

## **COMMITTEE REPORT**

TO: Patrick O'Donnell  
Clerk of the Legislature

FROM: Senator Sara Howard  
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on  
Regulated Occupations within Committee Jurisdiction – Swimming Pool  
Operator

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### **GENERAL INFORMATION**

- I. Occupation Regulated
  - A) Swimming Pool Operator
  
- II. Name of Occupational Board Responsible for Enforcement
  - A) Nebraska Department of Health and Human Services and Nebraska Department of Environment and Energy
  
- III. Public Purpose and Assumptions Underlying License Creation
  - A) Every Class A (municipality-type pool) shall be under the immediate supervision of a Nebraska Swimming Pool Operator who shall be held responsible for compliance with all provisions of the regulations relating to equipment, pool operation and maintenance, and safety of bathers. Every Class B (motel, hotel, apartment-type pool) and Class F (fitness facility-type pool) must have a Nebraska Swimming Pool Operator available within 60 minutes of the facility. The certified Operator must supervise the operation of the water treatment facilities to insure safe water, both from a physical and bacterial standpoint. Daily records of the pool operation, including attendance, chemicals used, disinfectant residuals, pH, equipment maintenance, and accidents, must be maintained. The certification was created to ensure Swimming Pool Operators have the appropriate knowledge to safely use the chemicals required to treat the swimming pools and protect the public.
  
- IV. Number of Regulated Professionals in Nebraska
  - A) There are 1,913 certified Swimming Pool Operators in Nebraska.

## **BOARD MEMBERSHIPS AND MEETINGS**

- I. Number of Members
  - A) There is no advisory board which oversees the Swimming Pool Operator occupation. The Swimming Pool Operator occupation is overseen by the Department of Health and Human Services, and the Department of Environment and Energy.
  
- II. Who Appoints Members of the Board / Is Legislative Approval Required?
  - A) Not Applicable
  
- III. Term Length
  - A) Not Applicable
  
- IV. Qualifications for Membership of the Board
  - A) Not Applicable
  
- V. The Number of Meetings Required Per Year / Meetings Actually Held
  - A) Not Applicable
  
- VI. Annual Budget Information for the Previous Five Years
  - A) The Swimming Pool Operator occupation is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
  - B) For FY 2014-2015: \$101,026
  - C) For FY 2015-2016: \$111,991
  - D) For FY 2016-2017: \$91,948
  - E) For FY 2017-2018: \$95,965
  - F) For FY 2018-2019: \$71,104
  
- VII. Statement from Occupational Board on Effectiveness of Regulations
  - A) The Department of Health and Human Services stated that they believe the statute, Neb. Rev. Stat. 71-4305 (4) and NAC Title 178, Chapter 2, Operation and Management of Public Swimming Pools have been effective in assuring that swimming pools in Nebraska operated by well trained and competent operators. Proper operation and maintenance of pools is essential to ensure the health and safety of patrons.

## **AUTHORIZATION**

- I. Statutory Authorization
  - A) Statutory authorization for the Swimming Pool Operator occupation may be found in the Nebraska Revised Statutes, sections [71-4301](#) to [71-4307](#). For text of the Nebraska statutes relating to the Swimming Pool Operator occupation, see Appendix A.
- II. Other Authorization
  - A) Rules and regulations regarding the Swimming Pool Operator occupation may be found in the Nebraska Administrative Code [Title 178, Chapter 2](#).

## **CREDENTIALING**

- I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years
  - A) There were 4,344 Swimming Pool Operator certifications issued in the past five years.
- II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years
  - A) There were 361 Swimming Pool Operator certifications denied in the past five years.
  - B) Swimming Pool Operator certifications may be denied due to failure of the examination, failure to pay the required fees, or failure to review and complete the training materials within the appropriate timeframe, amongst other reasons.
- III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years
  - A) There were no Swimming Pool Operator certifications revoked in the past five years.
- IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years
  - A) There were no Swimming Pool Operator certifications penalized in the past five years.
- V. Comparison of How Other States Regulate This Occupation
  - A) There are 24 states and the District of Columbia that require a Swimming Pool Operator certification. There are seven states that require a knowledge of operation of swimming pools. There are 19 states that have no requirement at the state level, however, there are certain cities, counties, or municipalities that require certification of the Swimming

Pool Operator occupation. Additional information may be found on the Pool and Hot Tub Alliance [website](#).

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If Swimming Pool Operators are no longer licensed, certified, or regulated in Nebraska there may be more pools that are out of compliance with the regulations. This may include issues with water quality – such as proper levels of disinfectant – or water clarity issues. It could also lead to not having proper lifesaving equipment at the pool. A lack of regulation could lead to more injuries, infections, chemical burns, drownings, or near-drownings across the State, which would endanger the public health, safety, and welfare.

**COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS**

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Department of Health and Human Services and the Department of Environment and Energy are intended to

protect the health, safety, and welfare of Nebraskans. The current regulation of the Swimming Pool Operator occupation by certification is appropriate and balanced and does not need modification at this time.

