

26:4A-4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 31
NJSA: 26:4A-4 (Concerns safety measures at health club swimming pools)
BILL NO: A3075 (Substituted for S2059)

SPONSOR(S) Johnson and others

DATE INTRODUCED: September 15, 2008

COMMITTEE: **ASSEMBLY:** Law and Public Safety

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** February 5, 2009

SENATE: February 23, 2009

DATE OF APPROVAL: March 21, 2009

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

A3075

SPONSOR'S STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

S2059

SPONSOR'S STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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LAW

[First Reprint]

ASSEMBLY, No. 3075

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2008

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman DAVID P. RIBLE

District 11 (Monmouth)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Co-Sponsored by:

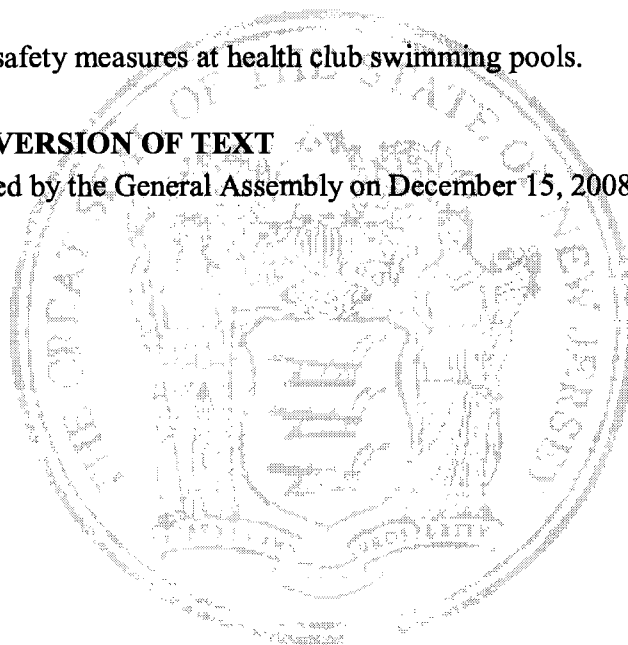
Assemblywoman Vainieri Huttie, Assemblyman DeAngelo and Senator Sweeney

SYNOPSIS

Concerns safety measures at health club swimming pools.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 15, 2008.



(Sponsorship Updated As Of: 2/24/2009)

1 AN ACT concerning swimming pools in health clubs and amending
2 P.L.1991, c.135.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1991, c.135 (C.26:4A-4) is amended to read
8 as follows:

9 1. As used in this act:

10 "Campground" means a plot of ground upon which two or more
11 campsites are located, established or maintained for occupancy by
12 camping units of the general public as temporary living quarters for
13 children or adults, or both, for a total of 15 days or more in any
14 calendar year, for recreation, education, or vacation purposes.

15 "Common interest community" means:

16 a. property subject to the "Condominium Act," P.L.1969, c.257
17 (C.46:8B-1 et seq.) or the "Horizontal Property Act," P.L.1963,
18 c.168 (C.46:8A-1 et seq.);

19 b. a housing corporation or association, commonly known as a
20 cooperative, which entitles the holder of a share or membership
21 interest thereof to possess and occupy for dwelling purposes a
22 house, apartment, manufactured or mobile home or other unit of
23 housing owned or leased by the corporation or association, or to
24 lease or purchase a unit of housing constructed or to be constructed
25 by the corporation or association; or

26 c. real estate with respect to which a person, by virtue of his
27 ownership of a unit, is obligated to pay for real estate taxes,
28 insurance premiums, maintenance or improvement of other real
29 estate described in the instrument, however denominated, which
30 creates the common interest community. Ownership of a unit does
31 not include holding a leasehold interest of less than 20 years in a
32 unit, including renewal options;

33 "Health club" means a health club that is registered with the
34 Director of the Division of Consumer Affairs in the Department of
35 Law and Public Safety pursuant to P.L.1987, c.238 (C.56:8-39 et
36 seq.).

37 "Hotel" or "motel" means a commercial establishment with a
38 building of four or more dwelling units or rooms used for rental and
39 lodging by guests.

40 "Mobile home park" means a parcel of land, or two or more
41 contiguous parcels of land, containing at least 10 sites equipped for
42 the installation of mobile or manufactured homes, where these sites
43 are under common ownership and control, other than as a
44 cooperative, for the purpose of leasing each site to the owner of a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted December 15, 2008.

