

CHAPTER 328—S.F.No. 2833

An act relating to health; requiring public pools and spas to be equipped with anti-entrapment devices or systems; requiring a study; appropriating money; amending Minnesota Statutes 2006, sections 144.1222, subdivision 1a, by adding subdivisions; 157.16, as amended; 157.20, subdivisions 1, 2a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CITATION.**

Sections 2 to 4 may be cited as the "Abigail Taylor Pool Safety Act."

Sec. 2. Minnesota Statutes 2006, section 144.1222, subdivision 1a, is amended to read:

Subd. 1a. **Fees.** All plans and specifications for public ~~swimming~~ pool and spa construction, installation, or alteration or requests for a variance that are submitted to the commissioner according to Minnesota Rules, part 4717.3975, shall be accompanied by the appropriate fees. All public pool construction plans submitted for review after January 1, 2009, must be certified by a professional engineer registered in the state of Minnesota. If the commissioner determines, upon review of the plans, that inadequate fees were paid, the necessary additional fees shall be paid before plan approval. For purposes of determining fees, a project is defined as a proposal to construct or install a public pool, spa, special purpose pool, or wading pool and all associated water treatment equipment and drains, gutters, decks, water recreation features, spray pads, and those design and safety features that are within five feet of any pool or spa. The commissioner shall charge the following fees for plan review and inspection of public pools and spas and for requests for variance from the public pool and spa rules:

(1) each ~~spa~~ pool, ~~\$500~~ \$800;

(2) ~~projects valued at \$250,000 or less, a minimum of \$800 per pool plus~~ each spa pool, \$500;

~~(i) (3) for each slide, an additional \$400; and~~

~~(ii) for each spa pool, an additional \$500;~~

~~(3) (4) projects valued at \$250,000 or more, the greater of the sum of the fees in clauses (1), (2), and (3) or 0.5 percent of the documented estimated project cost to a maximum fee of \$10,000;~~

~~(4) (5) alterations to an existing pool without changing the size or configuration of the pool, \$400;~~

~~(5) (6) removal or replacement of pool disinfection equipment only, \$75; and~~

~~(6) (7) request for variance from the public pool and spa rules, \$500.~~

Sec. 3. Minnesota Statutes 2006, section 144.1222, is amended by adding a subdivision to read:

Subd. 1b. **Public pool construction.** For all public pools constructed after January 1, 2009, without a gravity outlet or drain, each pump must be connected to at least two suction outlets, connected in parallel with suction outlet covers that meet ASME/ANSI standards.

Sec. 4. Minnesota Statutes 2006, section 144.1222, is amended by adding a subdivision to read:

Subd. 1c. **Public pools; required equipment.** (a) Beginning January 1, 2009, all public pools with the deepest water being less than four feet deep must have:

(1) an unblockable suction outlet or drain;

(2) at least two suction outlets, connected in parallel with suction outlet covers that meet ASME/ANSI standards; or

(3) a gravity outlet or drain.

(b) Beginning January 1, 2011, all other existing public pools must have:

(1) an unblockable suction outlet or drain;

(2) at least two suction outlets, connected in parallel with suction outlet covers that meet ASME/ANSI standards;

(3) a gravity outlet or drain; or

(4) any other system determined by the commissioner to be equally effective as, or better than, the systems listed in this paragraph at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(c) By June 1, 2008, all drain covers and grates must be installed with screws that meet the manufacturer's specifications.

(d) By July 1, 2008, and annually thereafter, all public pool owners must certify to the commissioner on a form prescribed by the commissioner that:

(1) all outlets except for unblockable drains are equipped with covers that have been stamped by the manufacturer that they are in compliance with ASME/ANSI standards; and

(2) all covers and grates, including mounting rings, have been inspected to ensure that they have been properly installed and are not broken or loose.

Sec. 5. Minnesota Statutes 2006, section 144.1222, is amended by adding a subdivision to read:

Subd. 1d. **Safety inspections.** (a) The pool operator is required to conduct a physical inspection of the drain covers and grates on a daily basis. The record required under Minnesota Rules, part 4717.0750, must indicate that this inspection was completed every day the pool is open for use.

(b) If at any time an outlet cover or grate is missing, broken, or loose, the pool must be closed immediately. The pool must not be reopened until the missing or broken cover or grate has been replaced according to the manufacturer's specifications, or the loose cover or grate has been reattached to the manufacturer's specifications.

