

HOUSE BILL NO. HB0177

Public Pool and Spa Health and Safety Act.

Sponsored by: Representative(s) Meuli, Baker, McMurtrey
and Osborn and Senator(s) Massie and 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) "Imminent health hazard" means a
17 significant threat or danger to health when there is
18 evidence sufficient to show that a product, practice,
19 circumstance or event creates a situation that requires
20 immediate correction or cessation of operation to prevent
21 injury based on:

22

23 (A) The number of potential injuries; and

24

1 (B) The nature, severity and duration of
2 the anticipated injury.

3

4 (v) "Local health department" means a health
5 department established by a county, municipality or
6 district pursuant to W.S. 35-1-301 et seq.;

7

8 (vi) "Person" means municipalities, recreation
9 districts, counties, state agencies, individuals,
10 corporations, partnerships, enterprises or associations;

11

12 (vii) "Pool" means an artificial structure
13 containing water used for swimming, bathing, diving,
14 surfing, wading or a similar use and operated by an owner,
15 lessee, operator, licensee or concessionaire regardless of
16 whether a fee is charged for use;

17

18 (viii) "Public pool" means a pool that is open
19 to the public or a segment of the public;

20

21 (ix) "Regulatory authority" means the authority
22 which issued the license or adopted the rule or regulation
23 being enforced including the department of agriculture or
24 local health department;

1

2 (x) "Spa" means a bathing facility including,
3 but not limited to, a hot tub or whirlpool designed for
4 recreational or therapeutic use and not designed to be
5 drained, cleaned and refilled for each use. Spas are
6 designed to provide a means of agitation, which may
7 include, but is not limited to, hydro jet circulation, hot
8 water, cold water, mineral baths, air induction systems or
9 any combination thereof;

10

11 (xi) "Swimming pool" means a body of water,
12 other than a natural swimming area, maintained exclusively
13 for swimming, recreative bathing or wading, and includes
14 appurtenances used in connection with the swimming pool;

15

16 (xii) "Waterborne disease outbreak" means the
17 occurrence of two (2) or more cases of a similar illness
18 resulting from the ingestion of water from a common water
19 source;

20

21 (xiii) "Waterborne illnesses" means illnesses
22 caused by microorganisms, including, but not limited to,
23 cryptosporidium, giardia, pseudomonas, E. coli 0157:H7 and

1 shigella and spread by accidentally swallowing water that
2 has been contaminated with fecal matter;

3

4 (xiv) "This act" means W.S. 35-28-101 through
5 35-28-111.

6

7 **35-28-102. Establishment of a safety program.**

8

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

19

20 (i) Gather health and safety information related
21 to public pools and spas and disseminate the information to
22 the public, public pool or spa industry and local
23 departments of health which have implemented a health and
24 safety program;

1

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

7

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

15

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

18

19 (v) Work with federal, state and local agencies
20 to coordinate public health and safety efforts and
21 activities related to public pools and spas and coordinate
22 with all other agencies to maintain consistency in
23 inspection and enforcement activities;

24

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

3

4 (vii) Provide laboratory support if needed for
5 the analysis of water samples used to support inspection
6 activities and to monitor health and safety;

7

8 (viii) Provide support for local health and
9 safety programs related to public pool and spa programs as
10 authorized by the legislature;

11

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

16

17 (b) The director of the department of health or his
18 designee shall:

19

20 (i) Investigate all possible waterborne
21 illnesses and outbreaks and request assistance from the
22 department of agriculture and local health departments as
23 necessary;

24

1 (ii) Provide support for local health and safety
2 programs related to public pool and spa programs as
3 authorized by the legislature;

4

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

8

9 (c) Duties of a local health department shall
10 include:

11

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

16

17 (ii) Coordinating activities with the department
18 of agriculture in order to provide for statewide
19 consistency; and

20

21 (iii) Reporting to the department of health any
22 waterborne outbreak of illness and assisting the department
23 of health in any outbreak investigations if requested.