1 mobile or manufactured home for the installation thereof, and where
2 the owner provides services, which are provided by the municipality
3 in which the park is located for property owners outside the park,
4 which services may include, but shall not be limited to:

- 5 a. Construction and maintenance of streets;
- 6 b. Lighting of streets and other common areas;
- 7 c. Garbage removal;
- 8 d. Snow removal; and
- 9 e. Provision for the drainage of surface water from home sites
10 and common areas.

11 "Private lake, river or bay or private community lake, river or
12 bay association" means an organization of property owners within a
13 fixed or defined geographical area with deeded or other rights to
14 utilize, with similarly situated owners, various lakefront, riverfront
15 or bayfront properties, which properties are not open to the general
16 public, other than bona fide guests of a member of the private lake,
17 river or bay or private community lake, river or bay association.

18 "Private marina" means a privately-owned water dependent
19 facility for the docking, servicing or storage of private boats, at
20 which services are provided on an annual, seasonal or per diem
21 basis, and which facility is not open to the general public, other
22 than bona fide guests of boat owners eligible to use the marina and
23 which has a private swimming pool that is not open to the general
24 public, other than bona fide guests of boat owners eligible to use the
25 marina.

26 "Retirement community" means a retirement community which
27 is registered with the Division of Housing and Development in the
28 Department of Community Affairs pursuant to "The Planned Real
29 Estate Development Full Disclosure Act," P.L.1977, c.419
30 (C.45:22A-21 et seq.).

31 "Specially exempt facility" means a private lake, river or bay or
32 private community lake, river or bay association, or private
33 nonprofit common interest community which restricts the use of its
34 lake, river, bay or pool, as appropriate, to the owners of units
35 thereof and their invited guests. Specially exempt facility also
36 includes a campground, hotel, motel, mobile home park, or
37 retirement community which restricts the use of its pool to renters
38 of the lodging units or owners of the dwelling units, as appropriate,
39 and their invited guests, or day-use visitors, or a private marina
40 which restricts the use of its swimming pool to owners of boats
41 eligible to use the facilities and their invited guests. Specially
42 exempt facility also includes a privately-owned campground which
43 restricts the use of a swimming area other than its swimming pool
44 to renters of the lodging units or owners of the dwelling units, as
45 appropriate, and their invited guests, or day-use visitors. Specially
46 exempt facility also includes a health club which restricts the use of
47 its pool to members and their invited guests and does not permit the
48 use of its pool by persons under '[[13] 16' years of age, and in

1 which the maximum depth of the water in the pool does not exceed
2 five feet ¹, but does not include a health club which shares use of
3 its pool with another entity ¹ .

4 (cf: P.L.2001, c.151, s.1)

5
6 2. Section 2 of P.L.1991, c.135 (C.26:4A-5) is amended to read
7 as follows:

8 2. Notwithstanding the provisions of section 7 of P.L.1947,
9 c.177 (C.26:1A-7) or any rules or regulations promulgated pursuant
10 thereto to the contrary, a specially exempt facility shall be exempt
11 from mandatory compliance with the first aid personnel and
12 lifeguard requirements of N.J.A.C.8:26-5 et seq., except that [a]:

13 a. A campground, private marina with a swimming pool, hotel,
14 motel, mobile home park or retirement community which does not
15 voluntarily comply with these requirements shall have a manager or
16 owner on the premises when its swimming area or, in the case of a
17 private marina, when its swimming pool is open for use; and

18 b. A health club which does not voluntarily comply with these
19 requirements shall have an owner or '[operator] manager' on the
20 premises when its swimming pool is open for use. The provisions
21 of this section shall not be construed to exempt a health club from
22 the provisions of P.L.2005, c.346 (C.2A:62A-30 et seq.).

23 (cf: P.L.2000, c.151, s.2)

24
25 3. Section 3 of P.L.1991, c.135 (C.26:4A-6) is amended to read
26 as follows:

27 3. [A] a. Except as provided in subsection b. of this section, a
28 specially exempt facility which does not voluntarily comply with
29 the first aid and lifeguard requirements of N.J.A.C.8:26-5 et seq.,
30 shall post a sign not less than three feet by four feet, which shall be
31 prominently displayed at the entrance to each swimming area,
32 stating: "No lifeguard on duty. Persons under the age of 16 must
33 be accompanied by an adult. No swimming alone." In the case of a
34 campground, hotel, motel, mobile home park or retirement
35 community, the sign shall also state: "This pool (or swimming area)
36 shall be closed when the owner or manager is not on the premises."
37 The notice shall also be posted on a sign not less than eight inches
38 by 10 inches at the registration desk of the campground, hotel or
39 motel, and in each room or suite of the campground, hotel or motel
40 used for occupancy by guests.

