

VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT\*

PUBLIC LAW 110-140

TITLE XIV--POOL AND SPA SAFETY

Sec. 1401. SHORT TITLE.

This title may be cited as the "Virginia Graeme Baker Pool and Spa Safety Act".

Sec. 1402. FINDINGS.

Congress finds the following:

(1) Of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States.

(2) In 2004, 761 children aged 14 and under died as a result of unintentional drowning.

(3) Adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning.

(4) Research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

Sec. 1403. DEFINITIONS.

In this title:

(1) ASME/ANSI.-- The term "ASME/ANSI" as applied to a safety standard means such a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) Barrier.-- The term "barrier" includes a natural or constructed topographical feature that prevents unpermitted access by children to a swimming pool, and, with respect to a hot tub, a lockable cover.

(3) Commission.-- The term "Commission" means the Consumer Product Safety Commission.

(4) Main drain.-- The term "main drain" means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.

(5) Safety vacuum release system.-- The term "safety vacuum release system" means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(6) Swimming pool; spa.-- The term "swimming pool" or "spa" means any outdoor

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or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

(7) Unblockable drain.-- The term "unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(8) State.—The term "State" has the meaning given such term in section 3(10) of the Consumer Product Safety Act (15 U.S.C. 2052(10)), and includes the Northern Mariana Islands.

#### Sec. 1404. FEDERAL SWIMMING POOL AND SPA DRAIN COVER STANDARD.

(a) Consumer Product Safety Rule.--The requirements described in subsection (b) shall be treated as a consumer product safety rule issued by the Consumer Product Safety Commission under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(b) Drain Cover Standard.--Effective 1 year after the date of enactment of this title, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover. If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public.

(c) Public Pools.--

(1) Required equipment.----

(A) In general.--Beginning 1 year after the date of enactment of this title--

(i) each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard; and

(ii) each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped, at a minimum, with 1 or more of the following devices or systems designed to prevent entrapment by pool or spa drains that meets the requirements of subparagraph (B):

(I) Safety vacuum release system.--A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.

(II) Suction-limiting vent system.--A suction-limiting vent system with a tamper-resistant atmospheric opening.

(III) Gravity drainage system.--A gravity drainage system that utilizes a

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collector tank.

(IV) Automatic pump shut-off system.--An automatic pump shut-off system.

(V) Drain disablement.--A device or system that disables the drain.

(VI) Other systems.--Any other system determined by the Commission to be equally effective as, or better than, the systems described in subclauses (I) through (V) of this clause at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(B) Applicable standards.--Any device or system described in subparagraph (A)(ii) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(2) Public pool and spa defined.-- In this subsection, the term "public pool and spa" means a swimming pool or spa that is--

(A) open to the public generally, whether for a fee or free of charge;

(B) open exclusively to--

(i) members of an organization and their guests;

(ii) residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction); or

(iii) patrons of a hotel or other public accommodations facility; or

(C) operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents.

(3) Enforcement.-- Violation of paragraph (1) shall be considered to be a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)) and may also be enforced under section 17 of that Act (15 U.S.C. 2066).

#### Sec. 1405. STATE SWIMMING POOL SAFETY GRANT PROGRAM.

(a) In General.--Subject to the availability of appropriations authorized by subsection (e), the Commission shall establish a grant program to provide assistance to eligible States.

(b) Eligibility.--To be eligible for a grant under the program, a State shall--

(1) demonstrate to the satisfaction of the Commission that it has a State statute, or that, after the date of enactment of this title, it has enacted a statute, or amended an existing statute, and provides for the enforcement of, a law that--

(A) except as provided in section 1406(a)(1)(A)(i), applies to all swimming pools in the State; and

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(B) meets the minimum State law requirements of section 1406; and

(2) submit an application to the Commission at such time, in such form, and containing such additional information as the Commission may require.

(c) Amount of Grant.--The Commission shall determine the amount of a grant awarded under this title, and shall consider--

(1) the population and relative enforcement needs of each qualifying State; and

(2) allocation of grant funds in a manner designed to provide the maximum benefit from the program in terms of protecting children from drowning or entrapment, and, in making that allocation, shall give priority to States that have not received a grant under this title in a preceding fiscal year.

(d) Use of Grant Funds.--A State receiving a grant under this section shall use--

(1) at least 50 percent of amounts made available to hire and train enforcement personnel for implementation and enforcement of standards under the State swimming pool and spa safety law; and

(2) the remainder--

(A) to educate pool construction and installation companies and pool service companies about the standards;

(B) to educate pool owners, pool operators, and other members of the public about the standards under the swimming pool and spa safety law and about the prevention of drowning or entrapment of children using swimming pools and spas; and

(C) to defray administrative costs associated with such training and education programs.

