

By: Zaffirini

S.B. No. 765

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of child swim instruction operators; requiring an occupational license; imposing penalties, including administrative penalties; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 769 to read as follows:

CHAPTER 769. REGULATION OF SWIM INSTRUCTION OPERATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 769.001. SHORT TITLE. This chapter may be cited as the Mitchell Chang Swim Safety Act.

Sec. 769.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Health care professional" means a licensed physician, licensed physician assistant, licensed advanced practice registered nurse, licensed vocational nurse, registered nurse, or other individual licensed to provide health care within the scope of the license.

(4) "Instructor" means an individual who provides swim instruction.

(5) "Operator" means a company, corporation,

1 partnership, or sole proprietorship that provides swim instruction
2 in the ordinary course of business.

3 (6) "Serious incident" means a circumstance occurring
4 in the course of swim instruction that requires attention by a
5 health care professional. The term includes:

6 (A) abuse, neglect, exploitation, or death of a
7 student;

8 (B) a critical injury of a student; and

9 (C) an illness of a student that requires
10 hospitalization.

11 (7) "Student" means a child who is six years of age or
12 younger and receives swim instruction.

13 Sec. 769.003. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a)
14 Subject to Subsection (b), this chapter applies only to an operator
15 that provides swim instruction to students who are six years of age
16 or younger in a group of three or more students, regardless of
17 whether a parent is present at the time of instruction.

18 (b) This chapter does not apply to swim instruction provided
19 to students by:

20 (1) a political subdivision as defined by Section
21 172.003, Local Government Code; or

22 (2) a child-care facility the Health and Human
23 Services Commission licenses.

24 Sec. 769.004. APPLICABILITY OF OTHER LAW. Chapter 51,
25 Occupations Code, applies to an operator licensed under this
26 chapter.

27 SUBCHAPTER B. COMMISSION AND DEPARTMENT POWERS AND DUTIES

1 Sec. 769.051. REGULATION BY DEPARTMENT. The department
2 shall administer and enforce this chapter.

3 Sec. 769.052. RULES. The commission shall adopt rules to
4 administer and enforce this chapter, including rules prescribing:

5 (1) operating standards; and

6 (2) minimum safety and training requirements.

7 Sec. 769.053. FEES. The commission by rule shall set
8 license, application, and renewal fees in the amounts reasonable
9 and necessary to cover the department's costs in administering this
10 chapter.

11 Sec. 769.054. COMPLAINTS SUBMITTED TO DEPARTMENT. (a) A
12 person may submit a complaint to the department concerning an
13 operator or an operator's employee or instructor.

14 (b) The department may investigate a complaint submitted
15 under this section in accordance with Subchapter E, Chapter 51,
16 Occupations Code.

17 Sec. 769.055. INSPECTION BY DEPARTMENT. (a) The department
18 may inspect an operator's place of business or other location where
19 the operator provides swim instruction on the department's receipt
20 of a complaint about the operator or a report of a serious incident
21 that the department determines warrants further investigation and
22 inspection.

23 (b) An authorized representative of the department may
24 visit an operator's place of business or other location where the
25 operator provides swim instruction during operating hours to
26 investigate, inspect, and evaluate compliance with the
27 department's operating standards, including safety and training

1 requirements.

2 (c) Following an inspection, the department shall review
3 the results of the inspection with the operator, notify the
4 operator of any violations found during the inspection, and provide
5 the operator an opportunity to respond to the inspection results.

6 (d) The department shall provide an operator 15 business
7 days after the date the operator is notified of a violation under
8 Subsection (c) to cure the violation unless the violation is
9 related to a serious incident. If the operator fails to cure the
10 violation during that period, the department may take
11 administrative action against the operator under Subchapter E.

12 Sec. 769.056. SEARCHABLE DATABASE. The department shall
13 maintain on the department's Internet website a searchable
14 database that contains information on each operator the department
15 licenses, including:

16 (1) the name of the operator;

17 (2) a record of all substantiated serious incidents
18 reported under Section 769.153 or discovered by the department
19 within the preceding five years; and

20 (3) results of inspections conducted by the department
21 within the preceding five years, and whether a violation identified
22 during an inspection was successfully cured by the operator within
23 the prescribed period.

24 SUBCHAPTER C. LICENSE REQUIREMENTS

25 Sec. 769.101. LICENSE REQUIRED. A person may not operate as
26 a swim instruction operator unless the person holds a license
27 issued under this chapter.

1 Sec. 769.102. LICENSE APPLICATION AND ISSUANCE; FEE. (a) A
2 person may submit to the department in the form and manner
3 prescribed by commission rule an application for an operator's
4 license under this chapter.

5 (b) The department shall issue an operator's license to an
6 applicant who:

7 (1) submits to the department a completed license
8 application and the required nonrefundable application fee; and

9 (2) satisfies the licensing requirements under this
10 chapter and rules adopted under this chapter.

11 Sec. 769.103. TERM AND LICENSE RENEWAL. (a) Unless revoked
12 or suspended, an operator's license issued under this chapter is
13 valid for two years.

