

ENROLLED ACT NO. 57, HOUSE OF REPRESENTATIVES

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

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

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

Section 1. W.S. 35-28-101 through 35-28-110 are created to read:

CHAPTER 28
PUBLIC POOL AND SPA HEALTH AND SAFETY

35-28-101. Definitions.

(a) As used in this act:

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

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

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

(iv) "Imminent health hazard" means a significant threat or danger to health when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires

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immediate correction or cessation of operation to prevent injury based on:

(A) The number of potential injuries; and

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

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

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

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

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

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

(x) "Spa" means a bathing facility including, but not limited to, a hot tub or whirlpool designed for recreational or therapeutic use and not designed to be drained, cleaned and refilled for each use. Spas are designed to provide a means of agitation, which may include, but is not limited to, hydro jet circulation, hot

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water, cold water, mineral baths, air induction systems or any combination thereof;

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

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

(xiii) "Waterborne illnesses" means illnesses caused by microorganisms, including, but not limited to, cryptosporidium, giardia, pseudomonas, E. coli 0157:H7 and shigella and spread by accidentally swallowing water that has been contaminated with fecal matter;

(xiv) "This act" means W.S. 35-28-101 through 35-28-110.

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

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

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

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

(iii) Regulate the health and safety of public pools and spas. In any area which does not have a local public health and safety program established pursuant to law, the department shall issue licenses, conduct inspections and hold hearings to enforce any legal provision or rule adopted under this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35-28-103. Prohibited acts.

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

35-28-104. Cease operations order; injunctive proceedings.

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

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

35-28-105. Penalties.

Any person who knowingly and intentionally violates any provision of this act or regulation adopted pursuant to

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this act is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

35-28-106. Regulations.

The director may adopt regulations necessary for the efficient enforcement of this act and to ensure that appropriate sanitary conditions, public safety and water quality standards are met by any person engaged in operating a public pool or spa.

35-28-107. Inspections, examinations.

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

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

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

(b) Upon completion of any inspection under this section but before leaving the premises, the director shall give to the owner, operator or agent in charge a report in writing setting forth any conditions or practices observed

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by him which in his judgment indicate that any public pool or spa:

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

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

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

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

35-28-108. License required.

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

(b) Written application for a new license shall be made on a form approved by the department of agriculture and provided by the department of agriculture or the local health department and shall be signed by the applicant. An

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initial license fee of one hundred dollars (\$100.00) shall accompany each application. All licenses shall expire June 30 of each year unless suspended, revoked or renewed. Licenses shall be renewed each year upon application to the department accompanied by a fee of fifty dollars (\$50.00). Any public pool or spa which has a license on the effective date of this section shall pay a fee of fifty dollars (\$50.00) for the following year and shall not be liable to pay the initial license fee of one hundred dollars (\$100.00).

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

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

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

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

35-28-109. Summary suspension of a license.

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

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

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

(d) A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority through reinspection and other means as appropriate. A suspended license shall be reinstated immediately if the regulatory authority determines that the imminent health hazard no longer exists. A notice of

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reinstatement shall be provided to the license holder or person in charge of the facility.

35-28-110. License revocation.

(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:

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

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

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

(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.

(c) If, upon completion of the hearing and consideration of the record, the department of agriculture or local department of health finds that the conditions present at the facility pose an imminent health hazard, there is a history of noncompliance with this act or the regulations adopted under this act or there was a refusal to grant access to the regulatory authority, the regulatory authority shall issue an order of license revocation which shall include findings of fact and conclusions of law, and

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findings of actions necessary to cure the causes leading to the revocation.

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

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

35-1-240. Powers and duties.

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

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

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

The department of state parks and cultural resources shall retain one-fourth (1/4) of the water in the main or largest principal spring on the state land on the eastern bank of the Big Horn River with sufficient quantity of the land adjacent thereto, upon which suitable bathhouses may be constructed, which shall be open, with preference of use given free to persons who are indigent and suffering from ailments for which bathing in the waters of the Big Horn Hot Springs will afford relief. The department may make

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necessary rules and regulations governing free baths, the manner and time of bathing, and may require medical examination of applicants for baths. The bathhouse shall remain open not less than ten (10) hours a day each weekday and not less than six (6) hours on Sundays and holidays. The rules shall meet the minimum requirements of rules adopted by the department of agriculture governing public pools and spas. The department, in consultation with the commission, may set apart a suitable location and portion of the lands for public camping purposes but may contract for operation of any campgrounds by competitive sealed bid. Should the department, in consultation with the commission, operate any campground within Hot Springs State Park, the charges per night shall not be less than one-half (1/2) of the average charges imposed by private campground operators within a five (5) mile radius of the Hot Springs State Park. The balance of the water and lands may be leased by the department, in consultation with the commission, for a term not less than five (5) years nor longer than ninety-nine (99) years. The length of the term of each individual lease shall be determined by the department, in consultation with the commission, in accordance with the value of the improvements proposed and actually placed upon the leasehold. The department may by rule provide for special use permits for limited purposes. The department may make rules and regulations with respect to the erection of buildings and improvements upon the individual leaseholds and may prescribe the plans and specifications of, and the materials to be used in the buildings to be erected. The department, in consultation with the commission, in any lease may provide for such plans and buildings and such use thereof as will best carry out the purposes of this chapter in retaining the lands and waters thereon for the treatment and cure of diseases and the pleasure of the general public. The department, in consultation with the commission, may conduct through pipes

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or otherwise any portion of the waters of the hot springs reserved for free use under this section and to provide baths and bathhouses for the use of the water at such rental or rates as it prescribes.

36-8-308. Inspection for health purposes.

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

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

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk