

Calendar No. 654

109TH CONGRESS }
2nd Session }

SENATE

{ REPORT
{ 109-357

POOL AND SPA SAFETY ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3718



SEPTEMBER 29, 2006.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

49-010

WASHINGTON : 2006

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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Mr. STEVENS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 3718]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3718). To increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Pool and Spa Safety Act, as reported, is to improve pool and spa safety through the use of anti-entrapment drain covers and to encourage State adoption of uniform and mandatory swimming pool and spa safety laws incorporating several layers of protection.

BACKGROUND AND NEEDS

I. RECENT POOL AND SPA SAFETY STATISTICS INDICATE A NEED FOR ACTION

Each year, about 300 children under 5 years old drown in swimming pools.¹ More than 2,000 children under 5 are treated every year for submersion injuries. While motor vehicle accidents are the leading cause of injury-related deaths for children, submersion deaths are second. Between the years 1990 and 2000, drowning was the second leading cause of unintentional death among children in the United States aged 1 to 19.² Furthermore, in 2002, there were 3,447 unintentional drownings in the United States, excluding boating-related incidents, an average of 9 drownings a day.³ In light of these accidents, a complete review of pool and spa safety and potential precautionary solutions for reducing related injuries and deaths was a prudent subject for committee action.

II. SUBMERSION-RELATED INJURIES AND DEATHS, INCLUDING SUCTION ENTRAPMENT, HAVE BECOME A FOCUS OF INQUIRY BY THE CONSUMER PRODUCT SAFETY COMMISSION

Serious bodily injury or death may result if proper safety precautions are not followed prior to someone entering a pool or spa. Pool or spa entrapment occurs when a person's body, limbs, jewelry, clothing, or hair get caught in a pool or spa drain or, due to the suction force of the drain (sometimes exceeding 400 pounds of pressure), are pulled into the drain and involuntarily submerged.

CPSC officials have indicated that they are aware of 74 cases of body entrapment, including 13 deaths between 1990 and 2004. These incidents occurred when a person's entire body or individual limbs were held against, or sucked into, a pool or spa drain. CPSC is also aware of 43 incidents of hair entanglement in the drains of pools, spas, and hot tubs between 1990 and 2004.

Medical costs stemming from a submersion-related injury are high. The CPSC estimates that an injury resulting in brain damage can cost \$160,000. Some injuries, due to an extended hospital stay, can exceed \$300,000.⁴ Toddlers between the ages of 1 and 3 account for 75 percent of submersion victims. This is the case even though most of the victims were thought to have been supervised, with 69 percent of the victims reportedly not expected to be in or near the pool.⁵ The same study showed that 65 percent of injuries ensued from swimming in a pool owned by the victim's family.

Time is critical in preventing children from drowning. The CPSC has reported that three-quarters of all child victims were missing for five minutes or less. Supervision is also imperative in preventing submersion-related incidents, but an adult's presence around swimming children is only the first line of defense. In protecting children from drowning and entrapment, State laws, local building codes, and Federal guidelines have spawned requirements

¹ Consumer Product Safety Commission Website, "How to plan for the unexpected," www.cpsc.gov/cpscpub/pubs/359.pdf, Accessed September 27, 2006.

² American Academy of Pediatrics, Policy Statement, "Prevention of Drowning in Infants, Children, and Adolescents," *PEDIATRICS*, Vol. 112, No. 2, August 2003.

³ Centers for Disease Control, "Water-Related Injuries: Fact Sheet," www.cdc.gov/ncipc/factsheets/drown.htm, Accessed September 27, 2006.

⁴ CPSC Website, *supra* n. 1.

⁵ *Id.*

and recommendations for various “layers of protection” to be physically added to pools and spas as precautionary measures.

III. S. 3718 SUPPLEMENTS CURRENT VOLUNTARY STANDARDS, STATE AND LOCAL LAWS AND REGULATIONS, AND CPSC GUIDELINES ON POOL AND SPA SAFETY

Pool and spa safety has traditionally been governed by State law and local building codes which regulate the design, construction, and maintenance of swimming pools and spas. State and local regulations commonly find their origin in voluntary standards developed by the pool and spa industry, consumer safety groups, standards development organizations, and the CPSC. Consumer safety groups have also stressed precautionary measures to protect children from drowning, including such devices as barrier fencing, anti-entrapment drain covers, safety vacuum release systems, and anti-entrapment pool and spa designs, including multiple drains, to reduce the suction force of outlets.

The American Society for Testing and Materials (ASTM International), the American Society of Mechanical Engineers (ASME), and the Association of Pool and Spa Professionals (APSP), have developed standards that address various layers of protection intended to prevent submersion injuries and suction entrapment. These voluntary standards are primarily intended for use by designers, builders, equipment installers, manufacturers, and code officials. They are technical in nature, but serve as necessary guidance for those in the pool and spa industry, State and local government, and consumers. New model residential building codes developed by the International Code Council (ICC) in conjunction with ASME and adopted by various States and localities mandate the use of several devices, design standards, and performance standards to improve safety.

