

HOUSE BILL NO. HB0177

Public Pool and Spa Health and Safety Act.

Sponsored by: Representative(s) Meuli, Baker and McMurtrey and Senator(s) Scott

A BILL

for

1 AN ACT relating to public health and safety; providing for
2 the inspection and safety of public pools and spas;
3 providing definitions; authorizing rulemaking authority for
4 the department of agriculture; creating licensure authority
5 for the department of agriculture; repealing conflicting
6 provisions and conforming related provisions; providing for
7 fees and penalties; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 35-28-101 through 35-28-111 are
12 created to read:

13

14 CHAPTER 28

15 PUBLIC POOL AND SPA HEALTH AND SAFETY

16

1 **35-28-101. Definitions.**

2

3 (a) As used in this act:

4

5 (i) "Bathhouse" means a structure that contains
6 dressing rooms, showers and toilet facilities for use with
7 an adjacent public pool;

8

9 (ii) "Department" means the Wyoming department
10 of agriculture;

11

12 (iii) "Director" means the director of the
13 Wyoming department of agriculture or his duly authorized
14 representative;

15

16 (iv) "Local health department" means a health
17 department established by a county, municipality or
18 district pursuant to W.S. 35-1-301 et seq.;

19

20 (v) "Person" means municipalities, recreation
21 districts, counties, state agencies, individuals,
22 corporations, partnerships, enterprises or associations;

23

1 (vi) "Pool" means an artificial structure
2 containing water used for swimming, bathing, diving,
3 surfing, wading or a similar use and operated by an owner,
4 lessee, operator, licensee or concessionaire regardless of
5 whether a fee is charged for use;

6

7 (vii) "Public pool" means a pool that is open to
8 the public or a segment of the public;

9

10 (viii) "Regulatory authority" means the
11 authority which issued the license or adopted the rule or
12 regulation being enforced including the department of
13 agriculture or local health department;

14

15 (ix) "Spa" means a bathing facility including,
16 but not limited to, a hot tub or whirlpool designed for
17 recreational or therapeutic use and not designed to be
18 drained, cleaned and refilled for each use. Spas are
19 designed to provide a means of agitation, which may
20 include, but is not limited to, hydro jet circulation, hot
21 water, cold water, mineral baths, air induction systems or
22 any combination thereof;

23

1 (x) "Swimming pool" means a body of water, other
2 than a natural swimming area, maintained exclusively for
3 swimming, recreative bathing or wading, and includes
4 appurtenances used in connection with the swimming pool;

5

6 (xi) "This act" means W.S. 35-28-101 through
7 35-28-111.

8

9 **35-28-102. Establishment of a safety program.**

10

11 (a) The director shall establish and maintain a
12 public pool and spa health and safety program. The director
13 shall carry out provisions of the public pool and spa
14 health and safety program and shall be assisted by the
15 department of health. A local department of health, if
16 established according to law, may establish and maintain
17 its own local public pool and spa health and safety program
18 so long as the program meets the requirements of this act
19 and regulations adopted pursuant to this act. The director
20 or his designee shall:

21

22 (i) Gather health and safety information related
23 to public pools and spas and disseminate the information to
24 the public, public pool or spa industry and local

1 departments of health which have implemented a health and
2 safety program;

3

4 (ii) On a voluntary basis, provide health and
5 safety training for the pool and spa industry in this
6 state, and work with other state, local and federal
7 agencies to coordinate public health and safety educational
8 efforts;

9

10 (iii) Regulate the health and safety of public
11 pools and spas and adopt rules necessary to carry out the
12 provisions of this act. In any area which does not have a
13 local public health and safety program established pursuant
14 to law, the department shall issue licenses, conduct
15 inspections and hold hearings to enforce any legal
16 provision or rule adopted under this act;

17

18 (iv) Maintain a statewide database of public
19 pool and spa license and inspection results;

20

21 (v) Work with federal, state and local agencies
22 to coordinate public health and safety efforts and
23 activities related to public pools and spas and coordinate

1 with all other agencies to maintain consistency in
2 inspection and enforcement activities;

3

4 (vi) Establish health and safety priorities
5 related to public pools and spas for this state;

6

7 (vii) Provide laboratory support if needed for
8 the analysis of water samples used to support inspection
9 activities and to monitor health and safety;

10

11 (viii) Provide support for local health and
12 safety programs related to public pool and spa programs as
13 authorized by the legislature;

14

15 (ix) Take appropriate action against any person
16 holding a public pool and spa license for the purpose of
17 protecting the public health and preventing the
18 transmission of infectious disease.

