



Pool safety law not working, advocates say

Updated 1d 9h ago |

By **Gregory Korte**, USA TODAY

WASHINGTON — The incidents are rare, but horrifying.

Children — and sometimes adults, even strong swimmers — can get sucked in by a pool or spa drain, trapping them underwater until they drown or, in some cases, are disemboweled.

To prevent those accidents, Congress passed the Virginia Graeme Baker Pool and Spa Safety Act in 2007, named for the 7-year-old granddaughter of former secretary of State James Baker. She died in a hot tub in Northern Virginia in 2002 after getting trapped by the drain.

But almost four years later, pool safety advocates say the law's not working as hoped.

The pre-Memorial Day recall of more than 1 million pool drain covers designed to fix the problem only underscores how messy the implementation of the law has become, the law's backers say.

"You have a lot of pool owners that did work to become compliant, only to find out maybe it's not safe after all," said Nancy Baker, the mother whose lobbying efforts helped get the law passed. "The implementation of it, how else can I put it? It's just been botched."

The recall was the latest of many setbacks for the authors of the pool safety law.

The law was supposed to award more than \$4 million in grants for states to bring their pool safety codes up to federal standards. Not one state has done so.

Members of Congress have complained that the **Consumer Product Safety Commission** undermined the law by eliminating the requirement for automatic drain shut-off switches as an additional layer of protection in some pools. Industry groups argued that the switches were unnecessary.

That decision "runs counter to both the spirit and letter" of the law, said five senators led by **Mark Pryor**, D-Ark., the law's sponsor in the Senate. "In single drain pools, no drain cover — no matter how large or unblockable — can protect a child from entrapment if the drain cover is improperly installed or inadvertently removed," the senators wrote to the commission last year.

One of the biggest hurdles for the safety agency has been enforcement.

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The CPSC could not provide statistics on how many inspections have been done, but published a paperwork notice in 2009 estimating it would conduct 97 a year.

Since then, the agency has contracted out with 16 state and local health departments to do more than 2,800 inspections, costing as much as \$400 each. Those contracts cover less than 1% of the 300,000 commercial pools in the [United States](#).

That doesn't include residential pools and spas, which number more than 16 million, according to industry data compiled by P.K. Data Inc.

"The industry is vast," agency spokesman Scott Wolfson said. "CPSC alone is not big enough to educate this entire industry. But our mandate is clear. We need every single pool and spa in the country to be compliant with the act, and we need every single pool company to know what they have to do."

What they have to do has at times been unclear, as the recall incident shows. An investigation by the safety agency found that the testing laboratories that certified drain covers as meeting safety standards applied those standards inconsistently and incorrectly, meaning many of the covers may be unsafe for the pools they're installed in.

"(The CPSC has) to rely on industry to come up with standards that actually work, and that's a problem with pool safety. When you have a fox constructing, owning and living in the henhouse, that can be a problem," said Ken Nahigian, a former senior Senate staffer who helped write the law and now works as a consultant for the ZAC Foundation, a pool safety group founded by the parents of a pool entrapment victim. "The industry

pushed back on the new law, and have been actively working to weaken it ever since, though they probably won't admit it."

Carvin DiGiovanni, who directs standards for the Association of Pool and Spa Professionals, the leading industry group, declined to be interviewed. A spokeswoman, Lisa Grepps, said in a written statement that the industry's own standards — developed beginning in 2004 — meet or exceed the federal law. But she acknowledged that "neither the APSP nor its members have the authority to enforce voluntary standards."

The trade group also declined to address the enforcement issues, instead referring questions to state authorities.

One state official critical of how the law's been implemented is Joe Pollock of the Nevada State Health Division.

"They can come in and enforce it themselves," he said. "The Virginia Graeme Baker Act to date has been an unfunded mandate."

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Pollock was one of several state regulators who have opposed a proposed rule — still under consideration — that would expand the law's reach to pools at privately owned vacation rentals.

On the Outer Banks of North Carolina alone, about 25,000 rental homes have pools, said [Jim Hayes](#), who oversees pool inspections for that state. "There's no way" the state could inspect them all, he said.

Without buy-in from the building and health inspectors on the ground, the law won't work, said David Stingl, the owner of a company that makes pool safety products. "This is something that was never regulated by the federal government before," he said. "The intent and the work done so far has been well meaning. If you could get all the state health departments on board, then I think it would be perfect."

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