

VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT

OCTOBER 9, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 1721]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1721) to increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Virginia Graeme Baker Pool and Spa Safety Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Federal swimming pool and spa drain cover standard.
- Sec. 4. State swimming pool safety grant program.
- Sec. 5. Minimum State law requirements.
- Sec. 6. Education program.
- Sec. 7. Definitions.
- Sec. 8. CPSC report.

SEC. 2. FINDINGS.

The Congress finds that—

(1) of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States;

(2) there are approximately 260 drowning deaths of children younger than age 5 each year in swimming pools, and an estimated 2,725 children are treated annually in hospital emergency rooms for pool submersion injuries, mostly in residential pools;

(3) many children die due to pool and spa drowning and entrapment, such as Virginia Graeme Baker, who at age 7 drowned by entrapment in a residential spa, and Preston de Ibern, who at age 5 nearly drowned and was left permanently brain damaged, finally succumbing to his catastrophic healthcare issues when he was 12 years old;

(4) adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning; and

(5) research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

SEC. 3. FEDERAL SWIMMING POOL AND SPA DRAIN COVER STANDARD.

(a) **CONSUMER PRODUCT SAFETY RULE.**—The provisions of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(b) **DRAIN COVER STANDARD.**—Effective 1 year after the date of enactment of this Act, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard.

(c) **REVISION OF RULE.**—If, after the enactment of this Act, ANSI proposes to revise the entrapment protection requirements of ASME/ANSI A112.19.8, ANSI shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ANSI that the Commission has determined that such revision does not carry out the purposes of subsection (b).

(d) **IMPLEMENTING REGULATIONS.**—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act shall not apply to such issuance.

SEC. 4. STATE SWIMMING POOL SAFETY GRANT PROGRAM.

(a) **IN GENERAL.**—Subject to the availability of appropriations authorized by subsection (e), the Commission shall establish a grant program to provide assistance to eligible States.

(b) **ELIGIBILITY.**—To be eligible for a grant under the program, a State shall—

(1) demonstrate to the satisfaction of the Commission that it has a State statute, or that, after the date of enactment of this Act, it has enacted a statute, or amended an existing statute, that provides for the enforcement of a law that—

(A) except as provided in section 5(a)(1)(A)(i), applies to all swimming pools in the State; and

(B) meets the minimum State law requirements of section 5; and

(2) submit an application to the Commission at such time, in such form, and containing such additional information as the Commission may require.

(c) AMOUNT OF GRANT.—The Commission shall determine the amount of a grant awarded under this Act, and shall consider—

- (1) the population and relative enforcement needs of each qualifying State; and
- (2) allocation of grant funds in a manner designed to provide the maximum benefit from the program in terms of protecting children from drowning or entrapment, and, in making that allocation, shall give priority to States that have not received a grant under this Act in a preceding fiscal year.

(d) USE OF GRANT FUNDS.—A State receiving a grant under this section shall use—

- (1) at least 50 percent of amount made available to hire and train enforcement personnel for implementation and enforcement of standards under the State swimming pool and spa safety law; and
- (2) the remainder—
 - (A) to educate pool construction and installation companies and pool service companies about the standards;
 - (B) to educate pool owners, pool operators, and other members of the public about the standards under the swimming pool and spa safety law and about the prevention of drowning or entrapment of children using swimming pools and spas; and
 - (C) to defray administrative costs associated with such training and education programs.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission for each of fiscal years 2009 through 2013 \$5,000,000 to carry out this section, such sums to remain available until expended.

SEC. 5. MINIMUM STATE LAW REQUIREMENTS.

(a) IN GENERAL.—

(1) SAFETY STANDARDS.—A State meets the minimum State law requirements of this section if—

(A) the State requires by statute—

- (i) the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa;
- (ii) that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains;
- (iii) that pools and spas built more than 1 year after the date of enactment of such statute have—

- (I) more than 1 drain per circulation pump;
- (II) 1 or more unblockable drains per circulation pump; or
- (III) no main drain; and

(iv) every swimming pool and spa that has a main drain, other than an unblockable drain, be equipped with a drain cover that meets the consumer product safety standard established by section 3; and

(B) the State meets such additional State law requirements for pools and spas as the Commission may establish after public notice and a 30-day public comment period.

(2) USE OF MINIMUM STATE LAW REQUIREMENTS.—The Commission—

(A) shall use the minimum State law requirements under paragraph (1) solely for the purpose of determining the eligibility of a State for a grant under section 4 of this Act; and

(B) may not enforce any requirement under paragraph (1) except for the purpose of determining the eligibility of a State for a grant under section 4 of this Act.