41 b. A health club which is a specially exempt facility and does
42 not voluntarily comply with the first aid and lifeguard requirements
43 of N.J.A.C.8:26-5 et seq., shall post a sign not less than three feet
44 by four feet, which shall be prominently displayed at the entrance to
45 its swimming pool, stating: "No lifeguard on duty. Persons under
46 the age of '[13] 16' are not permitted to use this pool. '[Persons
47 under the age of 16 must be accompanied by an adult.]'" The sign

1 shall also state: "This pool shall be closed when the owner or
2 manager is not on the premises." This information shall also be
3 posted on a sign not less than eight inches by 10 inches at the
4 member service desk of the health club.

5 (cf: P.L.1991, c.135, s.3)

6

7 4. The Commissioner of Health and Senior Services, pursuant
8 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
9 1 et seq.), shall adopt rules and regulations to effectuate the
10 purposes of this act.

11

12 5. This act shall take effect on the 180th day after enactment,
13 but the Commissioner of Health and Senior Services may take such
14 anticipatory administrative action in advance thereof as shall be
15 necessary for the implementation of the act.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3075

STATE OF NEW JERSEY

DATED: OCTOBER 23, 2008

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 3075.

Assembly Bill No. 3075 exempts health clubs from the first aid personnel and lifeguard requirements established by regulation of the Commissioner of Health and Senior Services at N.J.A.C.8:26-5 et seq. under certain conditions. It includes them among the "specially exempt facilities" provided for under P.L.1991, c.135 (C.26:4A-4 et seq.), the statute which governs safety requirements for public swimming pools and places.

The bill provides specifically as follows:

- The bill defines "health club" to mean a health club that is registered with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1987, c.238 (C.56:8-39 et seq.).
- The category of "specially exempt facility" (as defined in section 1 of P.L.1991, c.135; C.26:4A-4) is expanded to include a health club which restricts the use of its pool to members and their invited guests and does not permit the use of its pool by persons under 13 years of age, and in which the maximum depth of the water in the pool does not exceed five feet.
- A health club which is a specially exempt facility and does not voluntarily comply with the first aid and lifeguard requirements of N.J.A.C.8:26-5 et seq. must:
 - have an owner or operator on the premises when its swimming pool is open for use; and
 - comply with the requirements of P.L.2005, c.346 (C.2A:62A-30 et seq.) that the health club have: at least one tested and maintained automated external defibrillator stored in an accessible location within the health club that is known and available to the employees of the health club; and at least one employee trained in its use and in cardiopulmonary resuscitation on site during the normal business hours of the health club.
- A health club which is a specially exempt facility and does not voluntarily comply with the first aid and lifeguard requirements of N.J.A.C.8:26-5 et seq., must post a sign not less than three feet by four feet, which is to be prominently displayed at the entrance to its

swimming pool, stating: "No lifeguard on duty. Persons under the age of 13 are not permitted to use this pool. Persons under the age of 16 must be accompanied by an adult." The sign is to also state: "This pool shall be closed when the owner or manager is not on the premises." This information must also be posted on a sign not less than eight inches by 10 inches at the member service desk of the health club.

STATEMENT TO

ASSEMBLY, No. 3075

with Assembly Floor Amendments
(Proposed By Assemblyman JOHNSON)

ADOPTED: DECEMBER 15, 2008

Assembly Bill No. 3075 exempts health clubs from the first aid personnel and lifeguard requirements established under Department of Health and Senior Services regulations under certain conditions and includes them as “specially exempt facilities.”

These Assembly amendments:

(1) specify that a “specially exempt facility” does not include a health club which shares use of its pool with another entity;

(2) clarify that an owner or “manager” must be on the premises when a pool is open for use in the case of a health club that does not voluntarily comply with the Department of Health and Senior Services first aid personnel and lifeguard regulations (as introduced, the bill required an owner or “operator” to be on the premises); and

(3) provide that persons under 16 years of age are not permitted to use the pool in the case of a health club that is a specially exempt facility (as introduced, the bill did not permit persons under 13 years of age to use the pool).