Sec. 6. Minnesota Statutes 2006, section 144.1222, is amended by adding a subdivision to read:

Subd. 4. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "ASME/ANSI standard" means a safety standard accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(c) "ASTM standard" means a safety standard issued by ASTM International, formerly known as the American Society for Testing and Materials.

(d) "Public pool" means any pool other than a private residential pool, that is: (1) open to the public generally, whether for a fee or free of charge; (2) open exclusively to members of an organization and their guests; (3) open to residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area; (4) open to patrons of a hotel or lodging or other public accommodation facility; or (5) operated by a person in a park, school, licensed child care facility, group home, motel, camp, resort, club, condominium, manufactured home park, or political subdivision with the exception of swimming pools at family day care homes licensed under section 245A.14, subdivision 11, paragraph (a).

(e) "Unblockable suction outlet or drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard and meets ASME/ANSI standards.

Sec. 7. Minnesota Statutes 2006, section 144.1222, is amended by adding a subdivision to read:

Subd. 5. **Swimming pond exemption.** (a) A public swimming pond in existence before January 1, 2008, is not a public pool for purposes of this section and section 157.16, and is exempt from the requirements for public swimming pools under Minnesota Rules, chapter 4717.

(b) Notwithstanding paragraph (a), a public swimming pond must meet the requirements for public pools described in subdivisions 1c and 1d.

(c) For purposes of this subdivision, a "public swimming pond" means an artificial body of water contained within a lined, sand-bottom basin, intended for public swimming, relaxation, or recreational use that includes a water circulation system for maintaining water quality and does not include any portion of a naturally occurring lake or stream.

(d) This subdivision expires June 30, 2011.

Sec. 8. Minnesota Statutes 2006, section 157.16, as amended by Laws 2007, chapter 147, article 9, section 34, is amended to read:

157.16 LICENSES REQUIRED; FEES.

Subdivision 1. **License required annually.** A license is required annually for every person, firm, or corporation engaged in the business of conducting a food and beverage service establishment, hotel, motel, lodging establishment, public pool, or resort. Any person wishing to operate a place of business licensed in this section shall first make application, pay the required fee specified in this section, and receive approval for operation, including plan review approval. Seasonal and temporary food stands and

special event food stands are not required to submit plans. Nonprofit organizations operating a special event food stand with multiple locations at an annual one-day event shall be issued only one license. Application shall be made on forms provided by the commissioner and shall require the applicant to state the full name and address of the owner of the building, structure, or enclosure, the lessee and manager of the food and beverage service establishment, hotel, motel, lodging establishment, public pool, or resort; the name under which the business is to be conducted; and any other information as may be required by the commissioner to complete the application for license.

Subd. 2. **License renewal.** Initial and renewal licenses for all food and beverage service establishments, hotels, motels, lodging establishments, public pools, and resorts shall be issued for the calendar year for which application is made and shall expire on December 31 of such year. Any person who operates a place of business after the expiration date of a license or without having submitted an application and paid the fee shall be deemed to have violated the provisions of this chapter and shall be subject to enforcement action, as provided in the Health Enforcement Consolidation Act, sections 144.989 to 144.993. In addition, a penalty of \$50 shall be added to the total of the license fee for any food and beverage service establishment operating without a license as a mobile food unit, a seasonal temporary or seasonal permanent food stand, or a special event food stand, and a penalty of \$100 shall be added to the total of the license fee for all restaurants, food carts, hotels, motels, lodging establishments, public pools, and resorts operating without a license for a period of up to 30 days. A late fee of \$300 shall be added to the license fee for establishments operating more than 30 days without a license.

Subd. 2a. **Food manager certification.** An applicant for certification or certification renewal as a food manager must submit to the commissioner a \$28 nonrefundable certification fee payable to the Department of Health.

Subd. 3. **Establishment fees; definitions.** (a) The following fees are required for food and beverage service establishments, hotels, motels, lodging establishments, public pools, and resorts licensed under this chapter. Food and beverage service establishments must pay the highest applicable fee under paragraph (d), clause (1), (2), (3), or (4), and establishments serving alcohol must pay the highest applicable fee under paragraph (d), clause (6) or (7). The license fee for new operators previously licensed under this chapter for the same calendar year is one-half of the appropriate annual license fee, plus any penalty that may be required. The license fee for operators opening on or after October 1 is one-half of the appropriate annual license fee, plus any penalty that may be required.

(b) All food and beverage service establishments, except special event food stands, and all hotels, motels, lodging establishments, public pools, and resorts shall pay an annual base fee of \$150.

