

## Senate Bill No. 442

### CHAPTER 670

An act to amend Section 7195 of the Business and Professions Code, and to amend Sections 115922 and 115925 of the Health and Safety Code, relating to public health.

[Approved by Governor October 11, 2017. Filed with  
Secretary of State October 11, 2017.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 442, Newman. Public health: pools: drownings.

Under the existing Swimming Pool Safety Act, upon the issuance of a building permit for construction of a new swimming pool or spa, or the remodeling of an existing pool or spa, at a private, single-family home, the pool or spa is required to be equipped with at least one of 7 drowning prevention safety features. The existing act requires the local building code official to inspect and approve the drowning safety prevention devices before the issuance of a final approval for the completion of permitted construction or remodeling work. The existing act does not apply to any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pools, as specified.

This bill would instead require, when a building permit is issued, that the pool or spa be equipped with at least 2 of 7 specified drowning prevention safety features. The bill would revise the characteristics of some of those safety features. The bill would also delete the exemption from the act of political subdivisions that adopt ordinances for swimming pools. By imposing additional duties on local officials, the bill would impose a state-mandated local program.

Existing law defines terms related to paid home inspections in connection with the transfer of real property, establishes a standard of care for home inspectors, and prohibits certain inspections in which the inspector or the inspector's employer, as specified, has a financial interest.

This bill would, as part of the definition of home inspection for the transfer of real property, specify that an appropriate inspection of real property with a swimming pool or spa would include noninvasive physical examination of the pool or spa and dwelling for the purpose of identifying which, if any, of the 7 specified drowning prevention safety features the pool or spa is equipped. The bill would also require that the information be included in the home inspection report, as specified.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. This act shall be known, and may be cited, as the Pool Safety Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) Swimming pools provide children and their families with a wonderful opportunity for recreation, exercise, and fun. Keeping children safe during this activity is supported by parents and guardians, safety advocates, health providers, insurance companies, and the swimming pool industry.

(b) According to both the federal Centers for Disease Control and Prevention's National Center for Injury Prevention and Control and the State Department of Public Health's EpiCenter data, drowning is the second leading cause of death for California children one to four years of age, inclusive. EpiCenter data shows that between the years 2010 and 2014 more than 160 children one to four years of age, inclusive, suffered fatal drownings, with a majority of the incidents involving residential pools, and between the years 2010 and 2015 more than 740 children one to four years of age, inclusive, were hospitalized after suffering a near-drowning incident, with the leading cause of hospitalization being brain injury due to lack of oxygen, also known as asphyxiation.

(c) Additional children suffer near-drowning incidents and survive, but many of those children suffer irreversible brain injuries, which can lead to lifelong learning deficiencies that impact not only the affected child and his or her family, but also the resources and moneys available to California's health care system, regional centers, and special education school programs. The State Department of Developmental Services reported that as of December 2016 the agency was providing care for more than 755 near-drowning victims with severe brain damage resulting from the near drowning.

(d) Close parental supervision of children with access to swimming pools is essential to providing pool safety for children. Barriers, such as those required pursuant to Section 115922 of the Health and Safety Code, can help to deter young children from gaining unsupervised access to pools. Swimming lessons are encouraged and can help children understand the importance of water safety.

(e) All water sports activities come with risk. Knowing the risks and having drowning prevention strategies in place before and during water sports activities reduce drowning incidents, and the installation of a residential pool barrier is a leading strategy to further California's goal of dramatically reducing unintentional injury.

SEC. 3. Section 7195 of the Business and Professions Code is amended to read:

7195. For purposes of this chapter, the following definitions apply:

(a) (1) “Home inspection” is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures, and components. “Home inspection” includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.

(2) In connection with the transfer, as defined in subdivision (e), of real property with a swimming pool or spa, an appropriate inspection shall include a noninvasive physical examination of the pool or spa and dwelling for the purpose of identifying which, if any, of the seven drowning prevention safety features listed in subdivision (a) of Section 115922 of the Health and Safety Code the pool or spa is equipped.

(3) “Home inspection,” if requested by the client, may include an inspection of energy efficiency. Energy efficiency items to be inspected may include the following:

(A) A noninvasive inspection of insulation R-values in attics, roofs, walls, floors, and ducts.

(B) The number of window glass panes and frame types.

(C) The heating and cooling equipment and water heating systems.

(D) The age and fuel type of major appliances.

(E) The exhaust and cooling fans.

(F) The type of thermostat and other systems.

(G) The general integrity and potential leakage areas of walls, window areas, doors, and duct systems.

(H) The solar control efficiency of existing windows.

(b) A “material defect” is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.

(c) A “home inspection report” is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons. In a dwelling with a pool or spa, the report shall identify which, if any, of the seven drowning prevention safety features listed in subdivision (a) of Section 115922 of the Health and Safety Code the pool or spa is equipped with and shall specifically state if the pool or spa has fewer than two of the listed drowning prevention safety features.

(d) A “home inspector” is any individual who performs a home inspection.

(e) “Transfer” is a transfer by sale, exchange, installment land sales contract, as defined in Section 2985 of the Civil Code, lease with an option

to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

SEC. 4. Section 115922 of the Health and Safety Code is amended to read:

115922. (a) Except as provided in Section 115925, 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. 5. Section 115925 of the Health and Safety Code is amended to read:

115925. The requirements of this article do not apply to any of the following:

- (a) Public swimming pools.
- (b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing and Materials (ASTM F1346).
- (c) An apartment complex, or any residential setting other than a single-family home.

SEC. 6. If the Commission on State Mandates determines that this act contains 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.