24

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

5

6 **35-28-103. Prohibited acts.**

7

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

10

11 **35-28-104. Cease operations order; injunctive**
12 **proceedings.**

13

14 (a) If the director of the department of agriculture
15 or the director of the department of health has probable
16 cause to believe that an imminent hazard to the public
17 exists from a violation of this act, he may order any
18 person to immediately cease the practice believed to be a
19 violation of this act and shall provide the person an
20 opportunity for hearing pursuant to the Wyoming
21 Administrative Procedure Act within ten (10) days after
22 issuing the order.

23

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

4

5 **35-28-105. Penalties.**

6

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

13

14 **35-28-106. Regulations.**

15

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

18

19 (b) The director may adopt regulations necessary to
20 ensure that appropriate sanitary conditions, public safety
21 and water quality standards are met by any person engaged
22 in operating a public pool or spa.

23

24 **35-28-107. Inspections, examinations.**

1

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

5

6 (i) Enter at a reasonable time any public pool
7 or spa; and

8

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

17

18 (b) Upon completion of any inspection under this
19 section but before leaving the premises, the director shall
20 give to the owner, operator or agent in charge a report in
21 writing setting forth any conditions or practices observed
22 by him which in his judgment indicate that any public pool
23 or spa:

24

1 (i) Is not being maintained in whole or in part
2 in a clean and sanitary condition, in good repair and free
3 of safety hazards;

4
5 (ii) Through testing, contains water which does
6 not comply with the requirements set forth in the
7 regulations;

8
9 (iii) Is failing to meet generally accepted
10 health practices for pool and spa operation in compliance
11 with the laws and rules pertaining to public pools and
12 spas;

13
14 (iv) Is failing to keep and maintain records
15 pertaining to the operation and maintenance of the public
16 pool or spa as required by the regulations.

17

18 **35-28-108. Publication of reports.**

19

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

24

1 **35-28-109. License required.**

2

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

12

13 (b) Written application for a new license shall be
14 made on a form approved by the department of agriculture
15 and provided by the department of agriculture or the local
16 health department and shall be signed by the applicant. An
17 initial license fee of one hundred dollars (\$100.00) shall
18 accompany each application. All licenses shall expire June
19 30 of each year unless suspended, revoked or renewed.
20 Licenses shall be renewed each year upon application to the
21 department accompanied by a fee of fifty dollars (\$50.00).
22 Any public pool or spa which has a license on the effective
23 date of this section shall pay a fee of fifty dollars
24 (\$50.00) for the following year and shall not be liable to

1 pay the initial license fee of one hundred dollars
2 (\$100.00).

3

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

8

9 (i) In any county, city or district without a
10 local health department established pursuant to W.S.
11 35-1-301 et seq., the department of agriculture shall
12 receive ninety percent (90%) of the fee collected and the
13 department of health shall receive ten percent (10%). The
14 revenues received by the department of agriculture under
15 this paragraph shall be used to defray the cost associated
16 with the public health and safety program related to public
17 pools and spas;

18

19 (ii) In any county, city or district with a
20 local health department established pursuant to W.S.
21 35-1-301 et seq., the local health department shall receive
22 eighty-five percent (85%) of the amount of the fee
23 collected, the department of agriculture shall receive ten
24 percent (10%) and the department of health shall receive

1 five percent (5%). The revenues received by the department
2 of agriculture under this paragraph shall be used to defray
3 the cost associated with the public health and safety
4 program related to public pools and spas.

5

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

10

11 **35-28-110. Summary suspension of a license.**

12

13 (a) A regulatory authority may summarily suspend a
14 license to operate a public pool or spa if it determines
15 through inspection, water quality testing, records or other
16 authorized means, or after consultation with the state
17 health officer, that an imminent health hazard exists
18 including, but not limited to, fire, flood, extended
19 interruption of electrical or water service, sewage backup
20 or waterborne illness or disease.

21

22 (b) The regulatory authority may summarily suspend a
23 license by providing written notice of the summary

1 suspension to the license holder or the person in charge
2 without prior warning, notice of a hearing or a hearing.