(c) A special event food stand shall pay a flat fee of \$40 annually. "Special event food stand" means a fee category where food is prepared or served in conjunction with celebrations, county fairs, or special events from a special event food stand as defined in section 157.15.

(d) In addition to the base fee in paragraph (b), each food and beverage service establishment, other than a special event food stand, and each hotel, motel, lodging establishment, public pool, and resort shall pay an additional annual fee for each fee category, additional food service, or required additional inspection specified in this paragraph:

(1) Limited food menu selection, \$50. "Limited food menu selection" means a fee category that provides one or more of the following:

- (i) prepackaged food that receives heat treatment and is served in the package;
- (ii) frozen pizza that is heated and served;
- (iii) a continental breakfast such as rolls, coffee, juice, milk, and cold cereal;
- (iv) soft drinks, coffee, or nonalcoholic beverages; or
- (v) cleaning for eating, drinking, or cooking utensils, when the only food served is prepared off site.

(2) Small establishment, including boarding establishments, \$100. "Small establishment" means a fee category that has no salad bar and meets one or more of the following:

- (i) possesses food service equipment that consists of no more than a deep fat fryer, a grill, two hot holding containers, and one or more microwave ovens;
- (ii) serves dipped ice cream or soft serve frozen desserts;
- (iii) serves breakfast in an owner-occupied bed and breakfast establishment;
- (iv) is a boarding establishment; or
- (v) meets the equipment criteria in clause (3), item (i) or (ii), and has a maximum patron seating capacity of not more than 50.

(3) Medium establishment, \$260. "Medium establishment" means a fee category that meets one or more of the following:

- (i) possesses food service equipment that includes a range, oven, steam table, salad bar, or salad preparation area;
- (ii) possesses food service equipment that includes more than one deep fat fryer, one grill, or two hot holding containers; or
- (iii) is an establishment where food is prepared at one location and served at one or more separate locations.

Establishments meeting criteria in clause (2), item (v), are not included in this fee category.

(4) Large establishment, \$460. "Large establishment" means either:

- (i) a fee category that (A) meets the criteria in clause (3), items (i) or (ii), for a medium establishment, (B) seats more than 175 people, and (C) offers the full menu selection an average of five or more days a week during the weeks of operation; or
- (ii) a fee category that (A) meets the criteria in clause (3), item (iii), for a medium establishment, and (B) prepares and serves 500 or more meals per day.

(5) Other food and beverage service, including food carts, mobile food units, seasonal temporary food stands, and seasonal permanent food stands, \$50.

(6) Beer or wine table service, \$50. "Beer or wine table service" means a fee category where the only alcoholic beverage service is beer or wine, served to customers seated at tables.

(7) Alcoholic beverage service, other than beer or wine table service, \$135.

"Alcohol beverage service, other than beer or wine table service" means a fee category where alcoholic mixed drinks are served or where beer or wine are served from a bar.

(8) Lodging per sleeping accommodation unit, \$8, including hotels, motels, lodging establishments, and resorts, up to a maximum of \$800. "Lodging per sleeping accommodation unit" means a fee category including the number of guest rooms, cottages, or other rental units of a hotel, motel, lodging establishment, or resort; or the number of beds in a dormitory.

(9) First public ~~swimming~~ pool, \$180; each additional public ~~swimming~~ pool, \$100. "Public ~~swimming~~ pool" means a fee category that has the meaning given in ~~Minnesota Rules, part 4717.0250, subpart 8~~ section 144.1222, subdivision 4.

(10) First spa, \$110; each additional spa, \$50. "Spa pool" means a fee category that has the meaning given in Minnesota Rules, part 4717.0250, subpart 9.

(11) Private sewer or water, \$50. "Individual private water" means a fee category with a water supply other than a community public water supply as defined in Minnesota Rules, chapter 4720. "Individual private sewer" means a fee category with an individual sewage treatment system which uses subsurface treatment and disposal.

(12) Additional food service, \$130. "Additional food service" means a location at a food service establishment, other than the primary food preparation and service area, used to prepare or serve food to the public.

(13) Additional inspection fee, \$300. "Additional inspection fee" means a fee to conduct the second inspection each year for elementary and secondary education facility school lunch programs when required by the Richard B. Russell National School Lunch Act.

(e) A fee of \$350 for review of the construction plans must accompany the initial license application for restaurants, hotels, motels, lodging establishments, or resorts with five or more sleeping units.

