

INDEPENDENT INSURANCE AGENTS & BROKERS OF LOUISIANA
9818 BLUEBONNET BOULEVARD
BATON ROUGE, LA 70810
PHONE: 225/819-8007
FAX: 225/819-8027
www.iiabl.com

Technical Advisory

TA 269

March 16, 2009

Subject: Federal Pool and Spa Safety Act

Background: Sometimes it takes a tragedy to promote safety. Some of our most effective safety improvements in building design, automobiles, industrial processes, and other aspects of modern life originated with terrible accidents.

In the case of the Federal Pool and Spa Safety Act, the tragic death of one little seven-year-old girl, who was trapped in the powerful suction of a spa in 2002, sparked a 3-year campaign to mandate strong safety guidelines for pools and spas.

In December 2007, President Bush signed the Virginia Graeme Baker Pool and Spa Safety Act. The law was named for the granddaughter of former Secretary of State James Baker III. The legislation was the result of work spearheaded by the Baker family, Safe Kids USA, and many other interested parties.

Safe Kids USA was founded in 1987 under the joint sponsorship and support of the Children's National Medical Center and Johnson & Johnson. Safe Kids USA is a member of Safe Kids Worldwide, which is a global network of organizations whose mission is to prevent accidental childhood injury, a leading killer of children age 14 and under.

Sadly, drowning is the second leading cause of death for this age group, according to experts. In 2004, there were 761 drowning deaths for children under age 14. In addition, the Consumer Products Safety Commission reports that there is an annual average of 283 drowning deaths and 2,700 emergency room treatments for submersion involving children younger than 5 in pools and spas. And suction entrapment (as in Virginia's case) accounted for 74 incidents between 1997-2007, resulting in 63 injuries and 9 deaths.

The good news is that experts believe the strong safety measures in this legislation will save hundreds of lives and thousands of injuries in the future.

Main Points: There are two main issues related to this law which are of interest to the insurance industry.

Issue #1: Major provisions of the law. The Virginia Graeme Baker Pool and Spa Safety Act is actually incorporated into the Energy Independence and Security Act of 2007 (Public Law 110-140). Of this massive 311 page bill (originally HR 6), Title XIV contains the Virginia Graeme Baker Pool and Spa Safety Act, which runs a mere 7 pages near the end Act.

The safety requirements of the law must be met within one year from the date of signing, which means the compliance deadline was December 2008. The law applies to both new and existing pools and spas that are open to the public. The Consumer Products Safety Commission is the enforcement agency. Failure to comply with the safety requirements can result in both civil and criminal penalties, as well as mandatory shut down of the facility.

Here are the four main parts of the law.

#1 – Drain cover standard. The law mandates upgraded manufacturing standards for pool or spa drain covers.

SEC. 1404. FEDERAL SWIMMING POOL AND SPA DRAIN COVER STANDARD.

(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.

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.

(6) SWIMMING POOL; SPA.—The term “swimming pool” or “spa” means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and aboveground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

#2 – Public pools and spas required equipment. Pools and spas that are open to the public must have certain anti-entrapment equipment installed.

SEC. 1404. FEDERAL SWIMMING POOL AND SPA DRAIN COVER STANDARD.

(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 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).

#3 – Safety grants for states. In addition to mandating that upgraded drain equipment be placed on all public pools and spas, the law also provides for the availability of grant money for states to use in various programs involving education and training in pool and spa safety. Section 1406 (not included in this article) outlines the specific requirement for eligibility for states to receive grant money. However, one of the key requirements is that states have statutes in place related to the safety of pools and spas.

Here are the most relevant parts of this section of the law dealing with state grants.

SEC. 1405. STATE SWIMMING POOL SAFETY GRANT PROGRAM.

(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
 - (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.

#4 – Education program. Lastly, the law also directs the Consumer Products Safety Commission to develop an education and public awareness program regarding pool and spa safety.

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).

Issue #2: Impact on insurance. Since the requirement for upgraded drain safety equipment applies to “public pools and spas,” and with the compliance deadline of December 2008 already past, commercial liability insurers have undertaken a number of steps to verify that their insureds with pools and/or spas have complied with the new safety requirements.

Some insurers are requesting certification or verification from the insured. Others are conducting independent inspections. Given the wide range of commercial insureds with pools or spas open to the public, including hotels, apartment complexes, condominiums, health clubs, and the like, most if not all new and renewal business will likely be required to provide some sort of documentation to the insurer that the mandated safety equipment is installed.

Necessary Action: Commercial lines staff should contact each commercial liability market, to determine what documentation or certification will be necessary to place new and renewal business for insureds with a pool or spa exposure. The agency should also consider establishing agency procedures which incorporate new underwriting guidelines for risks that have pools & spas.