

By: Castro

H.B. No. 1869

A BILL TO BE ENTITLED

AN ACT

relating to pool safety; providing a civil penalty.

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 DWELLINGS

Sec. 761.001. SHORT TITLE. This chapter may be cited as the Drowning Prevention and Swimming Pool Safety Act.

Sec. 761.002. DEFINITIONS. In this chapter:

(1) "Manual safety cover" means a pool cover that is not motor-powered and:

(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 Hot Tubs," as it existed on January 1, 2007.

(2) "Pool" means a temporary or permanent swimming pool, wading or reflection pool, hot tub, or spa that contains water more than 18 inches deep and that is located at ground level, aboveground, belowground, or indoors. The term does not include a bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

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

2 (4) "Pool yard enclosure" or "enclosure" means a
3 fence, wall, or combination of fences, walls, or gates that
4 completely surround a pool. A pool yard enclosure may enclose the
5 pool deck, landscaped areas, and other areas beyond the pool.

6 (5) "Power safety cover" means a motor-powered pool
7 cover that:

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

10 (B) conforms to the ASTM International Standard
11 F1346-91 "Standard Performance Specification for Safety Covers and
12 Labeling Requirements for All Covers for Swimming Pools, Spas and
13 Hot Tubs," as it existed on January 1, 2007.

14 (6) "Self-closing device" means a device that causes a
15 gate to automatically close without human or electrical power after
16 it has been opened.

17 (7) "Self-latching device" means a device that causes
18 a gate to automatically latch without human or electrical power
19 when the gate closes.

20 (8) "Seller" means a person who sells, builds, or
21 installs a pool that serves not more than one single-family
22 dwelling. The term does not include a builder who constructs the
23 dwelling or any improvements on the property on which the pool is
24 located.

25 Sec. 761.003. REQUIRED SAFETY EQUIPMENT. (a) In
26 accordance with rules adopted by the executive commissioner of the
27 Health and Human Services Commission, a seller shall provide, with

1 each pool sold, built, or installed for use at a single-family
2 dwelling, the following safety equipment:

3 (1) if the pool is a swimming pool:

4 (A) a throwing rope that:

5 (i) is one-fourth inch to three-eighths
6 inch in diameter;

7 (ii) is at least as long as two-thirds the
8 maximum width of the pool; and

9 (iii) is attached to a ring buoy approved as
10 a flotation device by the United States Coast Guard with an outside
11 diameter of 15 to 24 inches; and

12 (B) a reaching pole that is:

13 (i) light, strong, and non-telescoping;

14 (ii) at least 12 feet long;

15 (iii) constructed of fiberglass or another
16 material that does not conduct electricity; and

17 (iv) attached at one end to a body hook or
18 shepherd's crook with blunted ends; and

19 (2) a pool yard enclosure and gate that comply with the
20 specifications described by Sections 761.005 and 761.006, a power
21 safety cover, or a manual safety cover.

22 (b) A seller required to comply with this chapter may charge
23 the cost of the required safety equipment to the person purchasing
24 the pool.

25 (c) A seller is not required to provide the safety equipment
26 required by Subsection (a) if the person purchasing the pool owns
27 safety equipment or has contracted with another person for the

1 purchase or installation of safety equipment that complies with
2 this chapter. The person purchasing the pool must submit written
3 proof to the seller of the presence of the required safety equipment
4 or of a contract to purchase the equipment in accordance with rules
5 adopted by the executive commissioner of the Health and Human
6 Services Commission.

7 Sec. 761.004. DUTIES OF POOL OWNER. (a) A person who owns a
8 pool shall in accordance with rules adopted by the executive
9 commissioner:

10 (1) obtain and maintain the safety equipment required
11 under Section 761.003(a); and

12 (2) protect against body entrapment and hair
13 entanglement.

14 (b) This section does not apply to a pool built or installed
15 before January 1, 2008. This subsection expires December 31, 2012.

16 Sec. 761.005. ENCLOSURE FOR POOL YARD. (a) The height of
17 the pool yard enclosure must be at least 48 inches as measured from
18 the ground on the side away from the pool.

19 (b) Openings under the pool yard enclosure may not allow a
20 sphere four inches in diameter to pass under the pool yard
21 enclosure.

