A BILL TO BE ENTITLED
AN ACT TO REQUIRE OWNERS OF RESIDENTIAL SWIMMING POOLS TO ERECT PROTECTIVE BARRIERS TO PREVENT ACCIDENTAL DROWNINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"§ 75A-50. Short title.
This Article shall be known as the Swimming Pool Safety Act.

The following definitions apply in this Article:

(1) "ASTM" means the American Society for Testing Materials.

(2) "Barrier" means a fence, wall, building wall, or combination thereof which completely surrounds the swimming pool and obstructs access to the swimming pool.

(3) "Indoor swimming pool" means a swimming pool which is totally contained within a structure and surrounded on all four sides by walls of the structure.

(4) "Outdoor swimming pool" means any swimming pool which is not an indoor pool.

(5) "Portable hot tub or spa" means a nonpermanent structure intended for recreational bathing, in which all controls, water-heating and water-circulating equipment are an integral part of the product.

(6) "Residential" means that which is situated on the premises of a detached one- or two-family dwelling or a one-family townhouse not more than three stories in height.
"Swimming pool" means any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, and spas.

§ 75A-52. Safety requirements.

On and after the effective date of this Article, every residential swimming pool in this State shall have the following safety requirements:

(1) The pool must be entirely surrounded by a barrier that meets all of the following requirements:

a. The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two inches measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be four inches.

b. Openings in the barrier shall not allow passage of a four-inch-diameter sphere.

c. Solid barriers which do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

d. If the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed one and three-fourths inches in width. If there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed one and three-fourths inches in width.

e. If the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members shall not exceed four inches. If there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed one and three-fourths inches in width.

f. If the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than one and three-fourths inches.
If the barrier is a chain link fence, the maximum mesh size shall be a one and one-fourth-inch square unless the fence is provided with slats fastened at the top or the bottom which reduce the openings to not more than one and three-fourths inches.

(2) Any gate providing direct access to the pool must meet all of the following requirements:
   a. It shall comply with the requirements in subdivision (1) of this section.
   b. It shall be equipped to accommodate a locking device.
   c. If it is a pedestrian-access gate, it shall open outward away from the pool and shall be self-closing and self-latching.
   d. If it is other than a pedestrian-access gate, it shall have a self-latching device.

(3) Any release mechanism on a self-latching device must meet the following requirements:
   a. It must be placed no lower than 54 inches from the bottom of the gate; or
   b. If it is located less than 54 inches from the bottom of the gate, it shall be located on the pool side of the gate at least three inches below the top of the gate, and the gate and barrier shall have no opening greater than one-half inch within 18 of the release mechanism.

(4) If a wall of a dwelling serves as part of the barrier, one of the following conditions shall be met:
   a. The pool shall be equipped with a powered safety cover in compliance with ASTM ES 13-89; or
   b. All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen, if present, are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm system shall be equipped with a manual means, such as a touchpad or switch, to temporarily deactivate the alarm for a single opening. The deactivation shall last for not more than 15 seconds. The deactivation switch or switches shall be located at least 54 inches above the threshold of the door; or
   c. Other means of protection, such as self-closing doors with self-latching devices, approved by the North Carolina Building Code Council, shall be acceptable so long as the degree of protection afforded is not less than the protection afforded by sub-subdivision a. or b. of this subdivision.
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(5) Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps, then the ladder or steps shall be capable of being secured, locked, or removed to prevent access, or the ladder or steps shall be surrounded by a barrier which meets the requirements of subdivisions (1) and (2) of this section. When the ladder or steps are secured, locked, or removed, any opening created shall not allow the passage of a four-inch-diameter sphere.


Any person entering into an agreement to build a residential swimming pool, or sell, rent, or lease property on which is located a residential swimming pool shall give the buyer, lessee, or renter notice of the provisions of this Article.

"§ 75A-54. Penalties.

Any person who owns or leases property on which is located a residential swimming pool that fails to comply with this Article shall be guilty of a Class 3 misdemeanor, except that no penalty shall be imposed if the person corrects the nonconformity within 45 days after the date on which the citation was issued.

"§ 75A-55. Exceptions.

This Article does not apply to:

1. Any system of pumps, irrigation canals, or irrigation flood control or drainage works constructed or operated for the purpose of storing, delivering, distributing, or conveying water.

2. Any political subdivision that has adopted or adopts a residential pool safety ordinance, provided the ordinance is equal to or more stringent to the provisions of this act.

3. Stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures used in normal agricultural practices.

4. Any portable hot tub or spa with a safety cover that complies with the ASTM ES 13.

5. Small, temporary pools not more than 24 inches deep designed for use by children which are commonly referred to as "wading pools" or "kiddy pools."

SECTION 2. The Department of Insurance and the Building Code Council shall amend the State Building Code to comply with this act. Specifically, the requirements of this act for the construction of swimming pools shall apply statewide and shall apply to residential swimming pools as defined in this act. On or before April 1, 2002, the Department of Insurance shall report to the General Assembly on any legislative amendments to the North Carolina Building Code required by this act.

SECTION 3. This act applies to agreements to construct residential swimming pools that are entered into on or after December 1, 2001, and applies to offenses committed on or after that date. Owners and lessors of property on which a completed residential swimming pool is located prior to the effective date of this act have one year from the effective date of this act to comply with the requirements of this
Article and shall be subject to the penalties in this Article for offenses that occur on or after December 1, 2002.