By:  Zaffirini S.B. No. 765

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of child swim instruction operators; requiring an occupational license; 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 SWIM INSTRUCTION OPERATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 769.001.  SHORT TITLE. This chapter may be cited as the Mitchell Chang Swim 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)  "Health care professional" means a licensed physician, licensed physician assistant, licensed advanced practice registered nurse, licensed vocational nurse, registered nurse, or other individual licensed to provide health care within the scope of the license.

(4)  "Instructor" means an individual who provides swim instruction.

(5)  "Operator" means a company, corporation, partnership, or sole proprietorship that provides swim instruction in the ordinary course of business.

(6)  "Serious incident" means a circumstance occurring in the course of swim instruction that requires attention by a health care professional. The term includes:

(A)  abuse, neglect, exploitation, or death of a student;

(B)  a critical injury of a student; and

(C)  an illness of a student that requires hospitalization.

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

Sec. 769.003.  APPLICABILITY OF CHAPTER; EXEMPTIONS.  (a) Subject to Subsection (b), this chapter applies only to an operator that provides swim instruction to students who are six years of age or younger in a group of three or more students, regardless of whether a parent is present at the time of instruction.

(b)  This chapter does not apply to swim instruction provided to students by:

(1)  a political subdivision as defined by Section 172.003, Local Government Code; or

(2)  a child-care facility the Health and Human Services Commission licenses.

Sec. 769.004.  APPLICABILITY OF OTHER LAW.  Chapter 51, Occupations Code, applies to an operator licensed under this chapter.

SUBCHAPTER B. COMMISSION AND DEPARTMENT POWERS AND DUTIES

Sec. 769.051.  REGULATION BY DEPARTMENT. The department shall administer and enforce this chapter.

Sec. 769.052.  RULES. The commission shall adopt rules to

administer and enforce this chapter, including rules prescribing:

(1)  operating standards; and

(2)  minimum safety and training requirements.

Sec. 769.053.  FEES.  The commission by rule shall set license, application, and renewal fees in the amounts reasonable and necessary to cover the department's costs in administering this chapter.

Sec. 769.054.  COMPLAINTS SUBMITTED TO DEPARTMENT.  (a)  A person may submit a complaint to the department concerning an operator or an operator's employee or instructor.

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

Sec. 769.055.  INSPECTION BY DEPARTMENT. (a) The department may inspect an operator's place of business or other location where the operator provides swim instruction on the department's receipt of a complaint about the operator or a report of a serious incident that the department determines warrants further investigation and inspection.

(b)  An authorized representative of the department may visit an operator's place of business or other location where the operator provides swim instruction during operating hours to investigate, inspect, and evaluate compliance with the department's operating standards, including safety and training requirements.

(c)  Following an inspection, the department shall review the results of the inspection with the operator, notify the operator of any violations found during the inspection, and provide the operator an opportunity to respond to the inspection results.

(d)  The department shall provide an operator 15 business days after the date the operator is notified of a violation under Subsection (c) to cure the violation unless the violation is related to a serious incident. If the operator fails to cure the violation during that period, the department may take administrative action against the operator under Subchapter E.

Sec. 769.056.  SEARCHABLE DATABASE.  The department shall maintain on the department's Internet website a searchable database that contains information on each operator the department licenses, including:

(1)  the name of the operator;

(2)  a record of all substantiated serious incidents reported under Section 769.153 or discovered by the department within the preceding five years; and

(3)  results of inspections conducted by the department within the preceding five years, and whether a violation identified during an inspection was successfully cured by the operator within the prescribed period.

SUBCHAPTER C.  LICENSE REQUIREMENTS

Sec. 769.101.  LICENSE REQUIRED. A person may not operate as a swim instruction operator unless the person holds a license issued under this chapter.

Sec. 769.102.  LICENSE APPLICATION AND ISSUANCE; FEE. (a) A person may submit to the department in the form and manner prescribed by commission rule an application for an operator's license under this chapter.

