

**SUBJECT:** Establishing regulations for swim instructors and operators

**COMMITTEE:** Licensing & Administrative Procedures — committee substitute recommended

**VOTE:** 8 ayes — K King, Walle, Goldman, Harless, Hernandez, Herrero, Patterson, S. Thompson

2 nays — Schaefer, Shaheen

1 absent — T. King

**WITNESSES:** For — Jennifer Bennett, Parent Preventing Childhood Drowning; April Chang; Kuang-yu Chang; Tanya Hicks; Sondra Walker (*Registered, but did not testify*: Amber Hausenfluck, Camping Association for Mutual Progress)

Against — Andrew Neillie, Aqua-Tots Swim Schools; Tracy Laman, Houston Swim Club; Ellis Raymond, Jim Montgomery Swim; Annie Spilman, NFIB; James Spiers, Stop Drowning Now; Juan Borrayo, SwimJim Swim School Texas; Richard Beaubouef, Texas Pool and Spa Coalition; Chris Mccuiston, United States Swim School Association; Pam Stryker, US Swim School Association; J. Kevin Tucker (*Registered, but did not testify*: Tammy Schoen, Houston Swim Club; Jake Posey, International Franchise Association; Tracy Koleber, Nitro Swimming; Steve Koebele, Pool & Hot Tub Alliance)

On — (*Registered, but did not testify*: Tanya Oestrick, DFPS; Jessica Escobar, Texas Department of Licensing and Regulation)

**BACKGROUND:** Some have suggested that state licensing and regulation of swim instructors and their operators would help to ensure the safety and well-being of young children.

**DIGEST:** CSHB 1568 would add provisions regarding the licensing and regulation of child swim instruction.

**Definitions.** CSHB 1568 would define a "controlling person" as a partner, officer, director, managing employee, owner, or other person who acted as a controlling person through the exercise of influence over management, money or policy of a business.

A "serious incident" would mean a suspected or actual incident that occurred during and as a direct result of swim instruction and that threatened or impaired the health, safety, or well-being of a student. The term would include:

- abuse, neglect, exploitation, or death of a student;
- a critical injury of a student; and
- an illness of a student that required hospitalization.

An "operator" would mean a company, corporation, partnership, or limited liability corporation that employed two or more employees and provided or offered to provide swim instruction for compensation.

For the purposes of CSHB 1568, a "student" would mean a child younger than seven years old.

**Powers and duties.** The Texas Department of Licensing and Regulation (TDLR) would be required to administer and enforce the bill. The Texas Commission of Licensing and Regulation (TCLR) would be required to adopt rules as necessary to implement the bill, including rules prescribing operating standards, license qualifications and renewal requirements, and minimum safety and training requirements. Minimum safety requirements for operators would have to include requirements on instructor to student ratios, instructor training and certification, and available and operational automated external defibrillators. TCLR by rule would be required to set fees in reasonable amounts necessary to cover administration costs. An operator would be required to make a copy of any inspection report issued to the operator by TDLR in the preceding two years available to the public on request.

**License requirements.** A person would not be allowed to operate as a swim instruction operator unless the person held an operator's license under the bill. A person could submit an application for an operator's license to TDLR in the form and manner prescribed by rule. TDLR would be required to issue a license to an applicant who submitted a completed application and the required nonrefundable application fee to TDLR and satisfied licensing requirements.

Unless revoked or suspended, an operator's license would be valid for two years. To renew a license, a license holder would have to submit an application for renewal to TDLR in the form and manner prescribed by commission rule. TDLR would be required to renew the operator's license of a license holder who submitted a completed renewal application and the required renewal fee and complied with certain provisions and rules.

TDLR would be required to perform a criminal history record information check on each operator's license applicant and on any controlling person of the applicant's company, corporation, partnership, or limited liability corporation.

**Training requirements.** Each manager and instructor for an operator would be required to:

- be certified to teach swimming techniques to students after successfully completing training that complied with the swim instructor training standards established by a TDLR-approved entity; and
- hold certifications from a TDLR-approved, nationally recognized entity for cardiopulmonary resuscitation and automated external defibrillator use.

An operator would be required to provide basic training to all employees in basic water rescue techniques and the provision of first aid. An operator also would be required to maintain records of the required certifications and training in the manner prescribed by TDLR.

Before an operator could hire an instructor or any other individual who interacted with students, the operator would be required to perform a criminal history record information check on the individual. An operator could not hire an individual who would interact with students if the individual had been convicted of certain offenses involving a minor.

An operator would be required to report each serious incident involving a student who was under the operator's or their employee's supervision to TDLR. TCLR by rule would be required to prescribe the form and manner in which an operator would report a serious incident.

**Enforcement.** An operator's license applicant or holder could be subject to license application denial or disciplinary action, as applicable, if the individual or a controlling person of the individual's company, corporation, partnership, or limited liability corporation:

- violated the bill, a commission rule, or an order of TCLR or TDLR's executive director;
- obtained an operator's license by means of fraud, misrepresentation, or concealment of a material fact;
- sold, bartered, or offered to sell or barter an operator's license; or
- was convicted of or employed any individual who interacted with students and who had been convicted of certain offenses involving a minor.

A person who committed a violation would be subject to an administrative penalty or other statutory penalties and enforcement action. An administrative penalty could not exceed \$500 per day for each violation. Each day a violation continued would be a separate violation for the purposes of imposing a penalty.

**Applicability.** The bill would apply only to an operator who provided swim instruction to a group of three or more students at one time. The bill would not apply to swim instruction provided to students by a licensed youth camp, a licensed child-care facility, or a political subdivision.

The bill would take effect September 1, 2023, and could be cited as the Mitchell Chang Swim Safety Act.

**NOTES:**

According to the Legislative Budget Board, CSHB 1568 would have a positive impact of \$131,602 on general revenue related funds through fiscal 2024-25.