

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MAY 20, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1020

Introduced by Assembly Members Emmerson and Ma

February 27, 2009

An act to add ~~Section 116064.1~~ *Sections 116064.1 and 116064.2* to the Health and Safety Code, relating to swimming pools, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1020, as amended, Emmerson. Public swimming pools: anti-entrapment devices and systems.

Under existing law, public wading pools, as defined, are required to equip drain suction outlets with specified anti-entrapment grates to prevent physical entrapment of the bathers. Under existing law, the Swimming Pool Safety Act, public swimming pools are exempted from that act's requirements that newly constructed pools be equipped with specified safety features, including anti-entrapment grates for drain suction outlets.

This bill would require ~~a~~ *an existing* public swimming pool, as defined, to be equipped with anti-entrapment devices or systems that meet ASME/ANSI or ASTM performance standards, ~~as specified~~. It would also require ~~a~~ *an existing* public swimming pool with a single main drain that is not an unblockable drain to meet at least one of the specified standards. The bill would impose timeframes by which its requirements must be met, *subject to exceptions, as specified*.

~~The bill would also specify that any amendments or successors to, or later published editions of, ASME/ANSI or ASTM performance standards relating to anti-entrapment devices or systems would become the applicable standard in California 90 days after publication by ASME/ANSI or ASTM, respectively, provided that the amendments, successors, or later published editions are approved by the department within that 90-day period. The bill would require that if the department approves an amendment or successor to, or later published edition of, a performance standard, the department would be required to adopt and file with the Secretary of State a regulation to that effect.~~

The bill would require that every newly constructed public swimming pool have at least 2 main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more “T” fittings, and be separated by a distances of at least 3 feet in any dimension between the drains.

Subsequent to the effective date of the bill, the State Department of Public Health is authorized to approve amendments or successors to these standards.

~~The bill would require the department to develop, and a public swimming pool owners and operators owner to file, a form to indicate compliance with the requirements of the bill, as specified. The form would be required to include a certification, signed under penalty of perjury, by either a state-licensed contractor or professional engineer that the by a qualified individual, as defined, that prescribed factual information provided on the form is true, thereby constituting a violation of the existing crime of perjury.~~

This bill would declare the intent of Legislature to occupy the whole field of health and safety standards for public swimming pools and to preempt all local health and safety standards relating to public swimming pools.

This bill would authorize local health departments to impose a fee on the owners of public swimming pools to cover the costs of enforcement incurred pursuant to the bill, in an amount not to exceed the actual costs of enforcement.

This bill would also authorize the department, until January 1, 2014, in addition to any fee imposed by local health officials pursuant to the bill, to assess a fee, as prescribed, to defray the department’s costs of carrying out its duties under the bill. The applicable local health department would be required to collect this fee, and transmit the fee collected to the Controller for deposit into the Recreational Health

Fund, created by the bill. Money in that fund would be available, upon appropriation by the Legislature, for carrying out its duties under the bill.

Violation of the requirements of the bill would constitute a misdemeanor. By creating new crimes, the bill would impose a state-mandated local program.

By imposing new duties on local building officials *and local health officials*, the bill would impose a state-mandated local program.

~~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.~~

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 no reimbursement is required by this act for specified reasons.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 116064.1 is added to the Health and
- 2 Safety Code, to read:
- 3 116064.1. The Legislature finds and declares that the public
- 4 health interest requires that there be uniform statewide health and
- 5 safety standards for public swimming pools to prevent physical
- 6 entrapment and serious injury to children and adults. It is the
- 7 intent of the Legislature to occupy the whole field of health and
- 8 safety standards for public swimming pools and the requirements
- 9 established in this article and the regulations adopted pursuant

1 to this article shall be exclusive of all local health and safety
2 standards relating to public swimming pools.

3 SECTION 1.

4 SEC. 2. Section ~~116064.1~~ 116064.2 is added to the Health and
5 Safety Code, to read:

6 ~~116064.1.~~

7 116064.2. (a) As used in this section, the following words
8 have the following meanings:

9 (1) "ASME/ANSI performance standard" means a standard that
10 is accredited by the American National Standards Institute and
11 published by the American Society of Mechanical Engineers.

12 (2) "ASTM performance standard" means a standard that is
13 developed and published by ASTM International.

