

By: Allison, Garcia, Thimesch

H.B. No. 1568

Substitute the following for H.B. No. 1568:

By: King of Hemphill

C.S.H.B. No. 1568

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) "Controlling person" means a person listed in Section 51.409(a)(5), Occupations Code.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Instructor" means an individual who for compensation provides swim instruction directly to students on behalf of an operator.

(6) "Operator" means a company, corporation,

1 partnership, or limited liability corporation that employs two or
2 more employees and provides or offers to provide swim instruction
3 for compensation.

4 (7) "Serious incident" means a suspected or actual
5 incident that occurs during and as a direct result of swim
6 instruction and that threatens or impairs the health, safety, or
7 well-being of a student. The term includes:

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

10 (B) a critical injury of a student; and

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

13 (8) "Student" means a child who is younger than seven
14 years of age.

15 (9) "Swim instruction" means the in-water educational
16 process of teaching an individual to swim.

17 Sec. 769.003. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a)
18 Subject to Subsection (b), this chapter applies only to an operator
19 who provides swim instruction to a group of three or more students
20 at one time.

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

23 (1) a youth camp licensed under Chapter 141;

24 (2) a child-care facility licensed under Chapter 42,
25 Human Resources Code; or

26 (3) a political subdivision as defined by Section
27 172.003, Local Government Code.

1 SUBCHAPTER B. COMMISSION AND DEPARTMENT POWERS AND DUTIES

2 Sec. 769.051. REGULATION BY DEPARTMENT; RULES. (a) The
3 department shall administer and enforce this chapter.

4 (b) The commission shall adopt rules as necessary to
5 implement this chapter, including rules prescribing:

6 (1) operating standards;

7 (2) qualifications for an operator's license;

8 (3) requirements to renew an operator's license; and

9 (4) minimum safety and training requirements.

10 Sec. 769.052. FEES. The commission by rule shall set fees
11 in the amounts reasonable and necessary to cover the costs of
12 administering this chapter.

13 Sec. 769.053. PUBLIC ACCESS TO INSPECTION REPORTS. An
14 operator shall make available to the public on request a copy of any
15 inspection report issued to the operator by the department in the
16 preceding two years.

17 SUBCHAPTER C. LICENSE REQUIREMENTS

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

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

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

27 (1) submits to the department a completed license

1 application and the required nonrefundable application fee; and
2 (2) satisfies the licensing requirements under this
3 chapter and rules adopted under this chapter.

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

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

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

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

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

16 Sec. 769.104. REQUIRED CRIMINAL HISTORY RECORD INFORMATION
17 CHECK. The department shall perform a criminal history record
18 information check on each applicant for an operator's license and
19 on any controlling person of the applicant's company, corporation,
20 partnership, or limited liability corporation.

21 SUBCHAPTER D. OPERATIONAL STANDARDS

22 Sec. 769.151. MINIMUM SAFETY REQUIREMENTS. The commission
23 by rule shall establish minimum safety requirements for operators,
24 including requirements on:

25 (1) instructor to student ratios during the provision
26 of swim instruction;

27 (2) training and certification for instructors; and

1 (3) available and operational automated external
2 defibrillators, as defined by Section 779.001.

3 Sec. 769.152. CERTIFICATION AND TRAINING REQUIREMENTS. (a)

4 Each manager and instructor for the operator must:

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

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

14 (A) cardiopulmonary resuscitation; and

15 (B) automated external defibrillator use.

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

18 (1) basic water rescue techniques; and

19 (2) the provision of first aid.

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

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

27 (b) The commission by rule shall prescribe the form and

1 manner in which an operator must report a serious incident under
2 this section.

3 Sec. 769.154. REQUIRED EMPLOYEE CRIMINAL HISTORY RECORD
4 INFORMATION CHECK. (a) Before an operator may hire an instructor
5 or any other individual who will interact with students in the
6 course and scope of the individual's employment, the operator shall
7 perform a criminal history record information check on the
8 individual.

9 (b) An operator may not hire an instructor or any other
10 individual who will interact with students in the course and scope
11 of the individual's employment if the individual has been convicted
12 of an offense under Title 5, Penal Code, or Chapter 43, Penal Code,
13 involving an individual who is younger than 18 years of age.

14 SUBCHAPTER E. ENFORCEMENT

15 Sec. 769.201. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
16 ACTION. An applicant for an operator's license or a license holder
17 may be subject to denial of a license application or disciplinary
18 action, as applicable, if the applicant or license holder or a
19 controlling person of the applicant's or license holder's company,
20 corporation, partnership, or limited liability corporation:

21 (1) violates this chapter, a commission rule, or an
22 order of the commission or the executive director;

23 (2) obtains an operator's license by means of fraud,
24 misrepresentation, or concealment of a material fact;

25 (3) sells, barter, or offers to sell or barter an
26 operator's license; or

27 (4) is convicted of, or employs an instructor or any

1 other individual who interacts with students in the course and
2 scope of the individual's employment and who has been convicted of,
3 an offense under Title 5, Penal Code, or Chapter 43, Penal Code,
4 involving a child who is younger than 18 years of age.

5 Sec. 769.202. ADMINISTRATIVE PENALTY; OTHER ENFORCEMENT
6 ACTION. (a) A person who violates this chapter or a rule adopted
7 under this chapter is subject to an administrative penalty or other
8 penalties and enforcement action in accordance with Subchapters F
9 and G, Chapter 51, Occupations Code.

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

13 SECTION 2. This Act takes effect September 1, 2024.