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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2023 - 2024 Regular**

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<b>Bill No:</b>	SB 552	<b>Hearing Date:</b>	1/9/2024
<b>Author:</b>	Newman		
<b>Version:</b>	1/3/2024 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Alison Hughes		

**SUBJECT:** Public safety: pools and spas.

**DIGEST:** This bill makes several changes to the Pool Safety Act, including that: (1) the combination of specified prevention features shall not satisfy the required two prevention feature requirements for pools or spas at a private, single family residence, and (2) manual pool covers do not satisfy one of the required prevention features for pools or spas at a private, single family residence.

**ANALYSIS:**

*Existing law:*

- 1) Requires that when a property with a pool is transferred:
  - a) The home inspection must include a physical examination of the pool to determine which, if any, of the seven drowning prevention features described in existing law with which it is equipped.
  - b) The home inspection report must identify which of these drowning prevention features the pool is equipped with and specifically state if fewer than two are installed.
- 2) Requires that when a pool at a private, single-family residence is constructed or remodeled, at least two of the following drowning prevention features must be installed:
  - a) An enclosure separating home access points from the pool and meeting specific requirements with respect to height, gaps, latches, and any features that could serve as handholds or footholds.
  - b) A removable mesh fence meeting specific standards set by the American Society for Testing and Materials (ASTM), and equipped with a self-closing, self-latching gate that can accommodate a lock.

- c) A pool cover meeting specific ASTM standards.
  - d) Exit alarms on all doors that provide access from the home to the pool.
  - e) Self-closing, self-latching devices, with release mechanisms placed no lower than 54 inches above the floor, on all doors that provide access from the home to the pool.
  - f) A pool alarm designed to sound in the event of an unauthorized entrance into the water and independently certified as meeting specific ASTM standards.
  - g) Another feature providing as much or more protection than the above devices and independently verified as meeting ASTM or American Society of Mechanical Engineers standards.
- 3) Specifies that exit alarms on home doors leading to a pool may use a verbal warning (*e.g.*, a repeating notification that “the door to the pool is open”) or an alarm noise.
  - 4) Establishes the Childhood Drowning Data Collection Pilot Program to be implemented by CDPH, by January 1, 2024, and until January 1, 2029, for the purpose of collecting detailed data on childhood fatal and nonfatal drownings in the state with a particular focus on pool drownings among children one to four years of age.
  - 5) Requires CDPH, on or before January 1, 2026, to submit a report to appropriate legislative policy committees on the progress and findings of the data collection program, with stakeholder input, and that includes recommendations related to improving pool safety on a state and local level.

**This bill:**

- 1) Provides that an approved automatic pool safety cover shall be accompanied by a label stating it meets specified standards, is in good repair, and can be opened and closed by automated mechanics.
- 2) Provides that exit alarms shall be on both doors and windows.
- 3) Provides that an alarm on a pool or spa shall be in good repair and operable as designed.
- 4) Provides that other means of protection can be utilized if the protection is established by a nationally recognized standards development organization and is accompanied by a label verifying that the protection meets those standards.

- 5) Provides that, the following shall not satisfy the threshold of two drowning protection features:
  - a) An exit alarm and self-closing, self-latching device on the same door.
  - b) An exit alarm and a door latch on separate doors.
  - c) A safety pool cover and specified pool or spa alarm.
- 6) Clarifies that a “home inspection” shall ensure that the noninvasive physical examination of the pool or spa and dwelling for purposes of meeting the drowning safety prevention features means the pool or spa is equipped, in safe repair, operable as designed, and, if applicable, appropriately labeled. Provides that the home inspection shall not require a determination of whether a pool safety feature meets specified safety prevention feature requirements.
- 7) Clarifies that the “home inspection report” shall ensure that the listed drowning prevention safety features are in place and in good repair, operable as designed, and, if applicable, appropriately labeled. Provides that the home inspection report shall not require a determination of whether a pool safety feature meets specified safety prevention feature requirements.
- 8) Makes technical and conforming changes.