(f) When existing food and beverage service establishments, hotels, motels, lodging establishments, or resorts are extensively remodeled, a fee of \$250 must be submitted with the remodeling plans. A fee of \$250 must be submitted for new construction or remodeling for a restaurant with a limited food menu selection, a seasonal permanent food stand, a mobile food unit, or a food cart, or for a hotel, motel, resort, or lodging establishment addition of less than five sleeping units.

(g) Seasonal temporary food stands and special event food stands are not required to submit construction or remodeling plans for review.

Subd. 3a. **Statewide hospitality fee.** Every person, firm, or corporation that operates a licensed boarding establishment, food and beverage service establishment, seasonal temporary or permanent food stand, special event food stand, mobile food unit, food cart, resort, hotel, motel, or lodging establishment in Minnesota must submit to the commissioner a \$35 annual statewide hospitality fee for each licensed activity. The fee for establishments licensed by the Department of Health is required at the same time the licensure fee is due. For establishments licensed by local governments, the fee is due by July 1 of each year.

Subd. 4. **Posting requirements.** Every food and beverage service establishment, hotel, motel, lodging establishment, public pool, or resort must have the license posted in a conspicuous place at the establishment.

Sec. 9. Minnesota Statutes 2006, section 157.20, subdivision 1, is amended to read:

Subdivision 1. **Inspections.** It shall be the duty of the commissioner to inspect, or cause to be inspected, every public pool, food and beverage service establishment, hotel, motel, lodging establishment, or resort. For the purpose of conducting inspections, the commissioner shall have the right to enter and have access thereto at any time during the conduct of business.

Sec. 10. Minnesota Statutes 2006, section 157.20, subdivision 2a, is amended to read:

Subd. 2a. **Risk categories.** (a) **High-risk establishment.** "High-risk establishment" means a public pool, or any food and beverage service establishment, hotel, motel, lodging establishment, or resort that:

- (1) serves potentially hazardous foods that require extensive processing on the premises, including manual handling, cooling, reheating, or holding for service;
- (2) prepares foods several hours or days before service;
- (3) serves menu items that epidemiologic experience has demonstrated to be common vehicles of food-borne illness;
- (4) has a public swimming pool; or
- (5) draws its drinking water from a surface water supply.

(b) **Medium-risk establishment.** "Medium-risk establishment" means a food and beverage service establishment, hotel, motel, lodging establishment, or resort that:

- (1) serves potentially hazardous foods but with minimal holding between preparation and service; or
- (2) serves foods, such as pizza, that require extensive handling followed by heat treatment.

(c) **Low-risk establishment.** "Low-risk establishment" means a food and beverage service establishment, hotel, motel, lodging establishment, or resort that is not a high-risk or medium-risk establishment.

(d) **Risk exceptions.** Mobile food units, seasonal permanent and seasonal temporary food stands, food carts, and special event food stands are not inspected on an established schedule and therefore are not defined as high-risk, medium-risk, or low-risk establishments.

(e) **School inspection frequency.** Elementary and secondary school food service establishments must be inspected according to the assigned risk category or by the frequency required in the Richard B. Russell National School Lunch Act, whichever frequency is more restrictive.

Sec. 11. **STUDIES.**

Subdivision 1. **Report.** By January 15, 2009, the commissioner of health shall report to the chairs and ranking minority members of the legislative committees and

divisions having jurisdiction over the regulation of public pools and spas: the number of public pools and spas under license in the state of Minnesota, the type of ownership of public pools under license in the state, the type of drains at all licensed public pools and spas as reported by owners or licensees, and the number of pools and spas that required drain modification due to this act. This report shall include the estimated economic impact and costs of the installation of a second main drain and cover.

Subd. 2. **Stakeholder group.** The commissioner of health shall convene a group of stakeholders to address the exception for public swimming ponds, under Minnesota Statutes, section 144.1222, subdivision 5, and make recommendations to the legislature by December 15, 2010.

Sec. 12. **APPROPRIATION.**

\$210,000 is appropriated from the state government special revenue fund to the commissioner of health for the purposes of this act, to be available until June 30, 2009.

Sec. 13. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall replace the public pool definition in Minnesota Rules, part 4717.0250, subpart 8, with the following language: "Public pool" has the meaning given in Minnesota Statutes, section 144.1222, subdivision 4, paragraph (d).

Sec. 14. **EFFECTIVE DATE.**

Sections 1 to 11 are effective the day following final enactment. Sections 12 and 13 are effective July 1, 2008.

Presented to the governor May 13, 2008

Signed by the governor May 16, 2008, 4:12 p.m.