

By: Van de Putte

S.B. No. 971

A BILL TO BE ENTITLED

AN ACT

relating to swimming 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 barrier 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 permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, 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.

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

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

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

7 (A) completely covers the water area of the pool;
8 or

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

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

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

19 Sec. 761.003. REQUIRED SAFETY EQUIPMENT. (a) In
20 accordance with rules adopted by the executive commissioner of the
21 Health and Human Services Commission, a person who sells or
22 installs a pool at a single-family dwelling shall provide, with
23 each pool sold or installed for use at a single-family dwelling, the
24 following safety equipment:

25 (1) a throwing rope that:

26 (A) is one-fourth inch to three-eighths inch in
27 diameter;

1 (B) is at least as long as two-thirds the maximum
2 width of the pool; and

3 (C) is attached to a ring buoy approved as a
4 flotation device by the United States Coast Guard with an outside
5 diameter of 15 to 24 inches;

6 (2) a reaching pole that is:

7 (A) light, strong, and non-telescoping;

8 (B) at least 12 feet long;

9 (C) constructed of fiberglass or another
10 material that does not conduct electricity; and

11 (D) attached at one end to a body hook or
12 shepherd's crook with blunted ends;

13 (3) a pool yard enclosure and gate that comply with the
14 specifications described by Sections 761.006 and 761.007, a power
15 safety cover, or a manual safety cover; and

16 (4) either:

17 (A) more than one drain;

18 (B) one or more unblockable drains; or

19 (C) no main drain.

20 (b) If the pool has a main drain, other than an unblockable
21 drain, the main drain must:

22 (1) be equipped with a drain cover that conforms to the
23 ASME/ANSI Standard A112.19.8M "Suction Fittings for Use in Swimming
24 Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub
25 Appliances," as it existed on January 1, 2007; and

26 (2) have at least one of the following anti-entrapment
27 devices:

1 (A) a safety vacuum release system, tested by an
2 independent third party, that ceases operation of a pump, reverses
3 the circulation flow, or otherwise provides a vacuum release at a
4 blocked suction outlet and that conforms to:

5 (i) the ASME/ANSI Standard A112.19.8M
6 "Suction Fittings for Use in Swimming Pools, Wading Pools, Spas,
7 Hot Tubs, and Whirlpool Bathtub Appliances," as it existed on
8 January 1, 2007; or

9 (ii) the ASTM International Standard F2387
10 "Standard Specification for Manufactured Safety Vacuum Release
11 Systems for Swimming Pools, Spas and Hot Tubs," as it existed on
12 January 1, 2007;

13 (B) a suction-limiting vent system with a
14 tamper-resistant atmospheric opening;

15 (C) a gravity drainage system that uses a
16 collector tank;

17 (D) an automatic pump shut-off system;

18 (E) a device or system that disables the drain;

19 or

20 (F) another system that the executive
21 commissioner determines is effective at preventing the risk of
22 injury or death for children associated with pool drainage systems.

23 (c) A seller or installer required to comply with this
24 chapter may charge the cost of the required safety equipment to the
25 person purchasing the pool.

26 (d) A seller or installer is not required to provide the
27 safety equipment required by Subsection (a) if the person

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

6 Sec. 761.004. DRAINS. (a) A pool that has a main drain that
7 is not an unblockable drain must be equipped with a drain cover that
8 meets a national safety standard approved by the executive
9 commissioner of the Health and Human Services Commission.

10 (b) A pool must have one of the following:

11 (1) more than one drain;

12 (2) one or more unblockable drains; or

13 (3) no main drain.

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

18 Sec. 761.006. ENCLOSURE FOR POOL YARD. (a) The height of
19 the pool yard enclosure must be at least 48 inches as measured from
20 the ground on the side away from the pool.

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

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

1 enclosure.

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

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

8 (1) chain link fencing materials; or

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

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

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

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

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

26 (j) If a pool is built on a slope, a pool yard enclosure is
27 not required in those areas around the pool where:

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

3 (2) there are no indentations, handholds, or footholds
4 in the structural walls or supports below the pool or pool deck that
5 could be readily used by a small child to climb to the pool or pool
6 deck; and

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

11 (k) A person who owns a pool with a pool yard enclosure shall
12 reasonably maintain the pool yard enclosure in compliance with this
13 section and shall ensure needed repairs are performed as soon as
14 reasonably possible.

15 Sec. 761.007. GATES. (a) A gate in a pool yard enclosure as
16 required by Section 761.006 must:

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

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

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

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

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

27 (2) the gate or enclosure has no opening greater than

1 one-half inch in any direction within 18 inches from the latch,
2 including the space between the gate and the gate post to which the
3 gate latches.

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

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

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

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

14 (3) the self-latching device complies with Subsection
15 (b) or (c).

16 (e) A gate in a pool yard enclosure that allows the entry of
17 a vehicle must comply with the height and design requirements of
18 Subsections (a) through (c) but may open either toward or away from
19 the pool yard, does not have to have hardware enabling the gate to
20 be locked, and is considered to have a self-closing device if the
21 gate closes automatically with electronic power after a vehicle is
22 driven through the gate. The gate is considered to have a
23 self-latching device if the gate is held closed by a device that
24 does not permit the gate to be opened without electronic activation
25 and any electronic activation switch or manual override switch is:

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

27 (2) located at least 42 inches above the ground if the

1 switch cannot be operated without a key, card, or combination.

2 (f) A door or other opening from the dwelling's interior to
3 a pool yard is not subject to the requirements of this section.

4 Sec. 761.008. ENFORCEMENT. (a) A person who purchases a
5 pool on or after September 1, 2007, from a seller or installer
6 required to comply with this chapter, a governmental entity, or the
7 person's representative may maintain an action against the seller
8 or installer of the pool for knowingly failing to comply with the
9 requirements of this chapter. In that action, the person may
10 obtain:

11 (1) a court order directing the seller or installer to
12 comply with this chapter; and

13 (2) a judgment against the seller or installer for
14 actual damages resulting from the failure to comply with the
15 requirements of this chapter.

16 (b) A seller and installer are jointly and severally liable
17 for damages under this section. Chapter 33, Civil Practice and
18 Remedies Code, does not apply to an action maintained under this
19 section.

20 Sec. 761.009. CIVIL PENALTY. (a) A person who knowingly
21 violates this chapter is subject to a civil penalty of not less than
22 \$2,000 and not more than \$5,000 for each violation.

23 (b) In determining the amount of the civil penalty, the
24 court shall consider:

25 (1) the person's previous violations;

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

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

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

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

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

9 (d) A penalty collected under this section by the attorney
10 general shall be deposited in the state treasury to the credit of
11 the general revenue fund. A penalty collected under this section by
12 a district or county attorney shall be deposited to the credit of
13 the general fund of the county in which the suit was heard.

14 Sec. 761.010. STATEWIDE UNIFORMITY. (a) To ensure uniform
15 and equitable implementation and enforcement throughout this
16 state, this chapter constitutes the whole field of regulation
17 regarding pool safety at single-family dwellings.

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

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

23 CHAPTER 757. POOL YARD ENCLOSURES AT CERTAIN DWELLINGS

24 SECTION 3. (a) Except as provided by Subsection (b) of this
25 section, this Act takes effect January 1, 2008.

26 (b) Section 761.004, Health and Safety Code, as added by
27 this Act, takes effect January 1, 2009.

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1 (c) Section 761.005, Health and Safety Code, as added by
2 this Act, takes effect January 1, 2012.