19

20 (b) The director of the department of health or his
21 designee shall:

22

23 (i) Investigate all possible waterborne
24 illnesses and outbreaks and request assistance from the

1 department of agriculture and local health departments as
2 necessary;

3

4 (ii) Provide support for local health and safety
5 programs related to public pool and spa programs as
6 authorized by the legislature;

7

8 (iii) Provide laboratory support for water
9 inspection and accompanying monitoring activities for the
10 health and safety of a public swimming pool or spa.

11

12 (c) Duties of a local health department shall
13 include:

14

15 (i) Issuing licenses, conducting inspections,
16 holding hearings and taking enforcement actions as
17 necessary to carry out the provisions of the health and
18 safety program related to public pools and spas;

19

20 (ii) Coordinating activities with the department
21 of agriculture in order to provide for statewide
22 consistency; and

23

1 (iii) Reporting to the department of health any
2 waterborne outbreak of illness and assisting the department
3 of health in any outbreak investigations if requested.

4
5 (d) A local jurisdiction may provide laboratory
6 support for water inspection and accompanying monitoring
7 activities for the health and safety of a public swimming
8 pool or spa.

9

10 **35-28-103. Prohibited acts.**

11

12 No person shall violate this act or any regulation adopted
13 in accordance with the provisions of this act.

14

15 **35-28-104. Cease operations order; injunctive**
16 **proceedings.**

17

18 (a) If the director of the department of agriculture
19 or the director of the department of health has probable
20 cause to believe that an imminent hazard to the public
21 exists from a violation of this act, he may order any
22 person to immediately cease the practice believed to be a
23 violation of this act and shall provide the person an
24 opportunity for hearing pursuant to the Wyoming

1 Administrative Procedure Act within ten (10) days after
2 issuing the order.

3

4 (b) In addition to any other remedies, the director
5 may apply to the district court for injunctive relief from
6 any person who violates this act.

7

8 **35-28-105. Penalties.**

9

10 Any person who knowingly and intentionally violates any
11 provision of this act or regulation adopted pursuant to
12 this act is guilty of a misdemeanor punishable by
13 imprisonment for not more than six (6) months, a fine of
14 not more than seven hundred fifty dollars (\$750.00), or
15 both.

16

17 **35-28-106. Regulations.**

18

19 (a) The director may adopt regulations necessary for
20 the efficient enforcement of this act.

21

22 (b) The director may adopt regulations necessary to
23 ensure that appropriate sanitary conditions, public safety

1 and water quality standards are met by any person engaged
2 in operating a public pool or spa.

3

4 **35-28-107. Inspections, examinations.**

5

6 (a) For purposes of enforcement of this act, the
7 director may, upon presenting appropriate credentials to
8 the owner, operator or agent in charge:

9

10 (i) Enter at a reasonable time any public pool
11 or spa; and

12

13 (ii) Inspect at any reasonable time and within
14 reasonable limits and in a reasonable manner any public
15 pool or spa and all pertinent equipment, finished and
16 unfinished materials and obtain samples necessary for the
17 enforcement of this act. The frequency of inspections shall
18 be based on the relative risk to public health and safety,
19 with no such facility receiving less than one (1)
20 inspection per year.

21

22 (b) Upon completion of any inspection under this
23 section but before leaving the premises, the director shall
24 give to the owner, operator or agent in charge a report in

1 writing setting forth any conditions or practices observed
2 by him which in his judgment indicate that any public pool
3 or spa:

4
5 (i) Is not being maintained in whole or in part
6 in a clean and sanitary condition, in good repair and free
7 of safety hazards;

8
9 (ii) Through testing, contains water which does
10 not comply with the requirements set forth in the
11 regulations;

12
13 (iii) Is failing to meet generally accepted
14 health practices for pool and spa operation in compliance
15 with the laws and rules pertaining to public pools and
16 spas;

17
18 (iv) Is failing to keep and maintain records
19 pertaining to the operation and maintenance of the public
20 pool or spa as required by the regulations.

21

22 **35-28-108. Publication of reports.**

23

1 The director may also cause to be published from time to
2 time reports summarizing all judgments, decrees and court
3 orders which have been rendered under this act, including
4 the nature of the charges.

5

6 **35-28-109. License required.**

7

8 (a) Any person operating a public pool or spa shall
9 obtain a license from the department of agriculture or a
10 local health department and shall be thoroughly
11 knowledgeable on good practices of swimming pool and spa
12 operation and with the laws and rules pertaining to public
13 swimming pools, spas and similar installations. The license
14 is not transferable, shall be renewed on an annual basis
15 and shall be prominently displayed in the facility. No
16 public pool or spa shall operate without a valid license.