(b)  The department shall issue an operator's license to an applicant who:

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

(2)  satisfies the licensing requirements under this chapter and rules adopted under this chapter.

Sec. 769.103.  TERM AND LICENSE RENEWAL. (a) Unless revoked or suspended, an operator's license issued under this chapter is valid for two years.

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

(c)  The department shall renew the operator's license of a license holder who:

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

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

Sec. 769.104.  REQUIRED SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. The department may not issue or renew an operator's license under this chapter unless the operator provides documentation to the department showing that the operator:

(1)  searched or requested a search of the central registry of substantiated cases of child abuse or neglect established under Section 261.002, Family Code;

(2)  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

(3)  maintains records regarding the searches conducted under this section.

Sec. 769.105.  CRIMINAL HISTORY RECORD INFORMATION.  The department may not issue or renew a license under this chapter unless the department conducts a check of the criminal history record information for the operator.

Sec. 769.106.  EDUCATION AND OUTREACH. The department may:

(1)  develop training and educational materials related to child swim safety; and

(2)  provide training and educational materials and opportunities to operators, operators' employees and instructors, and the public.

SUBCHAPTER D.  OPERATIONAL STANDARDS

Sec. 769.151.  MINIMUM SAFETY REQUIREMENTS. An operator must comply with minimum safety requirements prescribed by commission rule for:

(1)  swim instructor to student ratios during student swim instruction; and

(2)  training and certification requirements for instructors.

Sec. 769.152.  CERTIFICATION AND TRAINING REQUIREMENTS. (a) Each manager and instructor for the operator must:

(1)  be certified to teach swimming techniques to students after successfully completing training that complies with the swim instructor training standards established by the American Red Cross, the YMCA, or another entity the department approves whose swim instructor training standards are substantially the same as those established by the American Red Cross or the YMCA; and

(2)  hold certifications from the American Red Cross, the American Heart Association, or another nationally recognized entity the department approves for:

(A) cardiopulmonary resuscitation; and

(B) automated external defibrillator use.

(b)  An operator shall provide basic training to all employees in:

(1)  basic water rescue techniques; and

(2)  the provision of first aid.

(c)  An operator shall maintain records of the certifications and training required by this section in the manner prescribed by commission rule.

Sec. 769.153.  REPORT OF SERIOUS INCIDENTS. (a) An operator shall report to the department each serious incident involving a student who was under the supervision of an operator or an operator's employee or instructor.

(b)  The commission by rule shall prescribe the form and manner in which an operator must report a serious incident under this section.

SUBCHAPTER E. ENFORCEMENT

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

(b)  An administrative penalty may not exceed $500 per day for each violation. Each day a violation continues is a separate violation for purposes of imposing a penalty.

SECTION 2.  Section 51.2031(a), Occupations Code, is amended to read as follows:

(a)  This section applies only to the regulation of the following professions by the department:

(1)  athletic trainers;

(2)  behavior analysts;

(3)  dietitians;

(4)  hearing instrument fitters and dispensers;

(5)  midwives;

(6)  orthotists and prosthetists; [~~and~~]

(7)  speech-language pathologists and audiologists; and

(8)  swim instruction operators licensed under Chapter 769, Health and Safety Code.

SECTION 3.  (a)  Not later than June 1, 2024, the Texas Commission of Licensing and Regulation shall adopt the rules required by Chapter 769, Health and Safety Code, as added by this Act.

(b)  Notwithstanding Chapter 769, Health and Safety Code, as added by this Act, a person is not required to hold a license under that chapter before September 1, 2024.

(c)  Subchapters F and G, Chapter 51, Occupations Code, do not apply to conduct described by Section 769.101, Health and Safety Code, as added by this Act, before September 1, 2024.

SECTION 4.  (a)  Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b)  Sections 769.105 and 769.106, Health and Safety Code, as added by this Act, take effect September 1, 2024.