(3) REQUIREMENTS TO REFLECT NATIONAL PERFORMANCE STANDARDS AND COMMISSION GUIDELINES.—In establishing minimum State law requirements under paragraph (1), the Commission shall—

(A) consider current or revised national performance standards on pool and spa barrier protection and entrapment prevention; and

(B) ensure that any such requirements are consistent with the guidelines contained in the Commission's publication 362, entitled "Safety Barrier Guidelines for Home Pools", the Commission's publication entitled "Guidelines for Entrapment Hazards: Making Pools and Spas Safer", and any other pool safety guidelines established by the Commission.

(b) STANDARDS.—Nothing in this section prevents the Commission from promulgating standards regulating pool and spa safety or from relying on an applicable national performance standard.

(c) BASIC ACCESS-RELATED SAFETY DEVICES AND EQUIPMENT REQUIREMENTS TO BE CONSIDERED.—In establishing minimum State law requirements for swimming

pools and spas under subsection (a)(1), the Commission shall consider the following requirements:

- (1) **COVERS.**—A safety pool cover.
- (2) **GATES.**—A gate with direct access to the swimming pool that is equipped with a self-closing, self-latching device.
- (3) **DOORS.**—Any door with direct access to the swimming pool that is equipped with an audible alert device or alarm which sounds when the door is opened.
- (4) **POOL ALARM.**—A device designed to provide rapid detection of an entry into the water of a swimming pool or spa.
- (d) **ENTRAPMENT, ENTANGLEMENT, AND EVISCERATION PREVENTION STANDARDS TO BE REQUIRED.**—
 - (1) **IN GENERAL.**—In establishing additional minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall require, at a minimum, 1 or more of the following (except for pools constructed without a single main drain):
 - (A) **SAFETY VACUUM RELEASE SYSTEM.**—A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.
 - (B) **SUCTION-LIMITING VENT SYSTEM.**—A suction-limiting vent system with a tamper-resistant atmospheric opening.
 - (C) **GRAVITY DRAINAGE SYSTEM.**—A gravity drainage system that utilizes a collector tank.
 - (D) **AUTOMATIC PUMP SHUT-OFF SYSTEM.**—An automatic pump shut-off system.
 - (E) **OTHER SYSTEMS.**—Any other system determined by the Commission to be equally effective as, or better than, the systems described in subparagraphs (A) through (E) of this paragraph at preventing or eliminating the risk of injury or death associated with pool drainage systems.
 - (2) **APPLICABLE STANDARDS.**—Any device or system described in subparagraphs (B) through (E) of paragraph (1) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

SEC. 6. EDUCATION PROGRAM.

- (a) **IN GENERAL.**—The Commission shall establish and carry out an education program to inform the public of methods to prevent drowning and entrapment in swimming pools, spas, and ornamental pools. In carrying out the program, the Commission shall develop—
 - (1) educational materials designed for pool manufacturers, pool service companies, and pool supply retail outlets;
 - (2) educational materials designed for pool owners and operators;
 - (3) educational materials designed for ornamental pool owners and operators, including municipalities; and
 - (4) a national media campaign to promote awareness of pool and spa safety.
- (b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Commission for each of fiscal years 2008 through 2012 \$5,000,000 to carry out the education program authorized by subsection (a).

SEC. 7. DEFINITIONS.

In this Act:

- (1) **ASME/ANSI STANDARD.**—The term “ASME/ANSI standard” means a safety standard accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.
- (2) **ASTM STANDARD.**—The term “ASTM standard” means a safety standard issued by ASTM International, formerly known as the American Society for Testing and Materials.
- (3) **BARRIER.**—The term “barrier”, with respect to a swimming pool, means a fence, dwelling wall, or nondwelling wall, or any combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool, especially access from the residence or from the yard outside the barrier. In the case where a wall of a dwelling that contains a door or window serves as part of the barrier, all doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet. Alarms should meet the requirements of UL 2017 General-Purpose Signaling Devices and Systems, section 77. All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no

lower than 54 inches above the floor. The term “barrier” means, with respect to a portable hot tub, a lockable cover.

(4) COMMISSION.—The term “Commission” means the Consumer Product Safety Commission.

(5) MAIN DRAIN.—The term “main drain” means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a re-circulating pump.

(6) ORNAMENTAL POOL.—The term “ornamental pool” means a man-made structure designed to contain water such as a decorative fountain or reflecting pool in the ground, partially in the ground, or in a building, intended primarily for aesthetic value and not intended for swimming or wading.

