requirements specified in this *Code*.

#### **Governor's Building Codes Study Commission (BCSC)**

In 1996, the Governor established the Governor's Building Codes Study 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. If the Governor's Building Codes Study Commission's recommendation is approved by the Legislature, Florida will have one standard for residential swimming pool construction.

Under current provisions of HB 4181 by Representative Constantine, swimming pool provisions are not changed from current standards. In addition, there is a possibility that if enacted, this chapter may be repealed in the year 2001 when all statutes relating to Building Codes are repealed.

**B. EFFECT OF PROPOSED CHANGES:**

The "Florida Residential Swimming Pool Barriers Act" creates Chapter 515, Florida Statutes. The intent of the bill is to protect young children, defined in this bill as under the age of 6, from drowning in residential swimming pools.

All *new* residential swimming pools must be designed and built with a fence or barrier surrounding the entire swimming pool.

The bill also requires that the pool barrier requirements be met upon the sale of a residence with an existing pool.

Currently, State statutes do not require that barriers be constructed completely around the swimming pool. However, some municipalities and counties do require, by ordinance, some type of barrier or fencing. This bill requires additional barriers for a home owner even if the pool is surrounded by a fenced yard or the pool is screened in if the standards for barriers are not met.

The bill requires pool barriers for any structure, located in a residential area intended for swimming or recreational bathing with over 2 feet of water. The following structures are included: in-ground pools, aboveground pools, on-ground pools, hot tubs, and nonportable spas.

The pool barrier (a fence, wall, or combination of both) must meet the following requirements:

- at least 4 feet high;
- must not allow any child under the age of 6 to crawl under, squeeze through, or climb over it;
- must completely surround the perimeter of the pool, and cannot be the barrier surrounding the yard unless it meets the barrier requirements; and
- must be placed with sufficient distance between the barrier and the pool in order to avoid the child immediately falling in.

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.

An additional requirement is that if a wall of a dwelling is used as part of the barrier, it cannot contain any door or window which opens and provides pool access. If the dwelling wall does have a door or window, it may not be used as a component of the barrier 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, are equipped with a self-latching locking device, its release mechanism is located on the pool side, and it is outside the reach of a child under the age of 6.

An additional barrier requirement is that the barrier cannot be located near any permanent structure, equipment, or other object which may be used for climbing the barrier.

The bill requires pool contractors to give buyers a document reflecting the barrier requirements and information on drowning prevention.

Violations of the provisions of the bill is a misdemeanor of the second degree. A misdemeanor of the second degree is punishable by a definite term not exceeding 60 days and/or a fine not exceeding \$500. The bill provides that a fine cannot be imposed if the person complies within 45 days of the citation and attends a drowning prevention education program.

The bill requires the Department of Health to adopt rules necessary to implement and administer the Act and to develop a drowning prevention education program.

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

Yes. The Department of Health must adopt rules necessary to implement and administer this bill.

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

Yes. The Department of Health is required to develop a drowning prevention education program and produce a publication which explains pool ownership responsibilities. Individuals who would like to purchase a pool will be obliged to purchase pool barriers which are in compliance with this bill. Individuals who have homes with pools will also have to comply if the home is sold.

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

No.

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?

The bill potentially could result in fees assessed by DOH to assist in implementing this bill.

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?

Yes. Persons with swimming pools pay for their barriers.

4. Individual Freedom:

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

No. This bill may decrease the ability of owners to either purchase a new pool, hot tub, or nonportable spa due to the potential costs this bill imposes. This bill may increase the sale costs of a home with an existing pool since the requirement to comply with the barrier requirements occurs when it is sold.

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

Yes. This bill may interfere with the ability to purchase pools, hot tubs, and nonportable spas. This bill may also interfere with the ability to sell one's own home.

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 needs 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?

In this instance, pool contractors are obligated to provide information on barriers.

- (3) government employees/agencies?

N/A



**D. STATUTE(S) AFFECTED:**

N/A

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1:** Creates Chapter 515, Florida Statutes, and provides the following sections:

Section 515.21 -- Provides the short title of "Florida Residential Swimming Pool Barriers Act"

Section 515.23 -- Provides legislative findings that drowning is the primary cause of death of young children 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; provides intent that all *new* swimming pools be designed and built with complying fences and/or barriers; and provides that it is the intent that the pool barrier requirements are met with the sale of a residence with an existing pool.