(e) Authorization of Appropriations.--There are authorized to be appropriated to the Commission for each of fiscal years 2009 and 2010 \$ 2,000,000 to carry out this section, such sums to remain available until expended. Any amounts appropriated pursuant to this subsection that remain unexpended and unobligated at the end of fiscal year 2010 shall be retained by the Commission and credited to the appropriations account that funds enforcement of the Consumer Product Safety Act.

#### Sec. 1406. MINIMUM STATE LAW REQUIREMENTS.

(a) In General.--

(1) Safety standards.-- A State meets the minimum State law requirements of this section if--

(A) the State requires by statute--

(i) the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered

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access to the pool or spa;

(ii) that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains;

(iii) that pools and spas built more than 1 year after the date of the enactment of such statute have--

(I) more than 1 drain;

(II) 1 or more unblockable drains; or

(III) no main drain;

(iv) every swimming pool and spa that has a main drain, other than an unblockable drain, be equipped with a drain cover that meets the consumer product safety standard established by section 1404; and

(v) that periodic notification is provided to owners of residential swimming pools or spas about compliance with the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard; and

(B) the State meets such additional State law requirements for pools and spas as the Commission may establish after public notice and a 30-day public comment period.

(2) No liability inference associated with state notification requirement.-- The minimum State law notification requirement under paragraph (1)(A)(v) shall not be construed to imply any liability on the part of a State related to that requirement.

(3) Use of minimum state law requirements.-- The Commission--

(A) shall use the minimum State law requirements under paragraph (1) solely for the purpose of determining the eligibility of a State for a grant under section 1405 of this Act; and

(B) may not enforce any requirement under paragraph (1) except for the purpose of determining the eligibility of a State for a grant under section 1405 of this Act.

(4) Requirements to reflect national performance standards and commission guidelines.-- In establishing minimum State law requirements under paragraph (1), the Commission shall--

(A) consider current or revised national performance standards on pool and spa barrier protection and entrapment prevention; and

(B) ensure that any such requirements are consistent with the guidelines contained in the Commission's publication 362, entitled "Safety Barrier Guidelines for Home Pools", the Commission's publication entitled "Guidelines for Entrapment Hazards: Making Pools and Spas Safer", and any other pool safety guidelines established by the Commission.

(b) Standards.--Nothing in this section prevents the Commission from promulgating

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standards regulating pool and spa safety or from relying on an applicable national performance standard.

(c) Basic Access-Related Safety Devices and Equipment Requirements To Be Considered.--In establishing minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall consider the following requirements:

(1) Covers.-- A safety pool cover.

(2) Gates.-- A gate with direct access to the swimming pool or spa that is equipped with a self-closing, self-latching device.

(3) Doors.-- Any door with direct access to the swimming pool or spa that is equipped with an audible alert device or alarm which sounds when the door is opened.

(4) Pool alarm.-- A device designed to provide rapid detection of an entry into the water of a swimming pool or spa.

(d) Entrapment, Entanglement, and Evisceration Prevention Standards To Be Required.--

(1) In general.-- In establishing additional minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall require, at a minimum, 1 or more of the following (except for pools constructed without a single main drain):

(A) Safety vacuum release system.--A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387, or any successor standard.

(B) Suction-limiting vent system.--A suction-limiting vent system with a tamper-resistant atmospheric opening.

(C) Gravity drainage system.--A gravity drainage system that utilizes a collector tank.

(D) Automatic pump shut-off system.--An automatic pump shut-off system.

(E) Drain disablement.--A device or system that disables the drain.

(F) Other systems.--Any other system determined by the Commission to be equally effective as, or better than, the systems described in subparagraphs (A) through (E) of this paragraph at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(2) Applicable standards.-- Any device or system described in subparagraphs (B) through (E) of paragraph (1) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

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Sec. 1407. EDUCATION PROGRAM.

(a) In General.--The Commission shall establish and carry out an education program to inform the public of methods to prevent drowning and entrapment in swimming pools and spas. In carrying out the program, the Commission shall develop--

(1) educational materials designed for pool manufacturers, pool service companies, and pool supply retail outlets;

(2) educational materials designed for pool owners and operators; and

(3) a national media campaign to promote awareness of pool and spa safety.

(b) Authorization of Appropriations.--There are authorized to be appropriated to the Commission for each of the fiscal years 2008 through 2012 \$ 5,000,000 to carry out the education program authorized by subsection (a).

Sec. 1408. CPSC REPORT.

Not later than 1 year after the last day of each fiscal year for which grants are made under section 1405, the Commission shall submit to Congress a report evaluating the implementation of the grant program authorized by that section.

Sec. 1409. APPLICABILITY.

This Act is applicable to the United States and its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.