## **APPENDIX A**

## STATUTES PERTAINING TO SWIMMING POOLS

### **71-4301. Swimming pool, defined.**

For purposes of sections 71-4301 to 71-4307, unless the context otherwise requires, swimming pool means any artificial basin of water modified, improved, constructed, or installed solely for the purpose of public swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park. Swimming pool includes a spa, hot tub, or whirlpool or similar device which (1) is designed for recreational use and not to be drained, cleaned, and refilled after each individual use and (2) may consist of elements, including, but not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems, or any combination thereof. Swimming pool does not include an artificial lake, a pool at a private residence intended only for the use of the owner and guests, or a pool operated exclusively for medical treatment, physical therapy, water rescue training, or training of divers.

Source: Laws 1969, c. 760, § 1, p. 2875; Laws 2002, LB 1021, § 81.

### **71-4302. Department of Health and Human Services; sanitary and safety requirements; adopt.**

The Department of Health and Human Services shall prepare, adopt, and have printed minimum sanitary and safety requirements in the form of regulations for the design, construction, equipment, and operation of swimming pools and bather preparation facilities. Such requirements shall include, but not be limited to, provisions for waiver or variance of design standards and the circumstances under which such waiver or variance may be granted.

Source: Laws 1969, c. 760, § 2, p. 2876; Laws 1996, LB 1044, § 669; Laws 2002, LB 1021, § 82; Laws 2007, LB296, § 580.

### **71-4303. Construction; permit; Department of Health and Human Services; issuance; when.**

No swimming pool shall be constructed after January 1, 1970, unless and until plans, specifications, and any additional information relative to such pool as may be requested by the Department of Health and Human Services shall have been submitted to such department and after review by such department found to comply with the minimum sanitary and safety requirements provided in section 71-4302 and a permit for the construction of the pool issued by such department.

Source: Laws 1969, c. 760, § 3, p. 2876; Laws 1996, LB 1044, § 670; Laws 2007, LB296, § 581.

#### **71-4304. Permit; application; requirements.**

After January 1, 1970, swimming pools shall have equipment and shall be operated so as to comply with the minimum sanitary and safety requirements provided in section 71-4302. After such date no swimming pool shall operate until it has received a permit from the Department of Health and Human Services. Application for a permit to operate shall be submitted on forms provided by such department. Swimming pools constructed prior to January 1, 1970, which do not fully comply with the minimum sanitary and safety requirements as regards design and construction may be continued in use for such period as the department may authorize if the equipment and operation of such swimming pool comply with the minimum sanitary and safety requirements.

Source: Laws 1969, c. 760, § 4, p. 2876; Laws 1996, LB 1044, § 671; Laws 2007, LB296, § 582.

#### **71-4305. Department of Health and Human Services; inspection; records; owners and operators; fees; exception.**

(1) The Department of Health and Human Services shall make at least one inspection every year of each swimming pool to determine that such swimming pool complies with the minimum sanitary and safety requirements.

(2) The owner and operator of any swimming pool shall submit such operation and analytical records as may be requested at any time by the department to determine the sanitary and safety condition of the swimming pool.

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

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

Source: Laws 1969, c. 760, § 5, p. 2876; Laws 1973, LB 583, § 12; Laws 1976, LB 440, § 1; Laws 1978, LB 812, § 2; Laws 1983, LB 617, § 23; Laws 1986, LB 1047, § 5; Laws 1996, LB 1044, § 672; Laws 2002, LB 1021, § 83; Laws 2003, LB 242, § 123; Laws 2007, LB296, § 583; Laws 2007, LB463, § 1217.



**71-4306. Inspection; violation of act; effect.**

Whenever any duly authorized representative of the Department of Health and Human Services shall find that a swimming pool is being constructed, equipped, or operated in violation of any of the provisions of sections 71-4301 to 71-4307, the department may grant such time as in its opinion may reasonably be necessary for changing the construction or providing for the proper operation of the swimming pool to meet the provisions of sections 71-4301 to 71-4307. If and when the duly authorized representative of the department upon inspection and investigation of a swimming pool considers that the conditions are such as to warrant prompt closing of such swimming pool until the provisions of sections 71-4301 to 71-4307 are complied with, he or she shall notify the owner or operator of the swimming pool to prohibit any person from using the swimming pool and upon such notification to the sheriff and the county attorney of the county in which such pool is located, it shall be the duty of such county attorney and sheriff to see that the notice of the representative of the department shall be enforced. If and when the owner or operator of the pool has, in the opinion of the department, met the provisions of sections 71-4301 to 71-4307, the department may in writing authorize the use again of such swimming pool.

Source: Laws 1969, c. 760, § 6, p. 2876; Laws 1996, LB 1044, § 673; Laws 2007, LB296, § 584.

**71-4307. Violations; public nuisance; abatement.**

Any owner or operator of a swimming pool failing to comply with any of the provisions of sections 71-4301 to 71-4307 shall be guilty of maintaining a public nuisance and it shall be the duty of the county attorney of the county in which such swimming pool is located to act as provided by law for the abatement of public nuisances.

Source: Laws 1969, c. 760, §7, p. 2877.