

## **BILL ANALYSIS**

C.S.H.B. 1676  
By: Goodwin  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

When six-year-old Cati Delapeña went on a swimming trip with her camp, her parents informed the organization that Cati could not swim and gave instructions to put her in a lifejacket. The camp did not follow these directions, and Cati drowned. In the wake of this tragedy, there have been calls to update Texas law to clarify responsibility for the safety of children participating in activities in or near a body of water while under the care of certain organizations. C.S.H.B. 1676 seeks to answer these calls by requiring organizations such as camps, schools, and child-care facilities to obtain a parent's or guardian's written affirmation of a child's ability to swim. The organizations would then be required to provide the children who cannot swim with proper safety equipment when these children are in or near a body of water. The bill provides for disciplinary action against an organization that violates these requirements.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 1676 amends the Health and Safety Code to require an organization, including a day camp, youth camp, school, preschool, kindergarten, nursery school, child-care facility, or any other facility providing child-care services licensed by the Health and Human Services Commission (HHSC) that takes a child in its care or under its supervision to a body of water or otherwise allows a child access to a body of water to do the following:

- require the child's parent or legal guardian to affirm in writing whether the child is able to swim or is at risk of injury or death when swimming or otherwise accessing a body of water; and
- if the organization does not own or operate the body of water, provide the owner or operator of the body of water a written or electronic disclosure that clearly identifies each child who is unable to swim or is at risk of injury or death when swimming or accessing a body of water.

The bill's provisions do not apply to a youth camp licensed under the Texas Youth Camp Safety and Health Act. The bill defines, among other terms, "body of water" and excludes from that definition a pool with a maximum water depth of not more than 18 inches.

C.S.H.B. 1676 requires an applicable organization, during the time each child who is unable to swim or is at risk of injury or death when swimming or accessing a body of water is present

within a fenced-in area around a body of water or within 100 feet of a body of water without a fenced-in area, to do the following:

- provide to the child a Type II or III, as applicable, U. S. Coast Guard approved personal flotation device; and
- ensure the child is wearing the appropriate personal flotation device and the device is properly fitted and fastened for the child.

The bill establishes an exception to the requirement to provide a flotation device if the child is actively participating in swim instruction and the organization ensures that each participant is closely supervised during such instruction.

C.S.H.B. 1676 subjects a licensed or otherwise state-regulated organization that violates the bill's provisions, or rules adopted under those provisions, to disciplinary action by any state regulatory agency with the power to take disciplinary action against that organization. The bill authorizes the executive commissioner of the HHSC to adopt rules necessary to implement the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1676 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following additions to the original:

- provisions excluding a wading pool with a maximum water depth of 18 inches from the bill's definition of "body of water";
- a provision excluding a youth camp with a certain license from the applicability of the bill's provisions;
- language making the bill's provisions applicable to certain child-care facilities and licensed facilities providing child-care services;
- language extending the requirement to ensure that an applicable child is wearing an appropriate flotation device to include any time the child is present within a specified distance of a body of water or within an applicable fenced-in area;
- an exception to the bill's requirements regarding flotation devices for children participating in closely supervised swim instruction; and
- an enforcement provision subjecting a violating organization to certain disciplinary action.

The substitute replaces a requirement in the original for an organization to determine whether a child is able to swim or is at risk when swimming with a requirement for the organization to require the child's parent or legal guardian to affirm in writing whether the child is able to swim or is at risk of injury or death when swimming or otherwise accessing a body of water.

The substitute includes a specification not in the original that the required personal flotation devices must be properly fastened for the child.