14 (3) "Main drain" means a submerged suction outlet typically
15 located at the bottom of a swimming pool that conducts water to
16 a recirculating pump.

17 (4) "Public swimming pool" means an outdoor or indoor
18 structure, whether in-ground or above-ground, intended for
19 swimming or recreational bathing, including a ~~hot tub, spa, or~~
20 ~~portable spa, that is open to the public generally, whether for a fee~~
21 ~~or free of charge, open exclusively to members of an organization~~
22 ~~and their guests, residents of a multiunit apartment building,~~
23 ~~apartment complex, residential real estate development, or other~~
24 ~~multifamily residential area, or patrons of a hotel or other public~~
25 ~~accommodations facility. swimming pool, hot tub, spa, portable~~
26 ~~spa, or nonportable wading pool, that is any of the following:~~

27 (A) *Open to the public generally, whether for a fee or free of*
28 *charge.*

29 (B) *Open exclusively to members of an organization and their*
30 *guests, residents of a multiunit apartment building, apartment*
31 *complex, residential real estate development, or other multifamily*
32 *residential area, or patrons of a hotel or other public*
33 *accommodations facility.*

34 (C) *Located on the premises of an athletic club, or public or*
35 *private school.*

36 (5) "Qualified individual" means a contractor who holds a
37 current valid license issued by the State of California or a
38 professional engineer licensed in the State of California who has
39 experience working on public swimming pools.

40 (5)

1 (6) “Safety vacuum release system” means a vacuum release
2 system that ceases operation of the pump, reverses the circulation
3 flow, or otherwise provides a vacuum release at a suction outlet
4 when a blockage is detected.

5 ~~(6)~~

6 (7) “Unblockable drain” means a drain of any size and shape
7 that a human body cannot sufficiently block to create a suction
8 entrapment hazard.

9 ~~(b) Any amendments or successors to, or later published editions~~
10 ~~of, ASME/ANSI or ASTM performance standards relating to~~
11 ~~anti-entrapment devices or systems shall become the applicable~~
12 ~~standard in California 90 days after publication by ASME/ANSI~~
13 ~~or ASTM, respectively, provided that the amendments, successors,~~
14 ~~or later published editions are approved by the department within~~
15 ~~90 days of the publication of the performance standards by~~

16 *(b) Subject to subdivision (c), an ASME/ANSI or ASTM*
17 *performance standard relating to anti-entrapment devices or*
18 *systems or an amendment or successor to, or later published*
19 *edition of an ASME/ANSI or ASTM performance standard relating*
20 *to anti-entrapment devices or systems shall become the applicable*
21 *standard in California 90 days after publication by ASME/ANSI*
22 *or ASTM, respectively, provided that the performance standard*
23 *or amendment or successor to, or later published edition is*
24 *approved by the department within 90 days of the publication of*
25 *the performance standard by ASME/ANSI or ASTM, respectively.*
26 ~~Notwithstanding any other law, the adoption of rules and~~
27 ~~regulations pursuant to this section~~ *department may implement,*
28 *interpret, or make specific the provisions of this section by means*
29 *of a policy letter or similar instruction and this action by the*
30 *department shall not be subject to the rulemaking requirements of*
31 *the Administrative Procedure Act (Chapter 3.5 (commencing with*
32 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
33 *Code), except that, if the department approves a performance*
34 *standard or an amendment or successor to, or later published*
35 *edition of, a performance standard, the department shall adopt and*
36 *file with the Secretary of State a regulation to that effect.*

37 (c) Subject to subdivisions (e) to (g), inclusive and (f), every
38 public swimming pool shall be equipped with anti-entrapment
39 devices or systems that comply with ASME/ANSI performance
40 standard A112.19.8, as in effect on the date immediately prior to

1 the effective date of this section, or any applicable ASME/ANSI
2 performance standard that has been adopted by the department
3 pursuant to subdivision (b).