#### **COMMENTS:**

- 1) *Author’s statement.* “Drowning remains the leading cause of death for California children aged 4 and under, with roughly 75% of fatal childhood drownings occurring at home pools or spas. To guard against these tragedies, SB 442 (Newman, 2017) expanded California’s landmark Swimming Pool Safety Act to require at least two anti-drowning safety devices in place at residential pools, such as pool covers or alarms. SB 552 provides technical cleanup amendments that clarify original intent, update outdated references, and close gaps in implementation, thereby ensuring that critical pool safety features are properly and effectively employed to better prevent childhood deaths and injuries.”
- 2) *Background: Childhood drownings.* According to the American Academy of Pediatrics website, drowning is the leading cause of unintentional injury-related death in U.S. children one through four years of age and, as of 2018, has surpassed birth defects as the most common cause of death among this age group. Drowning is the third leading cause of unintentional injury-related death

among U.S. children and adolescents five through 19 years. In 2018, almost 900 U.S. children and youth under 20 years died of drowning, and more than 7,200 were seen at a hospital emergency department (ED) for a drowning event, with 35% of those children either hospitalized or transferred for further care. Childhood unintentional drowning fatality rates have decreased steadily from 2.68 per 100,000 in 1985 to 1.09 per 100,000 in 2018.

According to a CDPH safety brochure, drowning takes the lives of more California toddlers than any other kind of accident. Children who manage to survive a near drowning often suffer permanent brain damage from lack of oxygen. Most of these drownings take place at the homes of parents, relatives, or neighbors. CDPH recommends a combination of adult supervision and safety barriers for preventing drownings and states that, when around water, children must be kept in direct sight at all times, as children in water or next to water can drown immediately and silently, so there is no room for error.

- 3) *Background of the Pool Safety Act.* California's original Pool Safety Act (Setencich, Chapter 925, Statutes of 1996), which went into effect on January 1, 1997, required all new swimming pools constructed at private, single-family homes be equipped with either a permanent fence, a pool cover meeting certain safety standards, exit alarms or self-closing, self-latching devices on all doors providing access to the pool, or another safety feature providing as least as much protection as the specified four. The act was amended in 2006 (Mullin, Chapter 478, Statutes of 2006) to reflect the availability of two additional drowning-prevention features: removable mesh fencing and pool alarms that sound when a person enters the water. The 2006 act also expanded the scope of the law to include pools that undergo a remodel requiring a building permit.

The Pool Safety Act was substantially amended in 2017 by SB 442 (Newman, Chapter 670) to require at least two pool safety features for pools when single-family homes with pools were transferred. The primary rationale for that change was that a single safety feature may malfunction or become disabled. This made sense when considering at least two of the allowable safety features are designed to be disabled: pool entry alarms can be put into "sleep" mode when the pool is in use, and removable fencing is, as the name suggests, removable. Similarly, door alarms may run out of batteries, and latches may break. The requirement for a second safety feature was intended to provide backup to busy families that forget to replace an alarm or a removable fence, or who cannot immediately fix a malfunctioning latch or alarm.

- 4) *Do more safety features mean fewer drownings?* Currently, the state does not comprehensively track the number and type of drowning prevention features

that were installed on a pool where a drowning or near-drowning event occurred. In the absence of this data, it is impossible to know whether the single barrier previously required or the dual barrier now required under existing law is providing adequate protection.

SB 442 sought to place the burden of pool safety on pool owners by requiring them to control access to their pools. This may be a more direct and cost-efficient response to residential pool drownings than imposing extensive data collection requirements on state and local governments in order to inform future policy interventions. Ultimately, however, better protecting children's health and safety will require more and better information about drowning accidents as well as additional safety requirements for residential pools. Recent legislation — SB 855 (Newman, Chapter 817, Statutes of 2022) — requires CDPH to create a pilot program with the goal of collecting detailed data on childhood fatal and nonfatal drownings in California, with a specific focus on children between one and four years old. By January 1, 2027, CDPH, in consultation with specific entities, is required to submit a report to the legislature including recommendations on the structure and operation of an ongoing data collection system, and effective, evidence-based state and local drowning prevention policies and practices.

- 5) *Pool Safety Features: Home inspections.* Current law requires home inspectors to document through a “noninvasive physical examination” if any of the seven drowning prevention safety features are equipped on a residential pool or spa. According to the sponsors, this language has unintentionally been interpreted as requiring home inspectors to verify and test whether the safety features were manufactured and installed according to ASTM standards. According to the sponsors, verification of whether products meet ASTM standards cannot be achieved through noninvasive means. This bill proposes to solve this issue by providing that home inspectors are not required to carry out rigorous product testing, but rather check if safety features are working as intended.
- 6) *Specifying automatic pool covers.* This bill would also require all pool covers to meet specified standards for automatic pool covers, and disallow manual pool covers to meet one of the required drowning prevention standards. According to the sponsors, children can sneak or slip under the edges of manual pool covers and get trapped, and that more “modern” automatic covers on a tracked system can prevent that from occurring. The committee was not able to track down specific data about why this change would be more effective at preventing drowning, but notes that manual pool covers can cost less than automatic pool covers (\$500 - \$5,000 versus \$10,000 - \$20,000). Additionally, according to a U.S. Consumer Product Safety Commission report *Safety Barrier*

*Guidelines for Residential Pools: Preventing Child Drownings*, pool covers are identified as one of the safety features available for a pool. It states that if a homeowner installs a power safety cover, it should comply with the standard in this bill, but does not state that a manual cover is insufficient or less safe.

