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Chapter No. 508
12/HR40/R377SG
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HOUSE BILL NO. 1281

Originated in House  Clerk

HOUSE BILL NO. 1281

AN ACT TO CREATE "THE WILLIAM LEE MONTJOY" POOL SAFETY ACT; TO PROVIDE THE DEFINITIONS FOR CERTAIN LOCKS AND GATES; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL ONLY APPLY TO A POOL OWNED, CONTROLLED OR MAINTAINED BY THE OWNER OF A MULTIUNIT RENTAL COMPLEX, PROPERTY OWNERS ASSOCIATION, PRIVATE CLUB, AND DOORS AND WINDOWS OF RENTAL DWELLINGS OPENING INTO THE POOL YARD OF A MULTIUNIT RENTAL COMPLEX OR CONDOMINIUM, COOPERATIVE, OR TOWNHOME PROJECT; TO PROVIDE THAT THE OWNER OF A MULTIUNIT RENTAL COMPLEX WITH A POOL OR A PROPERTY OWNERS ASSOCIATION THAT OWNS, CONTROLS OR MAINTAINS A POOL SHALL COMPLETELY ENCLOSE THE POOL YARD WITH A POOL YARD ENCLOSURE; TO PROVIDE THAT A DOOR, SLIDING GLASS DOOR, OR FRENCH DOOR MAY NOT OPEN DIRECTLY INTO A POOL YARD IF THE DATE OF ELECTRICAL SERVICE FOR INITIAL CONSTRUCTION OF THE BUILDING OR POOL IS ON OR AFTER JULY 1, 2012; TO PROVIDE THAT A TENANT OF AN OWNER OF A MULTIUNIT RENTAL COMPLEX, A MEMBER OF A PROPERTY OWNERS ASSOCIATION, A GOVERNMENTAL ENTITY, OR ANY OTHER PERSON OR THE PERSON'S REPRESENTATIVE MAY MAINTAIN AN ACTION AGAINST THE OWNER OR PROPERTY OWNERS ASSOCIATION FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ACT; TO PROVIDE THAT THE OWNER OF A MULTIUNIT RENTAL COMPLEX OR A PROPERTY OWNERS ASSOCIATION IS NOT REQUIRED TO ENCLOSE A BODY OF WATER OR CONSTRUCT BARRIERS BETWEEN THE OWNER'S OR PROPERTY OWNERS ASSOCIATION'S PROPERTY AND A BODY OF WATER SUCH AS AN OCEAN, BAY, LAKE, POND, BAYOU, RIVER, CREEK, STREAM, SPRING, RESERVOIR, STOCK TANK, CULVERT, DRAINAGE DITCH, DETENTION POND, OR OTHER FLOOD OR DRAINAGE FACILITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and cited as the "William Lee Montjoy Pool Safety Act."

SECTION 2. The following words shall have the following meanings for purposes of this act:

(a) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(b) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or

combination and from the interior without a key, card, or combination.

(c) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(d) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two (2) doors are hinged and closable so that the edge of one (1) door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one (1) of the two (2) doors.

(e) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after July 1, 2012, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(f) (i) "Keyless bolting device" means a door lock not in the doorknob that locks:

1. With a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

2. By a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three (3) case-hardened screws at least three

(3) inches in length. One-half (1/2) of the central plate must overlap the interior surface of the door and the other one-half (1/2) of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

3. By a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three (3) inches in length and must be screwed into the doorframe stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the doorframe stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(ii) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded night latch, foot bolt, or other lock or latch.

(g) "Multiunit rental complex" means two (2) or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium, cooperative, or townhome project. The term does not include:

(i) A facility primarily renting rooms to overnight guests; or

(ii) A single-family home or adjacent single-family homes that are not part of a condominium, cooperative, or townhome project.

(h) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over eighteen (18) inches deep, located at ground level, above ground, below ground, or indoors.

(i) "Pool yard" means an area that contains a pool.

(j) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(k) "Private club" means country club, golf club, tennis club, yacht club, gym or any similar association or organization that provides services or facilities to its members and that is not usually open to the public.

(l) "Property owners association" means an association of property owners for a residential subdivision, a condominium, cooperative or townhome project, or other project involving residential dwellings.

(m) "Sliding-door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(n) "Sliding-door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(o) "Sliding-door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(p) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a

dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(q) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

SECTION 3. The provisions of this act shall only apply to: a pool owned, controlled or maintained by the owner of a multiunit rental complex, property owners association, or private club; and doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or a condominium, cooperative, or townhome project. This act does not apply to any private club that does not allow members or guests under the age of twelve (12) or to any multiunit rental complex that does not allow residents under the age of twelve (12).

SECTION 4. (1) Except as otherwise provided by Section 6 of this act, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(2) The height of the pool yard enclosure must be at least forty-eight (48) inches as measured from the ground on the side away from the pool.

(3) Openings under the pool yard enclosure may not allow a sphere four (4) inches in diameter to pass under the pool yard enclosure.

(4) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least forty-five (45) inches, the openings may not allow a sphere four (4) inches in diameter to pass through the enclosure.

(5) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than forty-five (45) inches, the

openings may not allow a sphere one and three-fourths (1-3/4) inches in diameter to pass through the enclosure.

(6) The use of chain-link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after July 1, 2012. The use of diagonal fencing members that are lower than forty-nine (49) inches above the ground is prohibited for a new pool yard enclosure that is constructed after July 1, 2012.

(7) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than one and three-fourths (1-3/4) inches in any direction.