As amended, this bill is identical to Senate Bill No. 2059 (1R), as amended and reported by the Senate Health, Human Services and Senior Citizens Committee on December 8, 2008.

1 not less than eight inches by 10 inches at the member service desk
2 of the health club.

3 (cf: P.L.1991, c.135, s.3)

4
5 4. The Commissioner of Health and Senior Services, pursuant to
6 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.), shall adopt rules and regulations to effectuate the purposes of
8 this act.

9
10 5. This act shall take effect on the 180th day after enactment,
11 but the Commissioner of Health and Senior Services may take such
12 anticipatory administrative action in advance thereof as shall be
13 necessary for the implementation of the act.

14

15

16 *SPONSOR'S* STATEMENT

17

18 This bill would, under certain conditions, exempt health clubs
19 from the first aid personnel and lifeguard requirements established
20 by regulation of the Commissioner of Health and Senior Services at
21 N.J.A.C.8:26-5 et seq., and include them among the "specially
22 exempt facilities" provided for under P.L.1991, c.135 (C.26:4A-4 et
23 seq.), which is the statute that governs safety requirements for
24 public swimming pools and places.

25 The bill provides specifically as follows:

26 • The bill defines "health club" to mean a health club that is
27 registered with the Director of the Division of Consumer Affairs
28 in the Department of Law and Public Safety pursuant to P.L.1987,
29 c.238 (C.56:8-39 et seq.).

30 • The category of "specially exempt facility" (as defined in section
31 1 of P.L.1991, c.135; C.26:4A-4) is expanded to include a health
32 club which restricts the use of its pool to members and their
33 invited guests and does not permit the use of its pool by persons
34 under 13 years of age, and in which the maximum depth of the
35 water in the pool does not exceed five feet.

36 • A health club which is a specially exempt facility and does not
37 voluntarily comply with the first aid and lifeguard requirements
38 of N.J.A.C.8:26-5 et seq. must:

39 -- have an owner or operator on the premises when its
40 swimming pool is open for use; and

41 -- comply with the requirements of P.L.2005, c.346 (C.2A:62A-
42 30 et seq.) that the health club have: at least one tested and
43 maintained automated external defibrillator stored in an accessible
44 location within the health club that is known and available to the
45 employees of the health club; and at least one employee trained in
46 its use and in cardiopulmonary resuscitation on site during the
47 normal business hours of the health club.

A3075 JOHNSON, RIBLE

6

- 1 • A health club which is a specially exempt facility and does not
2 voluntarily comply with the first aid and lifeguard requirements
3 of N.J.A.C.8:26-5 et seq., must post a sign not less than three feet
4 by four feet, which is to be prominently displayed at the entrance
5 to its swimming pool, stating: "No lifeguard on duty. Persons
6 under the age of 13 are not permitted to use this pool. Persons
7 under the age of 16 must be accompanied by an adult." The sign
8 is to also state: "This pool shall be closed when the owner or
9 manager is not on the premises." This information must also be
10 posted on a sign not less than eight inches by 10 inches at the
11 member service desk of the health club.
- 12 • The bill takes effect on the 180th day after enactment, but
13 authorizes the commissioner to take anticipatory administrative
14 action in advance as necessary for its implementation.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2059

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 2059.

As amended by committee, this bill would, under certain conditions, exempt health clubs from the first aid personnel and lifeguard requirements established by regulation of the Commissioner of Health and Senior Services at N.J.A.C.8:26-5 et seq., and include them among the "specially exempt facilities" provided for under P.L.1991, c.135 (C.26:4A-4 et seq.), which is the statute that governs safety requirements for public swimming pools and places.

The bill provides specifically as follows:

- The bill defines "health club" to mean a health club that is registered with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1987, c.238 (C.56:8-39 et seq.).
- The category of "specially exempt facility," as defined in section 1 of P.L.1991, c.135 (C.26:4A-4), is expanded to include a health club which restricts the use of its pool to members and their invited guests and does not permit the use of its pool by persons under 16 years of age, and in which the maximum depth of the water in the pool does not exceed five feet, but does not include a health club which shares use of its pool with another entity.
- A health club which is a specially exempt facility and does not voluntarily comply with the first aid and lifeguard requirements of N.J.A.C.8:26-5 et seq. must:
 - have an owner or manager on the premises when its swimming pool is open for use;
 - comply with the requirements of P.L.2005, c.346 (C.2A:62A-30 et seq.) that the health club have: at least one tested and maintained automated external defibrillator stored in an accessible location within the health club that is known and available to the employees of the health club; and at least one employee trained in its use and in

cardiopulmonary resuscitation on site during the normal business hours of the health club; and

-- post a sign not less than three feet by four feet, which is to be prominently displayed at the entrance to its swimming pool, stating: "No lifeguard on duty. Persons under the age of 16 are not permitted to use this pool." The sign is to also state: "This pool shall be closed when the owner or manager is not on the premises." This information must also be posted on a sign not less than eight inches by 10 inches at the member service desk of the health club.