(7) SAFETY VACUUM RELEASE SYSTEM.—The term “safety vacuum release system” means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(8) UNBLOCKABLE DRAIN.—The term “unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(9) SWIMMING POOL; SPA.—The term “swimming pool” or “spa” means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

SEC. 8. CPSC REPORT.

Within 1 year after the close of each fiscal year for which grants are made under section 4, the Commission shall submit a report to the Congress evaluating the effectiveness of the grant program authorized by that section.

PURPOSE AND SUMMARY

The purpose of H.R. 1721, the Virginia Graeme Baker Pool and Spa Safety Act, is to increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems. H.R. 1721 also establishes a swimming pool safety grant program, authorized at \$5 million annually for five years, administered by the Consumer Product Safety Commission (CPSC) to encourage States to pass comprehensive swimming pool and spa safety laws that require layers of protection against childhood drowning, including specified barriers, anti-entrapment drains, and safety vacuum releases. Further, H.R. 1721 requires CPSC to develop a national education program to prevent drowning and entrapment in swimming pools, spas, and ornamental pools, also authorized at \$5 million annually for five years. Finally, H.R. 1721 would require the CPSC to report to Congress on the effectiveness of the grant program for all applicable fiscal years.

BACKGROUND AND NEED FOR LEGISLATION

Drowning is the second highest cause of accidental deaths among American children 1 to 14 years of age, ranking right behind automobile accidents. In 2003, drowning incidents caused 761 childhood deaths; in 2004, over 3,000 children were treated in emergency rooms for near-drowning, often resulting in permanent injury, especially debilitating brain injuries. Approximately 40 percent of childhood deaths from drowning take place in pools or spas. Most childhood swimming pool drownings and other pool-related accidents result from lapses in adult supervision and from access to unguarded or unlocked pools.

Swimming pools and spas can present a danger beyond the inherent risk in any body of water—the risk of drain entrapment. Some drains have sufficiently powerful suction that they entrap

hair or body parts of children, holding them underwater. A child can be killed or seriously injured when the force of the suction is so powerful that the child cannot get free, sometimes even with the help of supervising adults. Such was the tragic case of seven-year-old Virginia Graeme Baker, Nancy Baker's daughter and the granddaughter of former Secretary of State James A. Baker III, who drowned after she became entrapped by the powerful suction on the drain of a spa. The force of the suction was powerful enough to require the strength of two adults to free Graeme from the pull of the drain. Drain entrapment deaths can be especially horrible—limbs can get stuck in the powerful suction of the drains; long hair can get tangled and wrapped around grate covers, trapping people's heads; and buttocks can get entrapped when children sit on drains, causing disembowelment. At least 33 children under the age of 14 died as a result of drain entrapment in the 20-year period between 1985 and 2004. Another 100 were seriously injured.

The purpose of this legislation is to decrease the incidence of childhood drowning through three initiatives. The first initiative is to require the use of safe, anti-entrapment drain covers—safe covers generally are not flush to the surface of the pool and are designed to prevent the circular or swirling action of the water that tends to cause the suction and vacuum. The second initiative is to establish a Federal program, through incentive grants administered by the CPSC, to encourage the States to enact laws that require layers of protection in residential swimming pools to reduce the incidence of childhood drowning. This initiative would establish a grant program within the CPSC, a function that does not currently exist at the agency. Concerns were raised during Committee hearings regarding the expertise and resources of the Commission to effectively manage such a grant program. The Committee expects the CPSC to establish within the agency the appropriate process to administer the grant program by Fiscal Year 2009. The third initiative is to establish a national public education program.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on Tuesday, May 15, 2007, entitled "Protecting Our Children: Current Issues in Consumer Product Safety," which examined the performance of the CPSC in safeguarding children from hazardous products. Testimony was received from the Honorable Nancy A. Nord, CPSC Acting Chairman; Mr. Alan Korn, Public Policy Director and General Counsel, Safe Kids Worldwide; Ms. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America; Mr. Frederick Locker, General Counsel, Toy Industry Association; Ms. Marla Felcher, Adjunct Lecturer, Kennedy School of Government, Harvard University; Mr. James A. Thomas, President, ASTM International; and Ms. Nancy A. Cowles, Executive Director, Kids in Danger.

The Subcommittee also held a legislative hearing on Wednesday, June 6, 2007, entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721." Testimony was received from Mr. Edmund Mierzwinski, Consumer Program Director, United States Public Interest Research Group, and Ms. Sally Greenberg, Senior Product Safety Counsel, Consumers Union.