(8) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(9) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(10) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 7 and 8 of this act.

(11) The owner of a multiunit rental complex with a pool, or a property owners association that owns, controls or maintains a pool, is not required to:

(a) Build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(b) Conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this act.

SECTION 5. (1) Except as otherwise provided by Section 6 of this act, a gate in a fence or wall enclosing a pool yard as required by Section 4 of this act shall:

(a) Have a self-closing and self-latching device;

(b) Have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(c) Open outward away from the pool yard.

(2) Except as otherwise provided by subsection (3) of this section and Section 6 of this act, a gate latch must be installed so that it is at least sixty (60) inches above the ground, except that it may be installed lower if:

(a) The latch is installed on the pool yard side of the gate only and is at least three (3) inches below the top of the gate; and

(b) The gate or enclosure has no opening greater than one-half (1/2) inch in any direction within eighteen (18) inches from the latch, including the space between the gate and the gatepost to which the gate latches.

(3) A gate latch may be located forty-two (42) inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

SECTION 6. (1) If a pool yard enclosure is constructed or modified before July 1, 2012, the provisions of this act shall not apply, except that any gate in a pool yard enclosure shall conform to Section 5 of this act no later than January 1, 2013.

(2) This act provides no exemption from any local ordinance that may apply to the pool yard enclosure.

(3) A pool yard enclosure modified on or after July 1, 2012, shall conform with this section and Sections 4 and 5 of this act as a part of the modification.

SECTION 7. (1) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after July 1, 2012.

(2) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for

initial construction of the building or pool is before July 1, 2012, and the pool yard enclosure complies with subsection (3), (4) or (5) of this section, as applicable.

(3) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(a) Latch that automatically engages when the door is closed;

(b) Spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(c) Keyless bolting device that is installed not less than thirty-six (36) inches or more than forty-eight (48) inches above the interior floor.

(4) If French doors of a building open to the pool yard, one (1) of the French doors must comply with subsection (3)(a) of this section and the other door must have:

(a) A keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(b) A bolt with at least a three-fourths (3/4) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a three-fourths (3/4) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(5) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(a) A sliding-door handle latch or sliding-door security bar that is installed not more than forty-eight (48) inches above the interior floor; and

(b) A sliding-door pin lock that is installed not more than forty-eight (48) inches above the interior floor.

(6) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(7) A keyed dead bolt, keyless bolting device, sliding-door pin lock, or sliding-door security bar installed before July 1, 2012, may be installed not more than fifty-four (54) inches from the floor.

(8) A keyed dead bolt or keyless dead bolt, as described by Section 1 of this act, installed in a dwelling on or after July 1, 2012, must have a bolt with a throw of not less than one (1) inch.

SECTION 8. A wall of a building constructed before July 1, 2012, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after July 1, 2012, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

SECTION 9. Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 7 and 8 of this act.

SECTION 10. (1) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair and keep in good working order the pool yard enclosures, gates and self-closing and self-latching devices required by this act and within the control of the owner or property owners association.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to maintain, repair and keep in good working order the window latches, sliding-door handle latches, sliding-door pin locks, and sliding-door security bars required by this act and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement.

(3) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every thirty-one (31) days.

(4) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this act.

SECTION 11. (1) Except as provided by subsection (2) of this section and Section 12 of this act, a person who constructs or modifies a pool yard enclosure to conform with this act may not be required to construct the enclosure differently by a local governmental entity, common law or any other law.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool may, at the person's option, exceed the standards of this act or those adopted by the State Board of Health under Section 12 of this act. A tenant or occupant in a multiunit

rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(3) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on July 1, 2012.

SECTION 12. (1) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this act. In that action, the person may obtain:

(a) A court order directing the owner or property owners association to comply with this act;

(b) A judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this act;

(c) A judgment against the owner or property owners association for attorney's fees if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious or grossly negligent actions; or

(d) A judgment against the owner or property owners association for a civil penalty of not more than Five Thousand Dollars (\$5,000.00) if the owner or property owners association fails to comply with this act within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association; the court may award reasonable attorney's fees and costs to the prevailing party in an action brought under this subsection (1)(d).

(2) The Attorney General, a local health department, a municipality, or a county having jurisdiction may enforce this act by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and after required

notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this act.

SECTION 13. The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

SECTION 14. Except to the extent that any local or state regulation or local ordinance imposes a stricter standard, the duties established by this act for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or townhome project and a property owners association supersede those established by common law and any local or state agency regulation and local ordinances relating to duties to inspect, install, repair or maintain:

- (a) Pool yard enclosures;
- (b) Pool yard enclosure gates and gate latches, including self-closing and self-latching devices;
- (c) Keyed dead bolts, keyless bolting devices, sliding-door handle latches, sliding-door security bars, self-latching and self-closing devices, and sliding-door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and
- (d) Latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

SECTION 15. The remedies contained in this act are not exclusive and are not intended to affect existing remedies allowed by law or other procedures.

SECTION 16. The provisions of this act shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

SECTION 17. This act shall take effect and be in force from and after July 1, 2012.

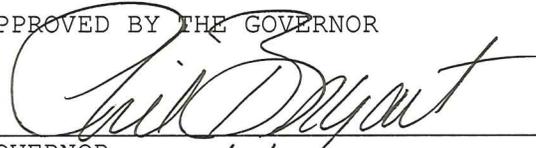
PASSED BY THE HOUSE OF REPRESENTATIVES
March 13, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 1, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
5/1/12 3:45 pm