Similarly, the CPSC has developed guidelines that address pool and spa safety, but are not enforced as mandatory standards. For instance, the recently updated “Guidelines for Entrapment Hazards,” is a document used by many States and localities as a model in developing building codes and addressing entrapment risks. These guidelines focus on implementation of “layers of protection,” i.e., devices, methods, and other pool products intended to prevent entrapment and related injuries. The guidelines recommend certain layers of protection like dual main drains, anti-entrapment drain covers, and alternative designs such as pools without main suction outlets.

SUMMARY OF PROVISIONS

S. 3718 would require the CPSC to adopt the current, or revised, ASME/American National Standards Institute (ANSI) standard on pool and spa drain covers as a consumer product safety rule. All new drain covers manufactured, distributed, or sold in United States’ commerce would be forced to comply with the relevant national performance standard, which is intended to reduce or eliminate pool and spa entrapment incidents. A second aspect of the legislation would authorize a Federal grant program designed to encourage States to pass more comprehensive pool and spa safety leg-

isolation. Finally, the bill would authorize funds for the CPSC to conduct a nationwide education campaign on pool and spa safety.

LEGISLATIVE HISTORY

On May 3, 2006, the Subcommittee on Consumer Affairs, Product Safety, and Insurance held a hearing to examine swimming pool and spa safety, focusing on precautionary measures to reduce pool and spa hazards, including body and hair entrapment. The Subcommittee heard testimony regarding methods for eliminating or reducing risks associated with pools and spas and provided a forum for increasing consumer awareness of various water-related hazards.

Following the hearing, the Pool and Spa Safety Act, S. 3718, was introduced by Senator Allen. The bill is cosponsored by Senators Stevens, DeWine, Dodd, and Durbin.

On September 27, 2006, the Committee on Commerce, Science, and Transportation considered the bill in an open Executive Session. Senators Allen and Pryor offered an amendment in the nature of a substitute. The Committee adopted the amendment by unanimous consent and unanimously ordered S. 3718 be reported with the amendment.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

Manufacturers, distributors, and retail sellers of pool and spa drain covers are the primary persons covered by this bill due to the requirement that new drain covers comply with the relevant performance standard. The number of citizens covered by this bill would depend upon the number of States which choose to accept Federal grant funds and pass legislation that conforms to the relevant requirements set by this bill and the CPSC.

ECONOMIC IMPACT

S. 3718 is not expected to have an adverse impact on the Nation's economy. Rather, requiring new pool and spa drain covers to comply with the pertinent national performance standard should reduce the societal cost stemming from significant brain or bodily injuries.

PRIVACY

S. 3718 would have minimal effect, if any, on the privacy rights of individuals.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens for private industry resulting from the passage of this legislation. In those areas where the bill would require additional paperwork, the burden would rest upon the CPSC to submit an annual report describing the efficacy of the grant program.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 sets forth the short title of the bill as the “Pool and Spa Safety Act” and the table of contents.

Section 2. Findings.

Section 2 cites recent statistics and findings which indicate that, of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States. Preventative measures which can enhance pool and spa safety include promoting adult awareness of pool and spa safety and supervisory obligations, as well as the use of barriers and layers of protection.

Section 3. Federal swimming pool and spa drain cover standard.

Section 3 would require all new pool and spa drain covers to conform to the anti-entrapment specifications of the pertinent national performance standard, or any revision of such standard. Under this section, drain cover manufacturers may only manufacture, distribute, or enter into commerce compliant drain covers designed to prevent body, hair, and other types of entrapment. Violations of section 3 will be a violation of the Consumer Product Safety Act.

Section 4. State swimming pool safety grant program.

Section 4 would direct the CPSC to administer a grant program designed to encourage States to pass comprehensive pool and spa safety legislation. A State would be eligible for a Federal grant if it passes State legislation that, at a minimum, addresses elements set forth by S. 3718, as well as additional pool and spa safety requirements that may be delineated by the CPSC. A State’s population, relative enforcement needs, and potential for making the greatest impact on pool and spa safety would each be considered in administration of grant funds.

Grant funds are to be used to hire and train enforcement personnel for implementation of State pool and spa safety laws, for education programs to prevent drowning and entrapment, and for administrative costs associated with the grant program. Ten million dollars per year from the years 2008 through 2012 are authorized for the foregoing purposes.

Section 5. Minimum State law requirements.

To be eligible for grant funds, a State must pass legislation that requires residential pools and spas to be surrounded by fencing or other barriers to entry that prevent or inhibit children from gaining unfettered access to the water, equipped with anti-entrapment devices, equipped with anti-entrapment drain covers, and, for new pool construction, built with multiple drains, unblockable drains, or no drains. In addition, the CPSC may add additional requirements

for State eligibility after a 30-day notice and comment period. The CPSC should utilize performance standards and published guidelines in establishing any additional minimum State law requirements for eligibility in the grant program.

Section 6. Education program.

Section 6 would authorize \$5 million per year for the CPSC to conduct a nationwide education campaign to promote safe pool and spa practices, and to publish relevant safety materials for those in the pool and spa industry, including owners and operators.

Section 7. Definitions.

Section 7 would define various terms associated with pools and spas used in this legislation.

Section 8. CPSC report.

Section 8 would require the CPSC to submit a report to Congress following each fiscal year in which grants are made. The report would evaluate the grant program's efficacy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

