

BILL ANALYSIS

Senate Research Center
80R2907 MSE-D

S.B. 971
By: Van de Putte
State Affairs
3/23/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no law requiring retailers of swimming pools to include proper safety products when selling and installing a swimming pool in a single-family home. Current statistics estimate 250 children under the age of five drown in swimming pools annually. In 2004, the United States Consumer Product Safety Commission launched a drowning prevention campaign as part of an intensive initiative to prevent such deaths from occurring. Drowning is the second leading cause of unintentional deaths for children under age five. In 2002, an estimated 1,600 children were also treated in hospital emergency rooms for submersion injuries. Many of these deaths and injuries occur in residential swimming pools. By requiring certain safety products to be sold when a swimming pool is installed in a single-family home, swimming pool deaths and injuries may be prevented and the life of a child may be saved.

As proposed, S.B. 971 requires retailers of swimming pools to include the following safety products when selling or installing a residential pool: a pool yard enclosure and gate, a power safety cover or a manual safety cover, and drainage protections. This bill also requires retailers of swimming pools to include a flotation device with a rope designed to be thrown to a person in a pool and a pole designed to retrieve a person from a pool. Finally, this bill allows for the enforcement of the law and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 9, Health and Safety Code, by adding Chapter 761, as follows:

CHAPTER 761. POOL SAFETY AT SINGLE-FAMILY DWELLINGS

Sec. 761.001. SHORT TITLE. Authorizes this chapter to be cited as the Drowning Prevention and Swimming Pool Safety Act.

Sec. 761.002. DEFINITIONS. Defines "manual safety cover," "pool," "pool yard," "pool yard enclosure" or "enclosure," "power safety cover," "self-closing device," and "self-latching device."

Sec. 761.003. REQUIRED SAFETY EQUIPMENT. (a) Requires a person who sells or installs a pool at a single-family dwelling to provide, with each pool sold or installed for use at a single-family dwelling, certain safety equipment in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner).

(b) Requires a main drain, if the pool has a main drain, other than an unblockable drain, to meet certain standards.

(c) Requires a seller or installer required to comply with this chapter to charge the cost of the required safety equipment to the person purchasing the pool.

(d) Provides that a seller or installer is not required to provide the safety equipment required by Subsection (a) if the person purchasing the pool owns safety equipment that complies with this chapter. Requires the person purchasing the pool to submit proof to the seller or installer of the presence of the required safety equipment in accordance with rules adopted by the executive commissioner.

Sec. 761.004. DRAINS. (a) Requires a pool that has a main drain that is not an unblockable drain to be equipped with a drain cover that meets a national safety standard approved by the executive commissioner.

(b) Requires a pool to have one of the following: more than one drain, one or more unblockable drains, or no main drain.

Sec. 761.005. DUTIES OF POOL OWNER. Requires a person who owns a pool to obtain and maintain the safety equipment required under Section 761.003(a) in accordance with rules adopted by the executive commissioner.

Sec. 761.006. ENCLOSURE FOR POOL YARD. (a)-(d) Sets forth the standards and requirements that a pool yard enclosure must meet.

(e)-(g) Sets forth specific prohibitions relating to the design and construction of a pool yard enclosure.

(h) Prohibits permanent equipment or structures from being constructed or placed in a manner that makes them readily available for climbing from the outside to the inside of the pool yard enclosure.

(i) Requires a door or window, if a dwelling has a door or window that allows access to the pool without another intervening enclosure, to be equipped with exit alarms that make audible, continuous alarm sounds when the door or window is opened or left ajar.

(j) Provides that a pool yard enclosure, if the pool is built on a slope, is not required in certain areas around the pool.

(k) Requires a person who owns a pool with a pool yard enclosure to reasonably maintain the pool yard enclosure in compliance with this section and ensure that needed repairs are performed as soon as reasonably possible.

Sec. 761.007. GATES. Sets forth the standards and requirements that a gate in a pool yard enclosure must meet.

Sec. 761.008. ENFORCEMENT. (a) Authorizes a person who purchases a pool on or after September 1, 2007, from a seller or installer required to comply with this chapter, a governmental entity, or the person's representative to maintain an action against the seller or installer of the pool for knowingly failing to comply with the requirements of this chapter. Authorizes the person to obtain in such an action a court order directing the seller or installer to comply with this chapter and a judgment against the seller or installer for actual damages resulting from the failure to comply with the requirements of this chapter.

(b) Provides that a seller and installer are jointly and severally liable for damages under this section. Provides that Chapter 33 (Proportionate Responsibility), Civil Practice and Remedies Code, does not apply to an action maintained under this section.

Sec. 761.009. CIVIL PENALTY. (a) Provides that a person who knowingly violates this chapter is subject to a civil penalty of not less than \$2,000 and not more than \$5,000 for each violation.

(b) Requires the court to consider certain factors in determining the amount of the civil penalty.

(c) Authorizes the attorney general or the appropriate district or county attorney, in the name of the state, to bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) Requires a penalty collected under this section by the attorney general to be deposited in the state treasury to the credit of the general revenue fund. Requires a penalty collected under this section by a district or county attorney to be deposited to the credit of the general fund of the county in which the suit was heard.

Sec. 761.010. STATEWIDE UNIFORMITY. (a) Provides that this chapter constitutes the whole field of regulation regarding pool safety at single-family dwellings to ensure uniform and equitable implementation and enforcement throughout this state.

(b) Provides that this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to pool safety at single-family dwellings.

SECTION 2. Amends the heading to Chapter 757, Health and Safety Code, to read as follows:

CHAPTER 757. POOL YARD ENCLOSURES AT CERTAIN DWELLINGS

SECTION 3. (a) Effective date: January 1, 2008, except as provided by Subsection (b) of this section.

(b) Effective date for Section 761.004, Health and Safety Code, as added by this Act: January 1, 2009.

(c) Effective date for Section 761.005, Health and Safety Code, as added by this Act: January 1, 2012.