Section 515.25 -- Provides definitions to be used, including the following, but not limited to:

- Barrier: a fence, barrier, dwelling wall, or combination which completely surrounds the pool and obstructs access from the yard and residence;
- Residential: detached one-family or two-family dwelling or a one-family townhouse under three stories;
- Swimming pool: any residential area structure intended for swimming or recreational bathing with over 2 feet of water, including in-ground pools, aboveground pools, on-ground pools, hot tubs, and nonportable spas; and
- Young child: any person under the age of 6.

Section 515.27 -- Provides residential swimming pool barrier requirements; 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; requires pool contractors provide new pool owners with a document relating to pool barrier requirements and drowning prevention; provides that a pool built prior to this bill must meet the requirements upon sale of the residence; and 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.

Section 515.29 -- Provides exemptions to the Act.

Section 515.31 -- Requires the Department of Health to develop a drowning prevention education program and a document explaining the responsibilities of pool ownership.

**Section 2:** Provides an effective date of October 1 of the year of enactment.

III. FISCAL RESEARCH & 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 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 that there be a one time expense associated with the development of the prevention program and publication on pool ownership responsibilities of approximately \$50,000.

2. Recurring Effects:

DOH anticipates rule adoption to implement an inspection program. In that event, DOH reports that an estimated average of 1.3 inspections per pool would be required to allow for some follow-ups and reinspections in order to implement the bill. The DOH reports that approximately 140,000 homes with pools sell annually, and that virtually all of these pools will need barrier installation or modification. Additionally, DOH reports that 23,000 new pools are sold or constructed annually. If a total of 163,000 homes with pools are sold and new pools are constructed each year, the department will perform a total of 211,900 pool fence inspections each year. DOH estimates that it will cost approximately \$31 per inspection. DOH estimates that it will need \$4.8 million in FY 98/99, and \$6.4 million annually thereafter to fund the inspection program. There is a decrease in expenditures in FY 98/99 as DOH estimates that only 3/4 of the inspections will be performed. The bill does not provide funding for or authorize a funding source to fund the pool inspections.

3. Long Run Effects Other Than Normal Growth:

No.

4. Total Revenues and Expenditures:

DOH estimates that first year costs for education program, publication and inspections would be an estimate of \$4.9 million. Recurring annual costs would be \$6.5 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

DOH reports that approximately 140,000 homes with pools sell annually, and that virtually all of these pools will need barrier installation or modification. Additionally, 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. Using the DOH estimates, it will cost homeowners \$145 to \$536 million annually to comply with this act. A representative from the Florida Pool & Spa Association (FPSA) estimates installation costs to range from \$1,500 to \$5,000. Using the FPSA estimates, it will annually cost homeowners \$245 to \$815 million annually to comply. Realtors and pool contractors may also have to add additional costs to their sales.

2. Direct Private Sector Benefits:

The benefit is the avoidance of legal and administrative costs, costly emergency medical responses, stays in intensive care, lifetime medical equipment, and loss of lifetime productivity associated with drownings and near-drownings. DOH estimates that these costs associated with toddler drownings in Florida each year is estimated at \$74 million. Also, the fencing industry would benefit financially from the requirements.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

None.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

N/A

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

N/A

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

N/A

**V. COMMENTS:**

The following is a list of concerns and deficiencies noted:

- There is no enforcement provision. Although the bill grants the Department of Health the authority to create rules and programs, it does not grant them the ability to enforce the requirement that residential pools have barriers. At this time, no agency or Department can enforce the bill's provisions.
- The bill does not provide for notice to home buyers of the barrier requirements. The bill does not stipulate who is required to pay for the barriers when the home is eventually sold. Is it the responsibility of the realtor to notify the owner and buyer of the pool barrier requirements? For example, in California and Arizona, the State's pool barrier requirements are listed in the mortgage closing documents.
- There is no mechanism for merchants of hot tubs and nonportable spas to notify the purchaser of the pool barrier requirements. Also, there is no enforcement mechanism for non-disclosure on the part of the merchant.
- The bill contains no enforcement mechanism against the contractor if he/she fails to disclose the requirements of the pool barriers.
- The bill contains no notification of sales provision to the Department of Health. No mechanism is provided for the Department to be notified when a home with a pool, hot tub, or nonportable spa is sold, or when a new pool is purchased. Even if given the ability to enforce, it will be expensive and difficult to determine compliance. Also, if the counties are required to notify DOH of sales or to inspect, the bill may present an unauthorized mandate issue.
- Funds are not provided to the Department of Health for the required creation of a publication relating to pool ownership responsibilities, a drowning prevention education program or an inspection program.
- The bill is unclear as to what is included in the definition of a sale and whether a transfer of title is a sale. The bill needs clarification by defining "sale" in section 1 relating to 515.25 and that a transfer of title is a sale.
- In Section 1 relating to 515.29(4) it is unclear as to what is exempt. Whether it is the political subdivision's pool or all pools within the subdivision.

- The provisions of section 515.27(1)(b) may exclude mesh fencing, removable fencing and screened porches. In some circumstances, a child may be able to get through mesh fencing or screening, thus, rendering this type of barrier ineffective. If the intent is to include this as an acceptable type of barrier, the barrier definition should be expanded.
- The barrier requirements may restrict transfers of property. When a property is foreclosed and sold at a foreclosure sale, it is not clear who is liable to conform the property to the bill's requirements, the bank, buyer, or mortgagee.

The bill's sponsor responds as follows:

- It is not the intent of the sponsor to be intrusive into citizens' lives. There is no enforcement provision as self-compliance is the way the bill is to be enforced. The sponsor believes that citizens will realize that this is a positive requirement and will comply. Thus, there is no need for enforcement.
- The sponsor's intent is that the provisions will be enforced by self-compliance, permits, closing documents, and complaints made to local government.
  - The barrier requirements will become an additional requirement which must be satisfied prior to the permit's final approval. The pool inspector will determine that the pool is in compliance with the barrier requirements.
  - Closing documents will be required to state that the pool barrier requirements are satisfied. There is no penalty against the realtor for failing to check that the requirements are satisfied and that the pool is in compliance. This is similar to California's statute relating to sales of home with existing pools.
  - A third way to ensure compliance is through complaints made to local government. When there is a complaint that a home is in violation of the bill's provisions, a local government representative will determine compliance or non-compliance to the bill. Both an inspection and reinspection might occur.
- The sponsor also stated that the DOH will not be able to perform inspections which should remove the concerns of DOH expenditures.
- Mesh fencing is allowed under the definition of barrier. This is the type of barrier which the bill is intended to promote.
- The sponsor's intent is that this bill be very flexible in regards to who bears the expense of compliance. It is up to the buyer and seller and bank and buyer to determine who is going to bear the costs of compliance.

This bill excludes other additional methods of protecting children from drowning or near-drowning incidents which may be both less cumbersome and less expensive than surrounding the entire pool with a barrier. Alternative methods include door and window

alarms for those with pool access, screen enclosures, and automatic power safety covers. Also, the bill does not address the importance of swimming certification of children.

The Florida Pool & Spa Association's representatives stated that they do not support this bill. The Association feels that the *ANSI Model Barrier Code for Residential Swimming Pools, Spas and Hot Tubs* (1995) should be adopted. The Code's pool barrier provisions are similar to the *Standard Swimming Pool Code*, which is used by many Florida cities and counties. This bill goes beyond the requirements in the *Model Barrier Code*. Also, the Association believes that some provisions in the bill will be difficult, if not impossible, to comply with.

The following organizations support this bill: Florida Safe Kids Coalition, National Safe Kids Coalition, Florida Pediatric Society, Florida Developmental Disabilities Planning Council, Florida Medical Association, Florida Department of Health, Florida College of Emergency Physicians, Florida Teaching Hospitals, Florida Association of EMTs and Paramedics, Broward Building and Inspectors Association, and State Farm.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike everything amendment is being offered by the sponsor to address some of the concerns brought up at the last meeting.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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Laura L. Jacobs

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Joan Highsmith-Smith