3

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

10

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

20

21 **35-28-111. License revocation.**

22

23 (a) A regulatory authority may initiate revocation
24 proceedings for a license by serving a complaint signed by

1 the director or the director of a local department of
2 health. The application shall be accompanied by an
3 affidavit of the director or director of the local
4 department of health stating:

5

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

8

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

11

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

14

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

19

20 (c) If, upon completion of the hearing and
21 consideration of the record, the department of agriculture
22 or local department of health finds that the conditions
23 present at the facility pose an imminent health hazard,
24 there is a history of noncompliance with this act or the

1 regulations adopted under this act or there was a refusal
2 to grant access to the regulatory authority, the regulatory
3 authority shall issue an order of license revocation which
4 shall include findings of fact and conclusions of law, and
5 findings of actions necessary to cure the causes leading to
6 the revocation.

7

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

11

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

14

15 **35-1-240. Powers and duties.**

16

17 (a) The department of health, through the state
18 health officer, or under his direction and supervision,
19 through the other employees of the department, shall have
20 and exercise the following powers and duties:

21

22 (xv) To enforce ~~such-current~~ sanitary standards,
23 ~~as-are~~ or those that may be established by law, for the
24 operation and maintenance of lodging houses, hotels, public

1 conveyances and stations, schools, factories, workshops,
2 industrial and labor camps, recreational resorts and camps,
3 ~~swimming pools, public baths~~ and other buildings, centers
4 and places used for public gatherings;

5

6 **36-8-304. Public baths and public campgrounds.**

7

8 The department of state parks and cultural resources shall
9 retain one-fourth (1/4) of the water in the main or largest
10 principal spring on the state land on the eastern bank of
11 the Big Horn River with sufficient quantity of the land
12 adjacent thereto, upon which suitable bathhouses may be
13 constructed, which shall be open, with preference of use
14 given free to persons who are indigent and suffering from
15 ailments for which bathing in the waters of the Big Horn
16 Hot Springs will afford relief. The department may make
17 necessary rules and regulations governing free baths, the
18 manner and time of bathing, and may require medical
19 examination of applicants for baths. The bathhouse shall
20 remain open not less than ten (10) hours a day each weekday
21 and not less than six (6) hours on Sundays and holidays.
22 The rules shall meet the minimum requirements of rules
23 adopted by the department of agriculture governing public
24 pools and spas. The department, in consultation with the

1 commission, may set apart a suitable location and portion
2 of the lands for public camping purposes but may contract
3 for operation of any campgrounds by competitive sealed bid.
4 Should the department, in consultation with the commission,
5 operate any campground within Hot Springs State Park, the
6 charges per night shall not be less than one-half (1/2) of
7 the average charges imposed by private campground operators
8 within a five (5) mile radius of the Hot Springs State
9 Park. The balance of the water and lands may be leased by
10 the department, in consultation with the commission, for a
11 term not less than five (5) years nor longer than ninety-
12 nine (99) years. The length of the term of each individual
13 lease shall be determined by the department, in
14 consultation with the commission, in accordance with the
15 value of the improvements proposed and actually placed upon
16 the leasehold. The department may by rule provide for
17 special use permits for limited purposes. The department
18 may make rules and regulations with respect to the erection
19 of buildings and improvements upon the individual
20 leaseholds and may prescribe the plans and specifications
21 of, and the materials to be used in the buildings to be
22 erected. The department, in consultation with the
23 commission, in any lease may provide for such plans and
24 buildings and such use thereof as will best carry out the

1 purposes of this chapter in retaining the lands and waters
2 thereon for the treatment and cure of diseases and the
3 pleasure of the general public. The department, in
4 consultation with the commission, may conduct through pipes
5 or otherwise any portion of the waters of the hot springs
6 reserved for free use under this section and to provide
7 baths and bathhouses for the use of the water at such
8 rental or rates as it prescribes.

9

10 **36-8-308. Inspection for health purposes.**

11

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

1

2

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

3

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

15

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

17

18

(END)