4 (d) Subject to subdivisions (e) to (g), inclusive and (f), every
5 public swimming pool with a single main drain that is not an
6 unblockable drain shall be equipped with at least one or more of
7 the following devices or systems that are designed to prevent
8 physical entrapment by pool drains:

9 (1) A safety vacuum release system that has been tested by a
10 department-approved independent third party and found to conform
11 to ASME/ANSI performance standard A112.19.17, as in effect on
12 the date immediately prior to the effective date of this section, or
13 any applicable ASME/ANSI performance standard that has been
14 adopted by the department pursuant to subdivision (b), or ASTM
15 performance standard F2387, as in effect on the date immediately
16 prior to the effective date of this section, or any applicable ASTM
17 performance standard that has been adopted by the department
18 pursuant to subdivision (b).

19 (2) A suction-limiting vent system with a tamper-resistant
20 atmospheric opening, provided that it conforms to any applicable
21 ASME/ANSI or ASTM performance standard that has been
22 adopted by the department pursuant to subdivision (b).

23 (3) A gravity drainage system that utilizes a collector tank,
24 provided that it conforms to any applicable ASME/ANSI or ASTM
25 performance standard that has been adopted by the department
26 pursuant to subdivision (b).

27 (4) An automatic pump shut-off system tested by a
28 department-approved independent third party and found to conform
29 to any applicable ASME/ANSI or ASTM performance standard
30 that has been adopted by the department pursuant to subdivision
31 (b).

32 (5) Any other system that is deemed, in accordance with federal
33 law, to be equally effective as, or more effective than, the systems
34 described in paragraphs (1) to (4), inclusive, at preventing or
35 eliminating the risk of injury or death associated with pool drainage
36 systems.

37 ~~(e) Subdivisions (e) and (d) shall apply to every public~~
38 ~~swimming pool constructed on or after December 19, 2009.~~

39 ~~(f) Commencing December 19, 2009, whenever a construction~~
40 ~~permit is issued for the alteration of an existing public swimming~~

1 ~~pool, that public swimming pool shall be retrofitted so as to be in~~
2 ~~compliance with this section.~~

3 (e) *Every public swimming pool constructed on or after January*
4 *1, 2010, shall have at least two main drains per pump that are*
5 *hydraulically balanced and symmetrically plumbed through one*
6 *or more “T” fittings, and are separated by a distance of at least*
7 *three feet in any dimension between the drains. A public swimming*
8 *pool constructed on or after January 1, 2010, that meets the*
9 *requirements of this subdivision, shall be exempt from the*
10 *requirements of subdivisions (c) and (d).*

11 ~~(g)~~

12 (f) *A public swimming pool constructed prior to ~~December 19,~~*
13 *~~2009~~ January 1, 2010, shall be retrofitted to comply with*
14 *subdivisions (c) and (d) by no later than December 19, ~~2011,~~ 2010,*
15 *except that no further retrofitting is required for a public swimming*
16 *pool that completed a retrofit between December 19, 2007, and*
17 *January 1, 2010, that complied with the Virginia Graeme Baker*
18 *Pool and Spa Safety Act (15 U.S.C. Sec. 8001 et seq.) as in effect*
19 *on the date of issue of the construction permit, or for a nonportable*
20 *wading pool that completed a retrofit prior to January 1, 2010,*
21 *that complied with state law on the date of issue of the construction*
22 *permit.*

23 ~~(h)~~

24 (g) *Within 90 days of the effective date of this ~~act~~ section, the*
25 *department shall issue a form for use by ~~owners and operators of~~*
26 *~~public swimming pools~~ an owner of a public swimming pool to*
27 *indicate compliance with this section. The department shall consult*
28 *with county health officers and directors of departments of*
29 *environmental health in developing the form and shall post the*
30 *form on the department’s Internet Web site. ~~The form shall be~~*
31 *completed by the owner of a public swimming pool prior to filing*
32 *the form with the appropriate city, county, or city and county*
33 *department of environmental health. The form shall include, but*
34 *not be limited to, the following information:*

35 (1) *A statement of whether the pool operates with a single or*
36 *split main drain.*

37 (2) *Identification of the type of anti-entrapment device or system*
38 *that has been installed and the date of installation ~~or the reason~~*
39 *why the requirement is not applicable.*

1 (3) Identification of the type of device or system designed to
2 prevent physical entrapment that has been installed and the date
3 of installation *or the reason why the requirement is not applicable.*