COMMITTEE CONSIDERATION

On Tuesday, July 31, 2007, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and favorably forwarded H.R. 1721, amended, to the full Committee for consideration, by a voice vote. On Tuesday, September 25, 2007, the full Committee met in open markup session and ordered H.R. 1721 favorably reported to the House, as amended, by a voice vote, a quorum being present. No amendments were offered during full Committee consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken during consideration of H.R. 1721 or in ordering the bill reported. A motion by Mr. Dingell to order H.R. 1721 favorably reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of the legislation is to reduce the harm to individuals, particularly children, that results from pool and spa entrapments.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1721 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1721 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee will adopt as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Regarding clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate on H.R. 1721 by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available as of the time of the filing of this report by the Committee.

FEDERAL MANDATES STATEMENT

The Committee will adopt as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

Section 1(a) establishes the short title of the bill as the “Virginia Graeme Baker Pool and Spa Safety Act” and (b) provides a table of contents.

Section 2. Findings

Section 2 sets forth findings and statistics related to childhood drowning and drain entrapment.

Section 3. Federal swimming pool and spa drain cover standard

Section 3 mandates that one year after enactment of this legislation, all drain covers sold or distributed in commerce in the United States shall conform to the anti-entrapment standard specified as the “ASME/ANSI A112.19.8 performance standard,” which has been set by a private standard setting body, the American National Standards Institute (ANSI). The mandated standard under this bill shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission pursuant to Section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058).

In the event that ANSI proposes in the future to modify the drain cover standard, ANSI is required to notify the CPSC. The CPSC then has 60 days to consider the proposed change. If the CPSC does not affirmatively notify ANSI that the proposed change does not meet requirements for protecting the public safety, the revised standard will replace the standard set forth in this legislation and be considered a consumer product safety rule under section 9.

In the event that the CPSC believes that there is a need to promulgate implementing regulations to carry out the purposes of this legislation, it may do so pursuant to the requirements of the Administrative Procedure Act, 5 U.S.C. 553. It need not follow the procedures set forth in sections 7 and 9 of the CPSC. Thus, any implementing regulations would take place in a two-part proceeding instead of the three-part proceeding required under sections 7 and 9. The bill does not anticipate, however, that implementing regulations should be necessary. The new standard thus may take effect one year after enactment without any further action by the CPSC.

Specifically, the section eliminates Section 9(a)–(f) of the CPSA. The effect of this provision would eliminate the current procedural requirement of issuing an advance notice of proposed rulemaking (“ANPR”) and notice of proposed rulemaking (“NPR”) and potentially permit the CPSC to adopt a final rule without the Administrative Procedures Act requirement of providing the public with prior notice and an opportunity to submit comments on the proposed rule. This bill would also eliminate the required findings that the Commission currently must make in the ANPR and NPR rulemaking stages. The bill would also eliminate findings required in the Final Rule stage, such as a final cost-benefit regulatory analysis, a description of any alternatives to the final rule considered by the Commission, a summary of any significant issues raised by comments submitted during the public comment period, a determination that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, and a determination that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated. Also eliminated is the requirement of the Commission to rely upon a voluntary standard when that voluntary standard adequately addresses the risk of injury and there is likely to be substantial compliance with it. Other statutory requirements, however, such as those of the Regulatory Flexibility Act, Congressional Review Act, and National Environmental Policy Act, would continue to apply to the rulemaking.

While the Committee has serious concerns about removing the important requirements of Sections 7 and 9 of the CPSA, this drain performance standard has been recognized as extremely effective. In the interest of protecting children from possible entrapment drownings, the Committee believes that the removal of these requirements is acceptable in this particular case. Even given the fact that the pool and spa industry is overwhelmingly complying with the ANSI standard voluntarily, it is important to demand that the industry remove all unsafe drains from the stream of commerce.

Section 4. State swimming pool safety grant program

Section 4 establishes a grant program, to be administered by the CPSC, to encourage and assist the States to enact legislation that helps prevent childhood drowning by meeting the minimum standards set forth in section 5. The bill authorizes an annual appropriation to the CPSC of \$5 million for Fiscal Years 2009 to 2013 to fund the grant program. To be eligible for a grant, the State must demonstrate to the CPSC that it has a statute—whether existing, new, or newly amended—that meets the standards in section 5,

and that the standard applies to all swimming pools in the State, indoor or outdoor. Subsection (b)(1)(a), however, indicates that indoor pools are excepted from the barrier requirement.

