

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 223

Introduced by Nantkes, 46.

Read first time January 13, 2009

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to swimming pools; to amend sections 71-4301
2 and 71-4307, Reissue Revised Statutes of Nebraska, and
3 sections 71-4305 and 71-4306, Revised Statutes Cumulative
4 Supplement, 2008; to classify swimming pools; to provide
5 certified operator requirements; to harmonize provisions;
6 to provide an operative date; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-4301, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-4301 For purposes of sections 71-4301 to 71-4307,
4 ~~unless the context otherwise requires, swimming and sections 2 and~~
5 3 of this act:

6 (1) Certified operator means an individual who has
7 successfully completed either (a) a swimming pool operator training
8 clinic sponsored by the Department of Health and Human Services
9 or (b) the certified pool and spa operator course approved by the
10 National Swimming Pool Foundation, the Aquatic Facility Operator
11 course approved by the National Recreation and Park Association, or
12 an equivalent course provided by a nonprofit organization approved
13 by the department; and

14 (2) Swimming pool means any artificial basin of water
15 modified, improved, constructed, or installed solely for the
16 purpose of public swimming, wading, diving, recreation, or
17 instruction. Swimming pool includes, but is not limited to, a
18 pool serving a community, a subdivision, an apartment complex, a
19 condominium, a club, a camp, a school, an institution, a park, a
20 manufactured home park, a hotel, a motel, a recreational area, or a
21 water park. Swimming pool includes a spa, hot tub, or whirlpool or
22 similar device which ~~(1)~~ (a) is designed for recreational use and
23 not to be drained, cleaned, and refilled after each individual use
24 and ~~(2)~~ (b) may consist of elements, including, but not limited
25 to, hydrojet circulation, hot water, cold water, mineral baths,

1 air induction systems, or any combination thereof. Swimming pool
2 does not include an artificial lake, a pool at a private residence
3 intended only for the use of the owner and guests, or a pool
4 operated exclusively for medical treatment, physical therapy, water
5 rescue training, or training of divers.

6 Sec. 2. For purposes of sections 71-4301 to 71-4307,
7 this section, and section 3 of this act, swimming pools shall be
8 classified as follows:

9 (1) Class A pool means a pool operated by a governmental
10 agency or a pool intended for use for accredited competitive
11 aquatic events such as events sponsored by the Federation
12 Internationale de Natation, USA Swimming, USA Diving, the National
13 Collegiate Athletic Association, or the National Federation of
14 State High School Associations;

15 (2) Class B pool means a swimming pool operated at an
16 apartment, a condominium, a property owner association, a child
17 care facility, a health club, a lodging facility such as hotel and
18 motel, or any similar facility;

19 (3) Class C pool means a spa, such as a hot tub or
20 whirlpool designed for recreational use which is designed not to be
21 drained, cleaned, and refilled after each individual use. A spa may
22 include hydrojet circulation, hot water, cold water, mineral baths,
23 air induction systems, or any combination thereof; and

24 (4) Class D pool means a wading pool that is no more than
25 twenty-four inches deep that is primarily intended for use by young

1 children.

2 Sec. 3. The owner of a Class A or Class B pool shall
3 employ or contract for the services of a certified operator. If
4 the certified operator is a person described in subdivision (1)(a)
5 of section 71-4301, that certified operator shall be onsite at all
6 times when the swimming pool is open for use. If the certified
7 operator is a person described in subdivision (1)(b) of section
8 71-4301, that certified operator shall either be onsite or, if
9 another responsible person is onsite, be available by telephone or
10 electronic communications at all times when the swimming pool is
11 open for use. The certificate of the certified operator employed by
12 or under contract with an owner of a swimming pool shall be posted
13 conspicuously and maintained at the swimming pool or otherwise
14 available for inspection.

15 Sec. 4. Section 71-4305, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 71-4305 (1) The Department of Health and Human Services
18 shall make at least one inspection every year of each swimming
19 pool to determine that such swimming pool complies with section 3
20 of this act and the minimum sanitary and safety requirements of
21 section 71-4302.

22 (2) The owner and operator of any swimming pool or a
23 certified operator employed by or under contract with the owner
24 of any swimming pool shall submit such operation and analytical
25 records as may be requested at any time by the department to

1 determine the sanitary and safety condition of the swimming pool.

2 (3) The department shall adopt and promulgate rules and
3 regulations which classify swimming pools on the basis of criteria
4 deemed appropriate by the department. The department shall charge
5 engineering firms, swimming pool owners, and other appropriate
6 parties fees established by rules and regulations for the review
7 of plans and specifications of a swimming pool, the issuance of
8 a license or permit, the inspection of a swimming pool, and any
9 other services rendered at a rate which defrays no more than
10 the actual cost of the services provided. All fees shall be paid
11 as a condition of annual renewal of licensure or of continuance
12 of licensure. All fees collected under this subsection shall be
13 remitted to the State Treasurer for credit to the Health and Human
14 Services Cash Fund. The department shall not charge a municipal
15 corporation an inspection fee for an inspection of a swimming pool
16 owned by such municipal corporation.

17 (4) The department shall establish and collect fees for
18 certificates of competency for ~~swimming pool~~ certified operators as
19 provided in sections 38-151 to 38-157.

20 Sec. 5. Section 71-4306, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 71-4306 Whenever any duly authorized representative of
23 the Department of Health and Human Services shall find that a
24 swimming pool is being constructed, equipped, or operated in
25 violation of any of the provisions of sections 71-4301 to 71-4307

1 and sections 2 and 3 of this act, the department may grant such
2 time as in its opinion may reasonably be necessary for changing the
3 construction or providing for the proper operation of the swimming
4 pool to meet the provisions of sections 71-4301 to 71-4307 and
5 sections 2 and 3 of this act. If and when the duly authorized
6 representative of the department upon inspection and investigation
7 of a swimming pool considers that the conditions are such as to
8 warrant prompt closing of such swimming pool until the provisions
9 of sections 71-4301 to 71-4307 and sections 2 and 3 of this
10 act are complied with, he or she shall notify the owner ~~or~~
11 ~~operator~~ of the swimming pool or the certified operator employed
12 by or under contract with the owner of the swimming pool to
13 prohibit any person from using the swimming pool and upon such
14 notification to the sheriff and the county attorney of the county
15 in which such swimming pool is located, it shall be the duty of
16 such county attorney and sheriff to see that the notice of the
17 representative of the department shall be enforced. If and when
18 the owner or certified operator ~~of the pool~~ has, in the opinion of
19 the department, met the provisions of sections 71-4301 to 71-4307
20 and sections 2 and 3 of this act, the department may in writing
21 authorize the use again of such swimming pool.

22 Sec. 6. Section 71-4307, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-4307 Any owner ~~or operator~~ of a swimming pool or
25 certified operator employed by or under contract with the owner of

1 a swimming pool failing to comply with any of the provisions of
2 sections 71-4301 to 71-4307 and sections 2 and 3 of this act shall
3 be guilty of maintaining a public nuisance and it shall be the duty
4 of the county attorney of the county in which such swimming pool
5 is located to act as provided by law for the abatement of public
6 nuisances.

7 Sec. 7. This act becomes operative on March 10, 2010.

8 Sec. 8. Original sections 71-4301 and 71-4307, Reissue
9 Revised Statutes of Nebraska, and sections 71-4305 and 71-4306,
10 Revised Statutes Cumulative Supplement, 2008, are repealed.