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AB-2866 Pool safety: State Department of Social Services regulated facilities. (2023-2024)

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Assembly Bill No. 2866

CHAPTER 745

An act to amend Section 115922 of, to add Section 1596.814 to, and to repeal and add Section 115926 of, the Health and Safety Code, relating to pool safety.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2866, Pellerin. Pool safety: State Department of Social Services regulated facilities.

Existing law, the California Child Day Care Facilities Act, provides for the licensure and regulation of child daycare facilities by the State Department of Social Services. For purposes of the act, a child daycare facility includes a daycare center and a family daycare home, defined as a facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day. Under existing law, a violation of the act is a crime.

Existing law, the Swimming Pool Safety Act, among other requirements, requires a pool or spa to be equipped with at least 2 of 7 specified drowning prevention safety features when a building permit is issued for (1) the construction of a new swimming pool or spa or (2) the remodeling of an existing pool or spa at a private single-family home, except as provided. Existing law requires the 7 safety features to include, among others, an enclosure isolating the swimming pool from the home, a removable mesh fencing around the swimming pool with a self-closing and self-latching gate, a safety pool cover, and an alarm that sounds upon an accidental or unauthorized entrance into the water. Existing law exempts certain facilities regulated by the State Department of Social Services from the requirements of the Swimming Pool Safety Act.

This bill would repeal this exemption, making certain facilities regulated by the department subject to the Swimming Pool Safety Act, except as provided. The bill would require a licensed family daycare home operated at a private single-family dwelling with an in-ground swimming pool to have specified drowning safety features, including an enclosure and a cover or alarm, that meet specified standards. The bill would require a licensed daycare center with an in-ground swimming pool to have either a mesh fence, enclosure, or, if the pool is indoors, a self-closing door, as specified, and a 2nd, redundant feature that prevents children in the daycare center from entering the pool area unattended. The bill would also require safety equipment meeting certain specifications to be visible from the swimming pool and readily available for immediate use. The bill would require the licensees to perform a daily inspection of the safety features and safety equipment and maintain a log to be provided to the department upon request. The bill would require the department to by January 1, 2027, adopt regulations regarding bodies of water at daycare facilities regulated by the department and would require the department to prescribe drowning safety standards governing all swimming pools and bodies of water located at facilities regulated by the department. The bill would authorize the department to implement the changes by written directives until January 1, 2027. Because a willful or repeated violation of these provisions by a child daycare facility would be a crime, the bill would impose a state-mandated local program.

Existing law requires a local building code official to, before the issuance of a final approval for the completion of permitted construction or remodeling work, inspect the drowning safety prevention features for compliance with the Swimming Pool Safety

Act. By imposing additional duties on local officials relating to previously exempted pool or spa facilities, the bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 115922 of the Health and Safety Code proposed by SB 552 to be operative only if this bill and SB 552 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1596.814 is added to the Health and Safety Code, to read:

1596.814. (a) A licensed family daycare home operated at a private single-family dwelling with an in-ground swimming pool on the premises shall comply with all of the following requirements:

(1) The swimming pool shall be equipped with, at minimum, the following drowning prevention safety features:

(A) An enclosure, including, but not limited to, a fence, wall, or other barrier that isolates the swimming pool from access to the family daycare home and has all of the following characteristics:

(i) An access gate that opens away from the swimming pool and is self-closing with a self-latching, key lockable device placed no lower than 60 inches above the ground.

(ii) A minimum height of 60 inches.

(iii) A maximum vertical clearance of two inches from the ground to the bottom of the enclosure.

(iv) No gaps or voids that can allow the passage of a sphere with a diameter equal to or greater than four inches.

(v) An outside surface free of protrusions, cavities, or other physical characteristics that would serve as handholds or footholds that could enable a child to climb over.

(vi) For mesh fencing that does not meet the above characteristics, the licensee must provide documentation that establishes the mesh fencing is compliant with the American Society for Testing and Materials (ASTM) International Standard F2286.

(B) In addition to the characteristics described in subparagraph (A), at least one of the following:

(i) (I) An approved safety pool cover that is manually or power operated and meets the performance standards of ASTM International Standard F1346-23.

(II) A licensee shall maintain and make available for inspection, upon request by the department, documentation that establishes the cover is compliant with ASTM International Standard F1346-23.

(ii) (I) An alarm that, when placed in a swimming pool, will sound upon detecting an entrance into the water. The alarm shall be turned on and be in working condition during a facility's operating hours while the swimming pool is not in use.

(II) A licensee shall maintain and make available for inspection, upon request by the department, documentation that establishes the alarm is compliant with ASTM International Standard F2208.

(2) The licensee shall have the following safety equipment visible from the swimming pool and readily available for immediate use:

(A) A life ring with a minimum exterior diameter of 17 inches and labeled as approved by the United States Coast Guard.

(B) A rescue pole with a body hook and a minimum fixed length of 12 feet.

(3) A licensee shall perform a daily inspection of the drowning prevention safety features and safety equipment before opening the facility and maintain a log of the inspections to be provided to the department upon request.

(4) Other safety requirements as determined necessary by the department in regulations, or as determined in statute.

(b) A licensed daycare center with an in-ground swimming pool on the premises shall comply with all of the following requirements:

(1) The swimming pool shall be equipped with at least one of the following drowning prevention safety features:

(A) An enclosure as described in subparagraph (A) of paragraph (1) of subdivision (a).

(B) If the swimming pool is indoors, a self-closing door that has either a self-latching device no lower than 60 inches above the ground, or requires a key card, code, or other means to restrict opening.

