

By: Landgraf

H.B. No. 3357

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of child swim schools;
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 CHILD SWIM SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 769.001. SHORT TITLE. This chapter may be cited as the Mitchell Chang Swim School 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) "Operator" means a person who owns, controls, or has operational responsibility for a swim school.

(4) "Student" means a child who is six years of age or younger and receives swim instruction at a swim school.

(5) "Swim school" means a business that provides swim instruction and employs at least three individuals on a full or part-time basis whose responsibilities include providing in water swimming instructions to students.

1 Sec. 769.003. APPLICABILITY OF CHAPTER. This chapter
2 applies only to a swim school that provides swim instruction to
3 children who are six years of age or younger in a group of two or
4 more students, regardless of whether a parent is present at the time
5 of instruction.

6 Sec. 769.004. APPLICABILITY OF OTHER LAW. Chapter 51,
7 Occupations Code, applies to a swim school licensed under this
8 chapter.

9 SUBCHAPTER B. COMMISSION AND DEPARTMENT POWERS AND DUTIES

10 Sec. 769.051. RULES. The commission shall adopt rules to
11 implement this chapter.

12 Sec. 769.052. FEES. The commission by rule shall set
13 license, application, and renewal fees in the amounts reasonable
14 and necessary to cover the department's costs in administering this
15 chapter.

16 Sec. 769.053. COMPLAINTS. (a) Any individual may submit a
17 complaint to the department concerning a swim school or a swim
18 school employee. The department shall establish a process for
19 submitting a complaint through the department's Internet website.

20 (b) The department may investigate a complaint made under
21 this section in accordance with Subchapter E, Chapter 51,
22 Occupations Code.

23 Sec. 769.054. INSPECTION BY DEPARTMENT. (a) The department
24 shall inspect a swim school:

- 25 (1) at least annually; and
26 (2) on receipt by the department of a complaint about
27 the swim school that the department determines to warrant further

1 investigation and inspection.

2 (b) An authorized representative of the department shall
3 visit a swim school during operating hours to investigate, inspect,
4 and evaluate compliance with swim school operating standards.

5 (c) Following an inspection, the department shall review
6 the results of the inspection with the swim school and provide the
7 swim school an opportunity to respond to the inspection results.

8 (d) For violations or infractions that do not include a
9 serious incident of a student, as defined by section 769.157, the
10 swim school and the operator shall be given five business days to
11 cure any violations or infractions before any punitive action may
12 be taken by the department.

13 Sec. 769.055. SEARCHABLE DATABASE. The department shall
14 maintain on the department's Internet website a searchable database
15 that contains information on each swim school licensed by the
16 department, including:

17 (1) the name of the operator;

18 (2) any criminal convictions of the operator;

19 (3) incidents at the swim school that require the
20 hospitalization of a child under the supervision of the swim
21 school;

22 (4) safety violations committed by the swim school;

23 (5) complaints filed against a swim school under
24 Section 769.053 that the department determined to further
25 investigate; and

26 (6) results of inspections conducted by the department
27 under Section 769.054, including the acknowledgement of any results

1 that were successfully cured by the swim school and the operator
2 within five business days.

3 SUBCHAPTER C. LICENSE REQUIREMENTS

4 Sec. 769.101. LICENSE REQUIRED. A person may not operate a
5 swim school unless the person holds a license to operate the swim
6 school issued by the department under this chapter.

7 Sec. 769.102. LICENSE APPLICATION AND ISSUANCE; FEE. (a) A
8 person may submit to the department in the form and manner
9 prescribed by commission rule an application for a license to
10 operate a swim school under this chapter.

11 (b) The application for a swim school license must include
12 the identity of the operator of the swim school and be accompanied
13 by the certifications required by Section 769.153.

14 (c) The department shall issue a swim school license to an
15 applicant who:

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

18 (2) complies with this chapter and rules adopted under
19 this chapter.

20 Sec. 769.103. TERM AND LICENSE RENEWAL. (a) Unless revoked
21 or suspended, a swim school license issued under this chapter is
22 valid for one year.

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

26 (c) As a condition of renewal, a license holder must satisfy
27 the requirements that apply to an applicant for an initial license

1 under Section 769.102.

2 (d) The department shall renew the swim school license of a
3 license holder who:

4 (1) submits a completed renewal application and the
5 required renewal fee; and

6 (2) complies with this chapter and rules adopted under
7 this chapter.