17

18 (b) Written application for a new license shall be
19 made on a form approved by the department of agriculture
20 and provided by the department of agriculture or the local
21 health department and shall be signed by the applicant. An
22 initial license fee of one hundred dollars (\$100.00) shall
23 accompany each application. All licenses shall expire June
24 30 of each year unless suspended, revoked or renewed.

1 Licenses shall be renewed each year upon application to the
2 department accompanied by a fee of fifty dollars (\$50.00).
3 Any public pool or spa which has a license on the effective
4 date of this section shall pay a fee of fifty dollars
5 (\$50.00) for the following year and shall not be liable to
6 pay the initial license fee of one hundred dollars
7 (\$100.00).

8

9 (c) Fees collected under this section shall be
10 deposited in a special account within the department of
11 agriculture's consumer health services food and license
12 account and distributed monthly as follows:

13

14 (i) In any county, city or district without a
15 local health department established pursuant to W.S.
16 35-1-301 et seq., the department of agriculture shall
17 receive ninety percent (90%) of the fee collected and the
18 department of health shall receive ten percent (10%). The
19 revenues received by the department of agriculture under
20 this paragraph shall be used to defray the cost associated
21 with the public health and safety program related to public
22 pools and spas;

23

1 (ii) In any county, city or district with a
2 local health department established pursuant to W.S.
3 35-1-301 et seq., the local health department shall receive
4 eighty-five percent (85%) of the amount of the fee
5 collected, the department of agriculture shall receive ten
6 percent (10%) and the department of health shall receive
7 five percent (5%). The revenues received by the department
8 of agriculture under this paragraph shall be used to defray
9 the cost associated with the public health and safety
10 program related to public pools and spas.

11

12 (d) Before approving an application, the department
13 of agriculture or the local health department shall
14 determine that the facility is in compliance with this act
15 and any regulations adopted pursuant to this act.

16

17 **35-28-110. Summary suspension of a license.**

18

19 (a) A regulatory authority may summarily suspend a
20 license to operate a public pool or spa if it determines
21 through inspection, water quality testing, records or other
22 authorized means, or after consultation with the state
23 health officer, that an imminent health hazard exists
24 including, but not limited to, fire, flood, extended

1 interruption of electrical or water service, sewage backup
2 or waterborne illness or disease.

3

4 (b) The regulatory authority may summarily suspend a
5 license by providing written notice of the summary
6 suspension to the license holder or the person in charge
7 without prior warning, notice of a hearing or a hearing.

8

9 (c) The regulatory authority shall conduct an
10 inspection of the facility for which the license was
11 summarily suspended within forty-eight (48) hours after
12 receiving notice from the license holder stating that the
13 conditions cited in the summary suspension order no longer
14 exist.

15

16 (d) A summary suspension shall remain in effect until
17 the conditions cited in the notice of suspension no longer
18 exist and their elimination has been confirmed by the
19 regulatory authority through reinspection and other means
20 as appropriate. A suspended license shall be reinstated
21 immediately if the regulatory authority determines that the
22 imminent health hazard no longer exists. A notice of
23 reinstatement shall be provided to the license holder or
24 person in charge of the facility.

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35-28-111. License revocation.

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(a) A regulatory authority may initiate revocation proceedings for a license by serving a complaint signed by the director or the director of a local department of health. The application shall be accompanied by an affidavit of the director or director of the local department of health stating:

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13

(i) The condition for the summary suspension has not been corrected;

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16

(ii) There is a history of noncompliance with this act or the regulations adopted under this act; or

17

18

19

(iii) There was a refusal to grant access to the regulatory authority.

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24

(b) If requested, the regulatory authority shall provide notice and hold a hearing on any revocation proceeding in accordance with the provisions of the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq.

1 (c) If, upon completion of the hearing and
2 consideration of the record, the department of agriculture
3 or local department of health finds that the conditions
4 present at the facility pose an imminent health hazard,
5 there is a history of noncompliance with this act or the
6 regulations adopted under this act or there was a refusal
7 to grant access to the regulatory authority, the regulatory
8 authority shall issue an order of license revocation which
9 shall include findings of fact and conclusions of law, and
10 findings of actions necessary to cure the causes leading to
11 the revocation.

12

13 (d) The decision of the regulatory authority may be
14 appealed to the district court pursuant to the Wyoming
15 Administrative Procedure Act, W.S. 16-3-101 et seq.

