

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-39
SENATE BILL 368**

AN ACT TO (1) MODIFY THE APPLICABILITY OF CERTAIN FENCING REQUIREMENTS TO PUBLIC SWIMMING POOLS; (2) PROVIDE THAT REQUIREMENTS RELATED TO DRESSING AND SANITARY FACILITIES DO NOT APPLY TO INTERACTIVE PLAY ATTRACTIONS; (3) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO STUDY ISSUES RELATED TO FENCING REQUIREMENTS FOR WADING POOLS; AND (4) TEMPORARILY PROHIBIT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM ENFORCING CERTAIN REQUIREMENTS RELATED TO FENCING FOR WADING POOLS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Public Swimming Pool Operation Permit: Fencing Requirements. – Notwithstanding Part 10 of Article 8 of Chapter 130A of the General Statutes and rules adopted pursuant to the Part, except as provided in this section, the Department of Environment and Natural Resources shall not deny an operation permit to an owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, solely due to the failure of the owner or operator to comply with the specific fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2). The Department may deny an operation permit to an owner or operator that fails to comply with these provisions when: (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence. The Department may deny an operation permit to an owner or operator that fails to comply with any other rules for public swimming pools adopted by the Commission for Health Services.

SECTION 1.(b) Public Swimming Pool Owner/Operator Compliance: Fencing Requirements. – Notwithstanding Part 10 of Article 8 of Chapter 130A of the General Statutes and rules adopted pursuant to the Part, except as provided in this section, the owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, shall not be required to comply with the specific fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2). The owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, shall be required to comply with these fencing requirements when (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence. The owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, shall comply with all other rules for public swimming pools adopted by the Commission for Public Health.

SECTION 2.(a) Interactive Play Attraction Operation Permit: Dressing and Sanitary Facilities. – Notwithstanding Part 10 of Article 8 of Chapter 130A of the General Statutes and rules adopted pursuant to the Part, the Department of Environment and Natural Resources shall not deny an operation permit to an owner or operator of an interactive play attraction, as described in 15A NCAC 18A .2508(2)(d)(v), solely due to the failure of the owner or operator to comply with the dressing and sanitary facilities requirements of 15A NCAC 18A .2526. The Department may deny an operation permit to an owner or operator that fails to comply with any other rules for interactive play attractions adopted by the Commission for Health Services.

SECTION 2.(b) Interactive Play Attraction Owner/Operator Compliance: Dressing and Sanitary Facilities. – Notwithstanding Part 10 of Article 8 of Chapter 130A of the General Statutes or rules adopted pursuant to the Part, the owner or operator of an interactive play



attraction, as described in 15A NCAC 18A .2508(2)(d)(v), shall not be required to comply with the dressing and sanitary facilities requirements of 15A NCAC 18A .2526. The owner or operator of an interactive play attraction shall comply with all other rules for interactive play attractions adopted by the Commission for Public Health.

SECTION 3.(a) Wading Pool Fence Study. – The Commission for Public Health shall review the safety benefits of 15A NCAC 18A .2531(a)(7), which requires a wading pool to be separated from a swimming pool by a fence or other structure. As part of its review, the Commission shall specifically consider whether the safety benefits of requiring a fence or other structure between a wading pool and a swimming pool outweigh the safety benefits of allowing a parent with a child in each pool to quickly move between the wading pool and the swimming pool. The Commission shall report its findings and recommendations to the Joint Regulatory Reform Committee by March 1, 2012.

SECTION 3.(b) Wading Pool Fence Compliance. – From the effective date of this act through July 1, 2012, the Department of Environment and Natural Resources shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7).

SECTION 4. Rule-making Authority. – No later than January 1, 2012, the Commission for Public Health shall adopt rules consistent with the provisions of Sections 1 and 2 of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 1 and 2 of this act.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of April, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:23 p.m. this 12th day of April, 2011