14 (b) To renew a license, a license holder must submit to the
15 department in the form and manner prescribed by commission rule an
16 application for license renewal.

17 (c) The department shall renew the operator's license of a
18 license holder who:

19 (1) submits a completed renewal application and the
20 required renewal fee; and

21 (2) complies with this chapter and rules adopted under
22 this chapter.

23 Sec. 769.104. REQUIRED SEARCH OF CENTRAL REGISTRY OF
24 REPORTED CASES OF CHILD ABUSE OR NEGLECT. The department may not
25 issue or renew an operator's license under this chapter unless the
26 operator provides documentation to the department showing that the
27 operator:

1 (1) searched or requested a search of the central
2 registry of substantiated cases of child abuse or neglect
3 established under Section 261.002, Family Code;

4 (2) determined the operator and the operator's
5 employees and instructors present during swim instruction
6 operating hours are not listed in the registry as a person who
7 abused or neglected a child; and

8 (3) maintains records regarding the searches
9 conducted under this section.

10 Sec. 769.105. CRIMINAL HISTORY RECORD INFORMATION. The
11 department may not issue or renew a license under this chapter
12 unless the department conducts a check of the criminal history
13 record information for the operator.

14 Sec. 769.106. EDUCATION AND OUTREACH. The department may:

15 (1) develop training and educational materials
16 related to child swim safety; and

17 (2) provide training and educational materials and
18 opportunities to operators, operators' employees and instructors,
19 and the public.

20 SUBCHAPTER D. OPERATIONAL STANDARDS

21 Sec. 769.151. MINIMUM SAFETY REQUIREMENTS. An operator
22 must comply with minimum safety requirements prescribed by
23 commission rule for:

24 (1) swim instructor to student ratios during student
25 swim instruction; and

26 (2) training and certification requirements for
27 instructors.

1 Sec. 769.152. CERTIFICATION AND TRAINING REQUIREMENTS. (a)

2 Each manager and instructor for the operator must:

3 (1) be certified to teach swimming techniques to
4 students after successfully completing training that complies with
5 the swim instructor training standards established by the American
6 Red Cross, the YMCA, or another entity the department approves
7 whose swim instructor training standards are substantially the
8 same as those established by the American Red Cross or the YMCA; and

9 (2) hold certifications from the American Red Cross,
10 the American Heart Association, or another nationally recognized
11 entity the department approves for:

12 (A) cardiopulmonary resuscitation; and

13 (B) automated external defibrillator use.

14 (b) An operator shall provide basic training to all
15 employees in:

16 (1) basic water rescue techniques; and

17 (2) the provision of first aid.

18 (c) An operator shall maintain records of the
19 certifications and training required by this section in the manner
20 prescribed by commission rule.

21 Sec. 769.153. REPORT OF SERIOUS INCIDENTS. (a) An operator
22 shall report to the department each serious incident involving a
23 student who was under the supervision of an operator or an
24 operator's employee or instructor.

25 (b) The commission by rule shall prescribe the form and
26 manner in which an operator must report a serious incident under
27 this section.

1 SUBCHAPTER E. ENFORCEMENT

2 Sec. 769.201. ADMINISTRATIVE PENALTY; OTHER ENFORCEMENT
3 ACTION. (a) A person who violates this chapter or a rule adopted
4 under this chapter is subject to an administrative penalty or other
5 penalties and enforcement action in accordance with Subchapters F
6 and G, Chapter 51, Occupations Code.

7 (b) An administrative penalty may not exceed \$500 per day
8 for each violation. Each day a violation continues is a separate
9 violation for purposes of imposing a penalty.

10 SECTION 2. Section 51.2031(a), Occupations Code, is amended
11 to read as follows:

12 (a) This section applies only to the regulation of the
13 following professions by the department:

- 14 (1) athletic trainers;
- 15 (2) behavior analysts;
- 16 (3) dietitians;
- 17 (4) hearing instrument fitters and dispensers;
- 18 (5) midwives;
- 19 (6) orthotists and prosthetists; ~~and~~
- 20 (7) speech-language pathologists and audiologists;

21 and

22 (8) swim instruction operators licensed under Chapter
23 769, Health and Safety Code.

24 SECTION 3. (a) Not later than June 1, 2024, the Texas
25 Commission of Licensing and Regulation shall adopt the rules
26 required by Chapter 769, Health and Safety Code, as added by this
27 Act.

1 (b) Notwithstanding Chapter 769, Health and Safety Code, as
2 added by this Act, a person is not required to hold a license under
3 that chapter before September 1, 2024.

4 (c) Subchapters F and G, Chapter 51, Occupations Code, do
5 not apply to conduct described by Section 769.101, Health and
6 Safety Code, as added by this Act, before September 1, 2024.

7 SECTION 4. (a) Except as provided by Subsection (b) of
8 this section, this Act takes effect September 1, 2023.

9 (b) Sections 769.105 and 769.106, Health and Safety Code, as
10 added by this Act, take effect September 1, 2024.