- The bill takes effect on the 180th day after enactment, but authorizes the commissioner to take anticipatory administrative action in advance as necessary for its implementation.

The committee amended the bill to:

-- specify that "specially exempt facility" does not include a health club which shares use of its pool with another entity;

-- clarify that an owner or manager, rather than an owner or operator as the bill originally provided, shall be on the premises when a pool is open for use in the case of a health club that does not voluntarily comply with first aid personnel and lifeguard requirements; and

-- provide that persons under 16 years of age (rather than 13 years of age, as the bill originally provided) would not be permitted to use the pool in the case of a health club that is a specially exempt facility.

As amended, this bill is similar to Assembly Bill No. 3075 (Johnson/Rible/Evans), which is on second reading in the Assembly.

1 not less than eight inches by 10 inches at the member service desk
2 of the health club.

3 (cf: P.L.1991, c.135, s.3)

4
5 4. The Commissioner of Health and Senior Services, pursuant
6 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
7 1 et seq.), shall adopt rules and regulations to effectuate the
8 purposes of this act.

9
10 5. This act shall take effect on the 180th day after enactment,
11 but the Commissioner of Health and Senior Services may take such
12 anticipatory administrative action in advance thereof as shall be
13 necessary for the implementation of the act.

14
15
16 SPONSOR'S STATEMENT

17
18 This bill would, under certain conditions, exempt health clubs
19 from the first aid personnel and lifeguard requirements established
20 by regulation of the Commissioner of Health and Senior Services at
21 N.J.A.C.8:26-5 et seq., and include them among the "specially
22 exempt facilities" provided for under P.L.1991, c.135 (C.26:4A-4 et
23 seq.), which is the statute that governs safety requirements for
24 public swimming pools and places.

25 The bill provides specifically as follows:

- 26 • The bill defines "health club" to mean a health club that is
27 registered with the Director of the Division of Consumer Affairs
28 in the Department of Law and Public Safety pursuant to P.L.1987,
29 c.238 (C.56:8-39 et seq.).
- 30 • The category of "specially exempt facility" (as defined in section
31 1 of P.L.1991, c.135; C.26:4A-4) is expanded to include a health
32 club which restricts the use of its pool to members and their
33 invited guests and does not permit the use of its pool by persons
34 under 13 years of age, and in which the maximum depth of the
35 water in the pool does not exceed five feet.
- 36 • A health club which is a specially exempt facility and does not
37 voluntarily comply with the first aid and lifeguard requirements
38 of N.J.A.C.8:26-5 et seq. must:
- 39 -- have an owner or operator on the premises when its
40 swimming pool is open for use; and
- 41 -- comply with the requirements of P.L.2005, c.346 (C.2A:62A-
42 30 et seq.) that the health club have: at least one tested and
43 maintained automated external defibrillator stored in an accessible
44 location within the health club that is known and available to the
45 employees of the health club; and at least one employee trained in
46 its use and in cardiopulmonary resuscitation on site during the
47 normal business hours of the health club.

S2059 SWEENEY

6

- 1 • A health club which is a specially exempt facility and does not
2 voluntarily comply with the first aid and lifeguard requirements
3 of N.J.A.C.8:26-5 et seq., must post a sign not less than three feet
4 by four feet, which is to be prominently displayed at the entrance
5 to its swimming pool, stating: "No lifeguard on duty. Persons
6 under the age of 13 are not permitted to use this pool. Persons
7 under the age of 16 must be accompanied by an adult." The sign
8 is to also state: "This pool shall be closed when the owner or
9 manager is not on the premises." This information must also be
10 posted on a sign not less than eight inches by 10 inches at the
11 member service desk of the health club.
- 12 • The bill takes effect on the 180th day after enactment, but
13 authorizes the commissioner to take anticipatory administrative
14 action in advance as necessary for its implementation.