

BILL ANALYSIS

C.S.H.B. 1568
By: Allison
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A constituent in House District 121 lost her son during a swim lesson that was provided by an unlicensed child swim instruction operator. State licensing and regulation of such operators is needed to ensure the safety and well-being of young children who receive swim instruction. By requiring operators to obtain a license, the state can ensure that operators and the individuals they employ have the necessary training and qualifications to provide safe and effective swim instruction to children. C.S.H.B. 1568 seeks to address this issue by establishing the Mitchell Chang Swim Safety Act, which requires child swim instruction operators to obtain an occupational license from the Texas Department of Licensing and Regulation and sets out related provisions regarding licensing requirements, operational standards, and enforcement mechanisms.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1568 amends the Health and Safety Code to provide for the licensing and regulation of child swim instruction operators who provide swim instruction, defined by the bill as the in-water educational process of teaching an individual to swim, to a group of three or more students who are younger than seven years of age at one time. The bill defines "operator" as a company, corporation, partnership, or limited liability corporation that employs two or more employees and provides or offers to provide swim instruction for compensation. The bill does not apply to swim instruction provided to students by a youth camp licensed under the Texas Youth Camp Safety and Health Act, a licensed child-care facility, or a county, municipality, special district, school district, junior college district, housing authority, or other political subdivision.

C.S.H.B. 1568 prohibits a person from operating as a swim instruction operator unless the person holds a license to do so. A person may submit an application for an operator's license to the Texas Department of Licensing and Regulation (TDLR) in the form and manner prescribed by Texas Commission of Licensing and Regulation (TCLR) rule. The bill requires TDLR to issue an operator's license to an applicant who submits a completed application and the required nonrefundable application fee and who satisfies the bill's licensing requirements and rules adopted under the bill. The bill requires TCLR by rule to set fees in the amounts reasonable and necessary to cover the costs of administering the bill's provisions. The bill sets the license term at two years, unless revoked or suspended, and provides the process for renewing the license. The bill requires TDLR to perform a criminal history record information check on each applicant for an operator's license and on any controlling person of the applicant's company, corporation,

partnership, or limited liability corporation. The bill defines "controlling person" by reference with respect to a business as a partner, officer, director, managing employee, owner or other person who controls the owner, and a person who acts as a controlling person of the business through the exercise of direct or indirect influence or control over the business's management, expenditure of money, or policies.

C.S.H.B. 1568 additionally requires an operator to perform a criminal history record information check on an individual before the operator may hire the individual as an instructor, defined by the bill as an individual who for compensation provides swim instruction directly to students on behalf of an operator, or as any other individual who will interact with students in the course and scope of the individual's employment. The bill prohibits an operator from hiring such an instructor or other individual who has been convicted of one of the following offenses involving an individual who is younger than 18 years of age:

- an offense classified under the Penal Code as an offense against the person; or
- a public indecency offense.

C.S.H.B. 1568 requires TCLR by rule to establish minimum safety requirements for operators, including requirements on instructor to student ratios during the provision of student swim instruction, training and certification for instructors, and available and operational automated external defibrillators. The bill requires each manager and instructor for the operator to meet the following certification and training requirements:

- be certified by an accredited entity to teach swimming techniques to students after successfully completing training that complies with the swim instructor training standards established by the American Red Cross, YMCA, or another TDLR-approved entity whose training standards are substantially the same as those established by the American Red Cross or the YMCA; and
- hold certifications from the American Red Cross, the American Heart Association, or another nationally recognized entity TDLR approves for CPR and automated external defibrillator use.

In addition, the bill requires an operator to provide basic training to all employees in basic water rescue techniques and the provision of first aid and to maintain records of the required certifications and training in the manner prescribed by TCLR rule.

C.S.H.B. 1568 requires an operator to make available to the public on request a copy of any inspection report issued to the operator by TDLR in the preceding two years. The bill requires an operator to report to TDLR each serious incident involving a student who was under the supervision of an operator or an operator's employee or instructor. The bill requires TCLR by rule to prescribe the form and manner in which an operator must report a serious incident. The bill defines "serious incident" as a suspected or actual incident that occurs during and as a direct result of swim instruction and that threatens or impairs the health, safety, or well-being of a student. The term includes the following:

- abuse, neglect, exploitation, or death of a student;
- a critical injury of a student; and
- an illness of a student that requires hospitalization.

C.S.H.B. 1568 provides the following grounds for license denial or disciplinary action, as applicable, with respect to an applicant or license holder or a controlling person of the applicant's or license holder's company, corporation, partnership, or limited liability corporation:

- violating the bill's provisions, a TCLR rule, or an order of TCLR or the executive director of TDLR;
- obtaining an operator's license by means of fraud, misrepresentation, or concealment of a material fact;
- selling, bartering, or offering to sell or barter an operator's license; or
- being convicted of, or employing an instructor or any other individual who interacts with students in the course and scope of the individual's employment and who has been

convicted of, one of the following offenses involving an individual who is younger than 18 years of age:

- an offense under the Penal Code classified as an offense against the person; or
- a public indecency offense.