The CPSC may determine the amount of the grant awarded to States that apply and that meet the eligibility requirements by considering the individual State's population and enforcement needs. The CPSC also may exercise its judgment in awarding grants according to what will best serve the overall purpose of preventing childhood drowning. Priority, however, should be given to States that have not received a grant in the previous fiscal year.

States that receive grants are required to apply at least 50 percent of the funds to hire and train personnel to implement and enforce State law standards consistent with section 5. The remainder of the funds may be used to educate the pool industry, pool owners, and members of the public.

Section 5. Minimum State law requirements

Section 5(a) sets forth the minimum requirements that State law must meet to qualify for a grant. In establishing the grant eligibility requirement, the CPSC must ensure consistency with applicable national performance standards. The bill makes clear that the CPSC may use these requirements only for the purpose of determining eligibility for grants; the CPSC has no enforcement authority with respect to these requirements. Such minimum State standards include requirements for—

- Barriers that prevent small children from gaining unsupervised access to pools. The requirement for a qualifying barrier is detailed in the definition of “barrier” in section 7.
- Anti-entrapment drain systems.
- Drain design systems that feature no main drain and instead use multiple “unblockable” drains, as those terms are defined in section 7, for pools built more than 1 year after the date of enactment.
- Anti-entrapment drain covers that meet the standard set forth in section 3, for pools that have main drains.
- Additional requirements that the CPSC may establish with notice and a 30-day comment period.

Section 5(b) provides that nothing in this bill is intended to prevent the CPSC from promulgating pool and spa safety standards or relying on an applicable national standard.

Section 5(c) provides that, in setting forth minimum State law standards, the CPSC must consider various safety features for covers, gates, doors, and pool alarms.

Section 5(d) sets forth further specific minimum standards for grant eligibility for pools with single main drains to prevent entrapment, entanglement, and evisceration. The CPSC must require at least one of the following: safety vacuum release system, suction-limiting vent system, gravity drainage system, automatic pump shut-off system, or a system that is equally effective in eliminating the dangers associated with drainage systems. All such devices or systems must comply with ASME/ANSI or ASTM performance standards.

It is important to note that none of the current State laws regarding pool safety would qualify their States for grant money. The Committee remains concerned that the States with pool safety laws

similar to the requirements of those specified by the grant program may not change their laws to comply and will therefore not be eligible to participate in the grant program.

Section 6. Education program

Section 6 requires the CPSC to conduct an educational program to inform the public about ways to prevent drowning and entrapment in swimming pools, spas, and ornamental pools and fountains. The bill directs the CPSC to develop materials directed at the pool industry (manufacturers, service companies and retail outlets); pool owners and operators; and operators of ornamental pools and fountains (including municipalities). It also directs the CPSC to develop a national media campaign to promote awareness of pool safety. The bill authorizes an annual appropriation of \$5 million for Fiscal Years 2009 through 2013 to conduct the education program.

Section 7. Definitions

Section 7 defines terms used in the bill, as follows:

(a) "ASME/ANSI Standard" refers to a safety standard accredited by the American National Standards Institute and published by American Society of Mechanical Engineers.

(b) "ASTM STANDARD" means a safety standard issued by ASTM International.

(c) "Barrier," with respect to a swimming pool under this bill, includes a fence or wall (or combination), which completely surrounds the pool and obstructs access to the pool. If the dwelling wall, or house wall, constitutes one part of the barrier, any doors and windows that are part of that wall and provide direct access to the pool must be equipped with exit alarms (at the specified sound standard). Doors providing direct access also must be equipped with self-closing, self-latching devices at a height no lower than 54 inches above the floor. Barrier, with respect to a spa or a portable hot tub, means a lockable cover.

(d) "Commission" means the Consumer Product Safety Commission or the CPSC.

(e) "Main Drain" means a submerged suction outlet typically located at the bottom of a pool and connected to a circulating pump.

(f) "Ornamental Pool" is a decorative pool or fountain, not intended for swimming, bathing, or wading.

(g) "Safety Vacuum Release System" means a system that can shut off the suction caused by a vacuum.

(h) "Unblockable Drain" is a drain that cannot be sufficiently blocked by a human body to cause a suction hazard.

(i) "Swimming Pool and Spa" means any indoor or outdoor structure, in ground or above ground, intended for swimming or recreation. They include hot tubs, spas, portable spas, and non-portable wading pools.

Section 8. CPSC report

Section 8 requires the CPSC to submit annual reports to Congress evaluating the effectiveness of the grant program in Section 4. The reports are due one year after the close of each fiscal year for which grants were eligible to be made and for which funds were appropriated.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

