

By: Castro

H.B. No. 3455

A BILL TO BE ENTITLED

AN ACT

relating to swimming pool safety.

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 761 to read as follows:

CHAPTER 761. POOL SAFETY AT SINGLE-FAMILY HOMES

Sec. 761.001. DEFINITIONS. In this chapter:

(1) "Manufacturer" includes a contractor that constructs a pool at a single-family home.

(2) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground, or indoors.

(3) "Pool yard" means an area that contains a pool.

(4) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, or gates that completely surround a pool.

(5) "Power safety cover" means a motor-powered barrier that:

(A) completely covers the water area of the pool;
and

(B) conforms to the ASTM International Standard F1346-91 "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and

1 Hot Tubs" as it existed on January 1, 2005.

2 (6) "Self-closing and self-latching device" means a
3 device that causes a gate to automatically close without human or
4 electrical power after it has been opened and to automatically
5 latch without human or electrical power when the gate closes.

6 Sec. 761.002. REQUIRED SAFETY EQUIPMENT. (a) In
7 accordance with rules adopted by the executive commissioner of the
8 Health and Human Services Commission, a person who sells or
9 manufactures a pool shall provide, with each pool sold or
10 manufactured for use at a single-family home, the following safety
11 equipment:

12 (1) a flotation device designed to be thrown to a
13 person in the pool;

14 (2) a pole designed to retrieve a person from the pool;
15 and

16 (3) a pool yard enclosure and gate that comply with the
17 specifications described by Sections 761.003 and 761.004 or a power
18 safety cover.

19 (b) A seller or manufacturer required to comply with this
20 chapter may charge the cost of the required safety equipment to the
21 person purchasing the pool.

22 (c) A seller or manufacturer is not required to provide the
23 safety equipment required by Subsection (a) if the person
24 purchasing the pool owns safety equipment that complies with this
25 chapter. The person purchasing the pool must submit proof to the
26 seller or manufacturer of the presence of the required safety
27 equipment in accordance with rules adopted by the executive

1 commissioner of the Health and Human Services Commission.

2 Sec. 761.003. ENCLOSURE FOR POOL YARD. (a) The height of
3 the pool yard enclosure must be at least 48 inches as measured from
4 the ground on the side away from the pool.

5 (b) Openings under the pool yard enclosure may not allow a
6 sphere four inches in diameter to pass under the pool yard
7 enclosure.

8 (c) If the pool yard enclosure is constructed with
9 horizontal and vertical members and the distance between the tops
10 of the horizontal members is at least 45 inches, the openings may
11 not allow a sphere four inches in diameter to pass through the
12 enclosure.

13 (d) If the pool yard enclosure is constructed with
14 horizontal and vertical members and the distance between the tops
15 of the horizontal members is less than 45 inches, the openings may
16 not allow a sphere 1-3/4 inches in diameter to pass through the
17 enclosure.

18 (e) A pool yard enclosure may not contain:

19 (1) chain link fencing materials; or

20 (2) diagonal fencing members that are lower than 49
21 inches above the ground.

22 (f) Decorative designs or cutouts on or in the pool yard
23 enclosure may not contain any openings greater than 1-3/4 inches in
24 any direction.

25 (g) Indentations or protrusions in a solid pool yard
26 enclosure without any openings may not be greater than normal
27 construction tolerances and tooled masonry joints on the side away

1 from the pool.

2 (h) Permanent equipment or structures may not be
3 constructed or placed in a manner that makes them readily available
4 for climbing over the pool yard enclosure.

5 Sec. 761.004. GATES. (a) A gate in a fence or wall
6 enclosing a pool yard as required by Section 761.003 must:

7 (1) have a self-closing and self-latching device;

8 (2) have hardware enabling the gate to be locked, at
9 the option of whoever controls the gate, by a padlock or a built-in
10 lock operated by key, card, or combination; and

11 (3) open outward away from the pool yard.

12 (b) Except as otherwise provided by Subsection (c), a gate
13 latch must be installed so that it is at least 60 inches above the
14 ground, except that it may be installed lower if:

15 (1) the latch is installed on the pool yard side of the
16 gate only and is at least three inches below the top of the gate; and

17 (2) the gate or enclosure has no opening greater than
18 one-half inch in any direction within 18 inches from the latch,
19 including the space between the gate and the gate post to which the
20 gate latches.

21 (c) A gate latch may be located 42 inches or higher above the
22 ground if the gate cannot be opened except by key, card, or
23 combination on both sides of the gate.

24 Sec. 761.005. ENFORCEMENT. (a) A person who purchases a
25 pool from a seller or manufacturer required to comply with this
26 chapter, a governmental entity, or the person's representative may
27 maintain an action against the seller or manufacturer of the pool

1 for failure to comply with the requirements of this chapter. In
2 that action, the person may obtain:

3 (1) a court order directing the seller or manufacturer
4 to comply with this chapter; and

5 (2) a judgment against the seller or manufacturer for
6 actual damages resulting from the failure to comply with the
7 requirements of this chapter.

8 (b) A seller and manufacturer are jointly and severally
9 liable for damages under this section. Chapter 33, Civil Practice
10 and Remedies Code, does not apply to an action maintained under this
11 section.

12 SECTION 2. The heading to Chapter 757, Health and Safety
13 Code, is amended to read as follows:

14 CHAPTER 757. POOL YARD ENCLOSURES AT CERTAIN DWELLINGS

15 SECTION 3. The change in law made by this Act applies only
16 to a pool sold on or after the effective date of this Act. A pool
17 sold before the effective date of this Act is covered by the law in
18 effect when the pool was sold, and the former law is continued in
19 effect for that purpose.

20 SECTION 4. This Act takes effect September 1, 2005.