8 Sec. 769.104. REQUIRED SEARCH OF CENTRAL REGISTRY OF
9 REPORTED CASES OF CHILD ABUSE OR NEGLECT. The department may not
10 issue or renew a swim school license under this chapter unless the
11 department searches the central registry of reported cases of child
12 abuse or neglect established under Section 261.002, Family Code,
13 and determines the swim school applicant, operator, and any
14 employee included on the application form are not listed in the
15 registry as a person who abused or neglected a child.

16 SUBCHAPTER D. SWIM SCHOOL OPERATION

17 Sec. 769.151. EMPLOYEE CRIMINAL HISTORY RECORD
18 INFORMATION. Before a swim school may hire an individual for
19 full-time employment, the swim school shall obtain criminal history
20 record information on the individual and may not hire an individual
21 whose criminal history record information is unacceptable.

22 Sec. 769.152. MINIMUM SAFETY REQUIREMENTS. (a) The
23 department shall adopt rules necessary to establish an acceptable
24 student to swim instructor ratio for swim classes offered by a swim
25 school, and any additional employees that may be necessary to serve
26 in a dedicated supervisory role of the swim classes offered in order
27 to assist in ensuring the overall health and safety of all students

1 and swim school employees. In addition to all other information,
2 the ratio of student to swim instructor shall take into
3 consideration: whether a parent or legal guardian is required to be
4 in the water during the time of instruction with the student, any
5 student skill level necessary to qualify for a certain class, and
6 the training and accreditation of a swim school employee as set
7 forth by this chapter.

8 (b) A swim school must have available an automated external
9 defibrillator.

10 Sec. 769.153. CERTIFICATION AND TRAINING REQUIREMENTS. (a)
11 Each swim school operator and employee must:

12 (1) be certified by an accredited entity as a water
13 safety instructor for teaching swimming techniques to children
14 after successfully completing training that complies with the
15 American Red Cross's swimming and water safety training standards;

16 (2) if the operator or employee provides swim classes
17 to children younger than five years of age, successfully complete
18 additional water safety instructor training from an accredited
19 entity on swimming instruction for the age group taught by the
20 operator or employee; and

21 (3) hold certifications from an accredited entity for:

22 (A) cardiopulmonary resuscitation; and

23 (B) automated external defibrillator use.

24 (b) A swim school shall provide training to all employees
25 in:

26 (1) the application of first aid;

27 (2) the prevention and spread of communicable

1 diseases; and

2 (3) the industry standard protocols for preventing
3 drowning.

4 Sec. 769.157. REPORT OF SERIOUS INCIDENTS AND VIOLATIONS.

5 (a) In this section, "serious incident" means a suspected or actual
6 incident that threatens or impairs the basic health, safety, or
7 well-being of a child. The term includes:

8 (1) abuse, neglect, exploitation, or death of a child;

9 (2) a critical injury of a child; and

10 (3) an illness of a child that requires
11 hospitalization.

12 (b) A swim school shall report to the department each
13 serious incident involving a child who was under the supervision of
14 the swim school.

15 (c) The commission by rule shall prescribe the form and
16 manner in which a swim school must report a serious incident under
17 this section.

18 Sec. 769.158. REQUIRED PARENTAL NOTIFICATION OF SERIOUS
19 INCIDENT. A swim school shall immediately notify a parent of a
20 child who is involved in a serious incident as defined by Section
21 769.157 while the child is under supervision of the swim school.

22 SUBCHAPTER E. ENFORCEMENT

23 Sec. 769.201. ADMINISTRATIVE PENALTY; OTHER ENFORCEMENT
24 ACTION. A person who violates this chapter or a rule adopted under
25 this chapter is subject to an administrative penalty or other
26 penalties and enforcement action in accordance with Subchapters F
27 and G, Chapter 51, Occupations Code.

1 SECTION 2. Notwithstanding Chapter 769, Health and Safety
2 Code, as added by this Act, a person who operates a swim school is
3 not required to hold a license under that chapter to operate a swim
4 school in this state before January 1, 2022.

5 SECTION 3. (a) Except as provided by Subsection (b) of this
6 section, this Act takes effect September 1, 2021.

7 (b) Section 769.201, Health and Safety Code, as added by
8 this Act, takes effect January 1, 2022.