**Rather than placing specific safety standards in statute, the author moving forward may wish to require the California Building Standards Commission or other state agency to evaluate which standards provide the greatest prevention measures, or alternatively, require the pool safety pilot program at CDPH to specifically evaluate the efficacy of manual and automatic pool covers.**

- 7) *Ensuring two fail-safe protections.* As noted above in Comment 3, SB 442 (Newman, 2017) was intended to increase the number of drowning prevention safety features from one to two in case a single safety feature malfunctioned or become disabled. That bill, however, did not specify that those safety features could not be installed in the same space, such that the failure of one device could result in the failure of both.

The sponsors note, for example, that a door could be equipped with both an exit alarm and a self-closing, self-latching device. Under current law, these two safety protections meet the legal requirements. If the door is accidentally stuck ajar, not only has the self-closing, self-latching device failed, but so has the exit alarm. In this scenario, there are no protections from a child unintentionally entering the backyard and falling into the pool. Another loophole is to install two door safety devices on two different doors. While meeting the requirements under current law, this only provides one layer of protection, not the two-step protections the Legislature intended when passing SB 442.

This bill attempts to prohibit scenarios in which the two safety features do not create the redundancy protection intended by SB 442.

Due to timing, the committee was not able to independently verify that that this policy change would in fact reduce drownings or increase pool safety. **As with comment 6, rather than placing specific safety standards in statute, the author moving forward may wish to require the California Building Standards Commission or other state agency to evaluate which standards provide the greatest prevention measures, or alternatively, require the pool safety pilot program at CDPH to specifically evaluate the efficacy of manual and automatic pool covers.**

- 8) *Providing greater clarity.* According to the author, several technical changes to the law are intended to update references to international building standards, as well as identify specific model codes that should be followed when implementing pool safety standards. The committee has not been able to independently verify that these references are correct due to timing and lateness of the gut-and-amend. **Moving forward, the author may wish to consider verifying these are the correct references with local building officials and the California Building Standards Commission.**
- 9) *Opposition.* The California Building Officials (CALBO) are opposed to the bill, unless it is amended to direct the appropriate state agencies to evaluate specified changes to pool covers and drowning prevention techniques for residential pools. CALBO notes that if there are methods that ensure better pool safety, those changes should be evaluated through the existing regulatory process. Unfortunately, the changes in this bill circumvent that process, and could inadvertently impact pool safety without a formal evaluation by experts in the field.
- 10) *Gutted.* This bill was gut-and-amended into a bill dealing with single use waste products and went into print on January 3, 2024.
- 11) *Double-referred.* This bill was heard in the Senate Business, Professions and Economic Development Committee on January 8, 2024.

#### **RELATED LEGISLATION:**

**SB 855 (Newman, Chapter 670, Statutes of 2022)** — established a data collection pilot program, until January 1, 2029, to be administered by the California Department of Public Health (CDPH) for the purposes of tracking and collecting specified data on fatal and nonfatal childhood drownings; and required CDPH to use the collected data to develop a water safety action plan and standardized electronic forms for data collection, as specified.

**SB 736 (Newman, 2021)** — would have required, for a home inspection of real property with a swimming pool or spa, in connection with a prelisting inspection or transfer, that a home inspector be certified by a professional association or entity as having completed a continuing education training module on drowning prevention, and made other changes to the Pool Safety Act. *This bill was held in Senate Housing Committee at the request of the author.*

**SB 442 (Newman, Chapter 670, Statutes of 2017)** — required newly constructed or remodeled swimming pools at private single-family residences to incorporate at

least two of seven specified drowning-prevention safety features. It also required home inspections conducted as part of the transfer of a property with a pool to include an assessment of whether the pool is equipped with adequate safety features.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: No    Local: No

**POSITIONS:** (Communicated to the committee before noon on Wednesday, January 3, 2024.)

**SUPPORT:**

California Real Estate Inspection Association (Sponsor)

**OPPOSITION:**

California Building Officials

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