C.S.H.B. 1568 makes a person who violates the bill's provisions, or a rule adopted thereunder, subject to an administrative penalty or other penalties and enforcement action in accordance with applicable Occupations Code provisions. The bill caps the administrative penalty at \$500 per day for each violation and specifies that each day a violation continues is a separate violation for purposes of imposing a penalty.

C.S.H.B. 1568 requires TDLR to administer and enforce the bill's provisions and requires TCLR to adopt rules as necessary to implement the bill's provisions, including rules prescribing operating standards, qualifications for an operator's license, requirements to renew an operator's license, and minimum safety and training requirements.

EFFECTIVE DATE

September 1, 2024.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1568 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes definitions that were absent from the introduced for the terms "controlling person," "executive director," and "swim instruction." The substitute omits the definition of "health care professional," which was present in the introduced. The substitute revises the definitions that were included in the introduced in the following manner:

- while both the introduced and the substitute define "instructor" as an individual who provides swim instruction, the substitute includes specifications not in the introduced that the individual provides the swim instruction directly to students on behalf of an operator and does so for compensation;
- whereas the introduced defined "operator" as a company, corporation, partnership, or sole proprietorship that provides swim instruction in the ordinary course of business, the substitute defines the term as a company, corporation, partnership, or limited liability corporation that employs two or more employees and provides or offers to provide swim instruction for compensation;
- whereas the introduced defined "serious incident" as a circumstance occurring in the course of swim instruction that requires attention by a health care professional, the substitute defines the term as a suspected or actual incident that occurs during and as a direct result of swim instruction and that threatens or impairs the health, safety, or well-being of a student; and
- whereas the introduced defined "student" as a child who is six years of age or younger and receives swim instruction, the substitute defines the term as a child who is younger than seven years of age.

With respect to the bill's applicability provisions, the substitute omits a specification that the bill applies regardless of whether a parent is present at the time of instruction, as in the introduced, and includes a provision exempting a licensed youth camp from the bill's applicability, which was absent from the introduced. The substitute omits a provision included in the introduced making the general Occupations Code provisions governing TDLR applicable to an operator licensed under the bill.

The substitute changes the requirement that TCLR adopt rules to administer and enforce the bill, as in the introduced, to a requirement that TCLR adopt rules as necessary to implement the bill.

The substitute includes among the rules TCLR must adopt rules prescribing qualifications for an operator's license and requirements to renew an operator's license, which were absent from the introduced.

The substitute omits the specification included in the introduced that the type of fees which TCLR must set by rule are license, application, and renewal fees. The substitute additionally omits the specification included in the introduced that the costs which the fees are set to cover are TDLR's costs.

The substitute omits provisions included in the introduced relating to the submission of complaints to and the investigation of complaints by TDLR, TDLR's discretionary inspection of an operator's place of business or other applicable location on receipt of certain complaints or reports of a serious incident, and a required searchable database on TDLR's website containing certain operator information.

The substitute includes a provision not in the introduced requiring an operator to make publicly available on request a copy of any TDLR inspection report issued to the operator in the preceding two years.

The substitute omits provisions included in the introduced prohibiting TDLR from issuing or renewing an operator's license unless the operator provides documentation to TDLR showing that the operator searched or requested a search of the central registry of substantiated cases of child abuse or neglect, determined the operator and the operator's employees and instructors present during swim instruction operating hours are not listed in the registry as a person who abused or neglected a child, and maintains records regarding those searches. However, the substitute includes provisions that were not in the introduced requiring an operator to perform a criminal history record information check before hiring an instructor or any other individual who will interact with students in the course and scope of their employment and prohibiting the operator from hiring such an instructor or other individual who has been convicted of certain offenses involving an individual who is younger than 18 years of age. Whereas the introduced prohibited TDLR from issuing or renewing a swim operator's license unless it conducts a criminal history record information check on the operator, the substitute requires TDLR to perform that check on each applicant for an operator's license and on any controlling person of the applicant's company, corporation, partnership, or limited liability corporation.

The substitute includes provisions not in the introduced that do the following:

- specify that TCLR include requirements on available and operational automated external defibrillators in its minimum safety requirements; and
- establishing the grounds for license denial and disciplinary action.

The substitute omits the following provisions that were included in the introduced:

- an authorization for TDLR to develop training and educational materials related to child swim safety and to provide the materials and opportunities to operators, operators' employees and instructors, and the public;
- a provision subjecting TDLR regulation of licensed swim instruction operators to provisions limiting TCLR rulemaking authority for a profession to rules that have been proposed by the advisory board established for that profession and requiring TCLR to adopt rules prescribing the procedure for that rules proposal; and
- establishing a June 1, 2024, deadline for TCLR to adopt the rules required by the bill.

The substitute establishes the bill's effective date as September 1, 2024, whereas the introduced provided for the bill's possible immediate effect, contingent on receiving the requisite constitutional vote, or September 1, 2023, if the bill did not receive the requisite vote, except for its provisions relating to TDLR education and outreach and criminal history background checks on operators, which it made effective September 1, 2024.