22 (c) If the pool yard enclosure is constructed with
23 horizontal and vertical members and the distance between the tops
24 of the horizontal members is at least 45 inches, the openings may
25 not allow a sphere four inches in diameter to pass through or around
26 the enclosure.

27 (d) If the pool yard enclosure is constructed with

1 horizontal and vertical members and the distance between the tops
2 of the horizontal members is less than 45 inches, the openings may
3 not allow a sphere 1-3/4 inches in diameter to pass through or
4 around the enclosure.

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

6 (1) chain link fencing materials if the enclosure is
7 built on or after January 1, 2008; or

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

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

13 (g) Indentations or protrusions in a solid pool yard
14 enclosure without any openings may not be greater than normal
15 construction tolerances and tooled masonry joints on the side away
16 from the pool.

17 (h) Permanent equipment or structures may not be
18 constructed or placed in a manner that makes them readily available
19 for climbing from the outside to the inside of the pool yard
20 enclosure.

21 (i) If a dwelling has a door that opens into the pool yard
22 without another intervening enclosure, the door must be equipped
23 with:

24 (1) a self-closing device, a self-latching device, and
25 a keyless deadbolt or similar mechanism that is operated only from
26 the door's interior and is installed at least 60 inches above the
27 floor; or

1 (2) a door alarm that:

2 (A) sounds continuously for at least 30 seconds
3 immediately after the door is opened;

4 (B) provides a sound pressure of at least 85
5 decibels when measured indoors at 10 feet;

6 (C) automatically resets; and

7 (D) may be temporarily deactivated for a single
8 opening, provided the deactivation lasts not longer than 15 seconds
9 and the deactivation switch is at least 60 inches above the floor.

10 (j) If a dwelling has a sliding glass door that opens into
11 the pool yard without another intervening enclosure, the door must
12 be equipped with a pinlock or comparable mechanism that is operated
13 only from the door's interior and is at least 60 inches above the
14 floor.

15 (k) If a dwelling has a window that opens into the pool yard
16 without another intervening enclosure, and the bottom of the window
17 is less than 48 inches above the floor, the window must be equipped
18 with:

19 (1) a spring-loaded window latch or pinlock; or

20 (2) a window latch and screen with a spring-loaded
21 latch or pinlock on the screen.

22 (l) If a pool is built on a slope, a pool yard enclosure is
23 not required in those areas around the pool where:

24 (1) the deck of the pool is at least four feet above
25 grade level;

26 (2) there are no indentations, handholds, or footholds
27 in the structural walls or supports below the pool or pool deck that

1 could be readily used by a small child to climb to the pool or pool
2 deck; and

3 (3) any openings under the pool or pool deck that could
4 give access to the pool do not allow a sphere four inches in
5 diameter to pass through for a height of four feet above ground
6 level.

7 (m) If a pool is an aboveground temporary pool and the pool
8 is accessed by ladder, steps, or ramp, the owner shall:

9 (1) ensure that all ladders, steps, or ramps may be
10 locked, barricaded, or removed;

11 (2) enclose the pool yard in the same manner required
12 for an underground pool; and

13 (3) install a manual safety cover for the pool.

14 (n) A person who owns a pool shall reasonably maintain the
15 pool yard enclosure and safety devices required under this chapter
16 and shall ensure needed repairs are performed as soon as reasonably
17 possible.

18 Sec. 761.006. GATES. (a) A gate in a pool yard enclosure as
19 required by Section 761.003 must:

20 (1) have a self-closing device;

21 (2) have a self-latching device;

22 (3) have hardware enabling the gate to be locked, at
23 the option of whoever controls the gate, by a built-in lock operated
24 by key, card, or combination or a padlock; and

25 (4) open outward away from the pool yard.

26 (a-1) Subsection (a)(4) does not apply to a gate in a pool
27 yard enclosure that is built or installed before January 1, 2008.

1 This subsection expires December 31, 2012.

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

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

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

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

14 (d) A gate is not required to have a self-closing device if:

15 (1) the dwelling where the pool is located is occupied
16 on a regular basis by a person who is permanently disabled and the
17 person's disability prevents or significantly inhibits the person
18 from opening a gate with a self-closing device;

19 (2) the gate has a self-latching device when it is
20 manually closed; and

21 (3) the self-latching device complies with Subsection
22 (b) or (c).