16

17 **Section 2.** W.S. 35-1-240(a)(xv), 36-8-304, 36-8-308
18 and 36-8-315 are amended to read:

19

20 **35-1-240. Powers and duties.**

21

22 (a) The department of health, through the state
23 health officer, or under his direction and supervision,

1 through the other employees of the department, shall have
2 and exercise the following powers and duties:

3

4 (xv) To enforce ~~such~~ current sanitary standards,
5 ~~as are~~ or those that may be established by law, for the
6 operation and maintenance of lodging houses, hotels, public
7 conveyances and stations, schools, factories, workshops,
8 industrial and labor camps, recreational resorts and camps,
9 ~~swimming pools, public baths~~ and other buildings, centers
10 and places used for public gatherings;

11

12 **36-8-304. Public baths and public campgrounds.**

13

14 The department of state parks and cultural resources shall
15 retain one-fourth (1/4) of the water in the main or largest
16 principal spring on the state land on the eastern bank of
17 the Big Horn River with sufficient quantity of the land
18 adjacent thereto, upon which suitable bathhouses may be
19 constructed, which shall be open, with preference of use
20 given free to persons who are indigent and suffering from
21 ailments for which bathing in the waters of the Big Horn
22 Hot Springs will afford relief. The department may make
23 necessary rules and regulations governing free baths, the
24 manner and time of bathing, and may require medical

1 examination of applicants for baths. The bathhouse shall
2 remain open not less than ten (10) hours a day each weekday
3 and not less than six (6) hours on Sundays and holidays.
4 The rules shall meet the minimum requirements of rules
5 adopted by the department of agriculture governing public
6 pools and spas. The department, in consultation with the
7 commission, may set apart a suitable location and portion
8 of the lands for public camping purposes but may contract
9 for operation of any campgrounds by competitive sealed bid.
10 Should the department, in consultation with the commission,
11 operate any campground within Hot Springs State Park, the
12 charges per night shall not be less than one-half (1/2) of
13 the average charges imposed by private campground operators
14 within a five (5) mile radius of the Hot Springs State
15 Park. The balance of the water and lands may be leased by
16 the department, in consultation with the commission, for a
17 term not less than five (5) years nor longer than
18 ninety-nine (99) years. The length of the term of each
19 individual lease shall be determined by the department, in
20 consultation with the commission, in accordance with the
21 value of the improvements proposed and actually placed upon
22 the leasehold. The department may by rule provide for
23 special use permits for limited purposes. The department
24 may make rules and regulations with respect to the erection

1 of buildings and improvements upon the individual
2 leaseholds and may prescribe the plans and specifications
3 of, and the materials to be used in the buildings to be
4 erected. The department, in consultation with the
5 commission, in any lease may provide for such plans and
6 buildings and such use thereof as will best carry out the
7 purposes of this chapter in retaining the lands and waters
8 thereon for the treatment and cure of diseases and the
9 pleasure of the general public. The department, in
10 consultation with the commission, may conduct through pipes
11 or otherwise any portion of the waters of the hot springs
12 reserved for free use under this section and to provide
13 baths and bathhouses for the use of the water at such
14 rental or rates as it prescribes.

15

16 **36-8-308. Inspection for health purposes.**

17

18 The department, in consultation with the commission, may
19 call upon the state department of health to inspect,
20 examine and report fully upon the condition of any and all
21 hotels, ~~bathhouses,~~ sanitariums and buildings, and all
22 places and localities within the limits of the Big Horn Hot
23 Springs state park and to enforce the health laws of the
24 state and the applicable rules and regulations of the

1 department. The department may call upon the state
2 department of agriculture to inspect, examine and report
3 fully upon the condition of any and all bathhouses within
4 the limits of the Big Horn Hot Springs state park and to
5 enforce the health laws of the state and the applicable
6 rules and regulations.

7

8 **36-8-315. Penalty for public health violations.**

9

10 Any person who maintains a filthy, unwholesome or offensive
11 house, hotel, bathhouse, sanitarium, dwelling, stable,
12 privy or privy vault, drainpipe or sewer, which is a menace
13 to the public health, or who fails to comply with any
14 order, rule, direction or regulation of the department of
15 state parks and cultural resources, the state department of
16 agriculture or the state department of health is guilty of
17 a misdemeanor, and upon conviction shall be fined in any
18 sum not exceeding ~~one hundred dollars (\$100.00)~~ seven
19 hundred fifty dollars (\$750.00) or imprisoned in the county
20 jail for not more than six (6) months, or both.

21

22 **Section 3.** This act is effective July 1, 2003.

23

24

(END)