4 (4) A signature and license number of ~~either a state-licensed~~
5 ~~contractor whose license permits the contractor to work on~~
6 ~~swimming pools and related equipment or a state-licensed~~
7 ~~professional engineer with experience with public swimming pools~~
8 ~~who certifies under penalty of perjury that the information provided~~
9 ~~on the form is true. a qualified individual who certifies that the~~
10 ~~factual information provided on the form in response to paragraphs~~
11 ~~(1) to (3), inclusive, is true.~~

12 (i)

13 (h) Each public swimming pool owner ~~or operator~~ shall file a
14 completed copy of the form issued by the department pursuant to
15 this section with the ~~city or county~~ *city, county, or city and county*
16 department of environmental health in the ~~city or county~~ *city,*
17 *county, or city and county* in which the swimming pool is located.
18 The form shall be filed within 30 days following the completion
19 of the swimming pool construction or installation required pursuant
20 to subdivisions (e) ~~to (g), inclusive~~ and (f). The public swimming
21 pool owner or operator shall not make a false statement,
22 representation, certification, record, report, or otherwise falsify
23 information that he or she is required to file or maintain pursuant
24 to this section.

25 (j)

26 (i) In enforcing this section, health officers and directors of ~~city~~
27 ~~or county~~ *city, county, or city and county* departments of
28 environmental health shall consider documentation filed on or with
29 the form issued pursuant to this section by the ~~owners and operators~~
30 ~~of public swimming pools~~ *owner of a public swimming pool* as
31 evidence of compliance with this section. A ~~city or county~~ *city,*
32 *county, or city and county* department of environmental health
33 may verify the accuracy of the information filed on or with the
34 form.

35 (k) *To the extent that the requirements for public wading pools*
36 *imposed by Section 116064 conflict with this section, the*
37 *requirements of this section shall prevail.*

38 (l) *Local health departments may impose a fee on owners of*
39 *public swimming pools to cover the costs of enforcement imposed*

1 *pursuant to Section 116064.1 and this section, in an amount not*
2 *to exceed the actual cost of enforcement.*

3 *(m) (1) Until January 1, 2014, and in addition to any fee*
4 *imposed by local health officials pursuant to subdivision (l), the*
5 *department may assess an annual fee on the owners of public*
6 *swimming pools, to be collected by the applicable local health*
7 *department, in an amount not to exceed the amount necessary to*
8 *defray the department’s costs of carrying out its duties under*
9 *Section 116064.1 and this section.*

10 *(2) The local health department shall transmit fees collected*
11 *pursuant to paragraph (1) to the Controller for deposit into the*
12 *Recreational Health Fund, which is hereby created in the State*
13 *Treasury. Notwithstanding Section 16305.7 of the Government*
14 *Code, interest and dividends on moneys in the Recreational Health*
15 *Fund shall also be deposited in the fund. Moneys in the fund shall,*
16 *upon appropriation by the Legislature, be available to the*
17 *department for carrying out its duties under Section 116064.1 and*
18 *this section.*

19 ~~SEC. 2.~~

20 *SEC. 3. No reimbursement is required by this act pursuant to*
21 *Section 6 of Article XIII B of the California Constitution for certain*
22 *costs that may be incurred by a local agency or school district*
23 *because, in that regard, this act creates a new crime or infraction,*
24 *eliminates a crime or infraction, or changes the penalty for a crime*
25 *or infraction, within the meaning of Section 17556 of the*
26 *Government Code, or changes the definition of a crime within the*
27 *meaning of Section 6 of Article XIII B of the California*
28 *Constitution.*

29 ~~However, if the Commission on State Mandates determines that~~
30 ~~this act contains other costs mandated by the state, reimbursement~~
31 ~~to local agencies and school districts for those costs shall be made~~
32 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
33 ~~4 of Title 2 of the Government Code.~~

34 *No reimbursement is required by this act pursuant to Section 6*
35 *of Article XIII B of the California Constitution for certain other*
36 *costs that may be incurred by a local agency or school district*
37 *because a local agency or school district has the authority to levy*
38 *service charges, fees, or assessments sufficient to pay for the*
39 *program or level of service mandated by this act, within the*
40 *meaning of Section 17556 of the Government Code.*

1 ~~SEC. 3.~~

2 *SEC. 4.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

6 In order to conform state law with federal requirements for the
7 prevention of drowning, at the earliest possible time, it is necessary
8 that this act take effect immediately.

O