23 (e) A gate in a pool yard enclosure that allows the entry of
24 a vehicle must comply with the height and design requirements of
25 Subsections (a)-(c) but may open either toward or away from the pool
26 yard, does not have to have hardware enabling the gate to be locked,
27 and is considered to have a self-closing device if the gate closes

1 automatically with electronic power after a vehicle is driven
2 through the gate. The gate is considered to have a self-latching
3 device if the gate is held closed by a device that does not permit
4 the gate to be opened without electronic activation and any
5 electronic activation switch or manual override switch or mechanism
6 is:

7 (1) located at least 60 inches above the ground; or

8 (2) located at least 42 inches above the ground if the
9 switch or mechanism cannot be operated without a key, card, or
10 combination.

11 Sec. 761.007. ENFORCEMENT BY POLITICAL SUBDIVISION. A
12 municipality, by ordinance in accordance with Section 214.101,
13 Local Government Code, or county, by order, may enforce this
14 chapter by imposing requirements for permits or inspections, or
15 imposing fines for violations. A fee for a permit issued or
16 inspection conducted under this section may not exceed the
17 reasonable cost of the permit or inspection.

18 Sec. 761.008. INJUNCTION; CIVIL PENALTY. (a) The attorney
19 general, a county, or a municipality may institute an action for
20 injunctive relief to restrain a violation by a person that is
21 violating or threatening to violate a provision of this chapter or
22 to impose a civil penalty under this section.

23 (b) A person who violates this chapter is subject to a civil
24 penalty not to exceed \$1,000 for each violation.

25 (c) In determining the amount of the civil penalty, the
26 court shall consider:

27 (1) the person's previous violations;

1 (2) the seriousness of the violation, including the
2 nature, circumstances, extent, and gravity of the violation;

3 (3) whether the health and safety of the public was
4 threatened by the violation;

5 (4) the demonstrated good faith of the person; and

6 (5) the amount necessary to deter future violations.

7 (d) The attorney general or the appropriate district,
8 county, or municipal attorney, in the name of the state, may bring
9 an action under this section in a district court of Travis County or
10 of a county in which any part of the violation occurs.

11 (e) A penalty collected under this section by the attorney
12 general shall be deposited in the state treasury to the credit of
13 the general revenue fund. A penalty collected under this section on
14 behalf of a political subdivision shall be deposited to the credit
15 of the general fund of the political subdivision.

16 Sec. 761.009. STATEWIDE UNIFORMITY; LIABILITY. (a) To
17 ensure uniform and equitable implementation and enforcement
18 throughout this state, this chapter constitutes the whole field of
19 regulation regarding pool safety at single-family dwellings.

20 (b) Except as specifically provided by Section 761.007,
21 this chapter preempts and supersedes a local ordinance, order,
22 rule, or regulation adopted by a political subdivision of this
23 state pertaining to pool safety at single-family dwellings.

24 (c) This chapter does not limit a person's liability for
25 actual damages resulting from a violation of the person's duties
26 under this chapter or other law.

27 SECTION 2. The heading to Chapter 757, Health and Safety

1 Code, is amended to read as follows:

2 CHAPTER 757. POOL YARD ENCLOSURES AT CERTAIN DWELLINGS

3 SECTION 3. The heading to Section 214.101, Local Government
4 Code, is amended to read as follows:

5 Sec. 214.101. AUTHORITY REGARDING [~~SWIMMING~~] POOL
6 ENCLOSURES.

7 SECTION 4. Section 214.101(a), Local Government Code, is
8 amended to read as follows:

9 (a) A municipality may by ordinance establish minimum
10 standards for swimming pool fences and enclosures and may adopt
11 other ordinances as necessary to carry out this subchapter. A
12 municipal ordinance containing standards for a pool yard enclosure
13 as defined by Chapters [~~Chapter~~] 757 and 761, Health and Safety
14 Code, [~~as added by Section 2, Chapter 517, Acts of the 73rd~~
15 ~~Legislature, 1993,~~] must contain the same standards for that
16 enclosure as are required or permitted by those chapters [~~that~~
17 ~~chapter~~] of the Health and Safety Code.

18 SECTION 5. This Act takes effect January 1, 2008.