(2) The swimming pool shall have a second, redundant feature that prevents children in the daycare center from entering the pool area unattended.

(3) The licensee shall have the following safety equipment visible from the swimming pool and readily available for immediate use:

(A) A life ring with a minimum exterior diameter of 17 inches with a United States Coast Guard approval label.

(B) A rescue pole with a body hook and a minimum fixed length of 12 feet.

(4) The licensee shall perform a daily inspection of the drowning prevention safety features and safety equipment before opening the facility and maintain a log of the inspections to be provided to the department upon request.

(5) Other safety requirements as determined necessary by the department in regulations, or as determined in statute.

(c) The department shall adopt regulations implementing this section, in addition to regulations implementing drowning prevention safety standards for other bodies of water located at daycare facilities regulated by the department and not specified in this section, by January 1, 2027.

(d) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, make specific, and administer the changes made by this section by means of written directives that shall have the same force and effect as regulations, until January 1, 2027.

SEC. 2. Section 115922 of the Health and Safety Code is amended to read:

115922. (a) Except as provided in Section 115925, and consistent with Section 1596.814, when a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing swimming pool or spa at a private single-family home, the respective swimming pool or spa shall be equipped with at least two of the following seven drowning prevention safety features:

(1) An enclosure that meets the requirements of Section 115923 and isolates the swimming pool or spa from the private single-family home.

(2) Removable mesh fencing that meets American Society for Testing and Materials (ASTM) Specifications F2286 standards in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

(3) An approved safety pool cover, as defined in subdivision (d) of Section 115921.

(4) Exit alarms on the private single-family home's doors that provide direct access to the swimming pool or spa. The exit alarm may cause either an alarm noise or a verbal warning, such as a repeating notification that "the door to the pool is open."

(5) A self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor on the private single-family home's doors providing direct access to the swimming pool or spa.

(6) An alarm that, when placed in a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. The alarm shall meet and be independently certified to the ASTM Standard F2208 "Standard Safety Specification for Residential Pool Alarms," which includes surface motion, pressure, sonar, laser, and infrared type alarms. A swimming protection alarm feature designed for individual use, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water, is not a qualifying drowning prevention safety feature.

(7) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the features set forth above and has been independently verified by an approved testing laboratory as meeting standards for those features established by the ASTM or the American Society of Mechanical Engineers (ASME).

(b) Before the issuance of a final approval for the completion of permitted construction or remodeling work, the local building code official shall inspect the drowning safety prevention features required by this section and, if no violations are found, shall give final approval.

SEC. 2.5. Section 115922 of the Health and Safety Code is amended to read:

115922. (a) Except as provided in Section 115925, subject to subdivision (b), and consistent with Section 1596.814, when a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing swimming pool or spa at a private single-family home, the respective swimming pool or spa shall be equipped with at least two of the following seven drowning prevention safety features:

(1) An enclosure that meets the requirements of Section 115923 and isolates the swimming pool or spa from the private single-family home.

(2) Removable mesh fencing that meets the ASTM International F2286 standard in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

(3) A manually operated or power-operated safety pool cover that is accompanied by a label verifying that the cover meets the specifications of the ASTM International F1346-23 standard.

(4) Exit alarms on the private single-family home's doors and windows that provide direct access to the swimming pool or spa without any intervening enclosure. Whenever any door or window is opened or left ajar, exit alarms shall make either an audible, continuous alarm sound or a repeating verbal warning, such as a notification that "the door to the pool is open." An exit alarm may be battery operated or connected to the electrical wiring of the building.

(5) A self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor on the private single-family home's doors providing direct access to the swimming pool or spa.

(6) An alarm in good repair and operable as designed that, when placed in a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. The alarm shall meet and be independently certified to the ASTM International F2208 standard which includes surface motion, pressure, sonar, laser, and infrared type alarms. A swimming protection alarm feature designed for individual use, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water, is not a qualifying drowning prevention safety feature.

(7) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the features set forth above and has been independently verified by an approved testing laboratory as meeting standards for those features established by ASTM International, the American Society of Mechanical Engineers or another nationally recognized standards development organization, and the feature is accompanied by a label verifying that the protection meets those standards.

(b) The requirements of subdivision (a) are not satisfied by any of the following:

(1) An exit alarm and a self-closing, self-latching device on the same door.

(2) An exit alarm and a door latch on separate doors.

(3) A safety pool cover and an alarm described in paragraph (6) of subdivision (a).

(c) Before the issuance of a final approval for the completion of permitted construction or remodeling work, the local building code official shall inspect the drowning safety prevention features required by this section and, if no violations are found, shall give final approval.

SEC. 3. Section 115926 of the Health and Safety Code is repealed.

SEC. 4. Section 115926 is added to the Health and Safety Code, to read:

115926. (a) The State Department of Social Services shall prescribe drowning prevention safety standards governing all swimming pools and other bodies of water located at facilities regulated by the department, regardless of whether the swimming pool is also subject to this article. The department may adopt higher drowning prevention safety standards than the requirements of this article. The department shall adopt regulations required by this section by January 1, 2027.

(b) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement, interpret, or make specific this article by means of interim licensing standards or similar written instructions until regulations are adopted. These interim licensing standards or similar written instructions shall have the same force and effect as regulations until January 1, 2027.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 115922 of the Health and Safety Code proposed by both this bill and Senate Bill 552. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 115922 of the Health and Safety Code, and (3) this bill is enacted after Senate Bill 552, in which case Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.