

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1980

By: Sadler

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-1013, as amended by Section 1, Chapter 54, O.S.L. 1995, 1-1014, 1-1015, 1-1016, 1-1018, 1-1020 and 1-1021 (63 O.S. Supp. 1996, Section 1-1013), which relate to public bathing places; creating the Public Bathing Place Regulation Act; modifying and adding definitions; modifying and adding to powers and duties of the State Board of Health, the State Commissioner of Health and the State Department of Health; providing for issuance of certain permits; prohibiting assessment of certain fees; prohibiting certain actions; specifying license conditions; clarifying and updating language; authorizing inspections; providing for deeming of consent; providing for refusal to allow entry or inspection; providing for notice and hearing; providing for violations; specifying certain dates; providing for emergencies; authorizing assessment of administrative penalties; specifying conditions for assessment; providing for collection and deposit; specifying persons entitled to bring certain actions; authorizing certain actions; repealing 63 O.S. 1991, Sections 1-1017 and 1-1019, which relate

to certain plans and records; providing for codification; providing for recodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1012.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 11 of this act shall be known and may be cited as the "Public Bathing Place Regulation Act".

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1013, as amended by Section 1, Chapter 54, O.S.L. 1995 (63 O.S. Supp. 1996, Section 1-1013), is amended to read as follows:

Section 1-1013. ~~The term~~ For purposes of the Public Bathing Place Regulation Act:

1. ~~"public bathing place," as used in the following sections of this article, includes~~ means all entirely artificially constructed wading pools, swimming pools, bathhouses used collectively by a number of persons for wading, swimming, recreative, or therapeutic bathing, together with all sanitary facilities, bathing suits, buildings, equipment, and appurtenances pertaining to such bathing places; ~~provided, that such.~~ The term "public bathing place" shall not apply to these:

- a. public or semipublic baths where the main object is the external cleansing of the body, ~~to~~
- b. bathing places maintained by an individual for the use of family and friends, or ~~to~~
- c. bathing places owned or managed by a group or association of the owners of thirty or fewer homes,

the use of which is limited to the homeowner group and their nonpaying guests;

2. "Department" means the State Department of Health;

3. "Commissioner" means the State Commissioner of Health; and

4. "Board" means the State Board of Health.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-1014, is amended to read as follows:

Section 1-1014. ~~The State Commissioner of Health shall have supervision of sanitation, healthfulness, safety, and design of public bathing places, and shall enforce all rules and regulations promulgated and adopted by the State Board of Health for carrying out the following provisions of this article.~~ A. The State Board is hereby authorized to of Health shall promulgate and adopt reasonable standards and rules and regulations pertaining to the design, construction, safety, sanitation, and sanitary operation of public bathing places and the licensing of all owners and operators of public bathing places, as it may deem necessary to effectively carry out the following provisions of this article the Public Bathing Place Regulation Act.

B. The State Commissioner of Health shall have supervision of sanitation, healthfulness, safety, and design of public bathing places and the licensing of all owners and operators of public bathing places. In addition, the Commissioner shall have the power and duty to:

1. Establish, administer, and enforce safety standards for the design, construction, maintenance, and operation of all public bathing places;

2. Enforce rules promulgated by the Board implementing and effectuating the powers and duties of the State Department of Health pursuant to the provisions of the Public Bathing Place Regulation Act;

3. Make periodic investigations and inspections of public bathing places to ensure compliance with the provisions of the Public Bathing Place Regulation Act and rules promulgated by the Board pursuant thereto;

4. Require the submission of plans, specifications, and other data relative to public bathing places, and review said plans, specifications, and other data;

5. Require reports from all persons operating or owning a public bathing place;

6. Require the maintenance of records relating to the operation of public bathing places;

7. Issue permits for the operation and maintenance of public bathing places;

8. Institute or cause to be instituted any necessary legal proceedings in any court of competent jurisdiction for an injunction or other appropriate relief to enforce the provisions of the Public Bathing Place Regulation Act; and

9. Exercise all incidental powers which are necessary and proper to implement the provisions of the Public Bathing Place Regulation Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1014.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. On and after January 1, 1998, no person shall own, operate or maintain a public bathing place without a current permit issued by the State Commissioner of Health.

B. The application for a permit shall be upon such form and made in such manner as the State Department of Health shall prescribe. All permits shall be issued only for the premises named in the application and may be renewed for twenty-four-month periods in the same manner as in the case of procurement of the original permit.

C. No application or permit charge may be assessed by the Department.

D. No public bathing place shall be constructed, added to or changed unless plans and specifications therefor, prepared by a licensed professional engineer, have been approved by the Department.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-1015, is amended to read as follows:

Section 1-1015. ~~(a)~~ A. All public bathing places shall be maintained in a sanitary and safe condition, ~~and all.~~ All owners, managers, operators, and other attendants in charge of any public bathing place shall be responsible for the sanitation and safety of such places ~~during the season or seasons~~ when the public bathing place is in use.

~~(b)~~ B. The water in a public bathing place shall, at all times ~~during the season or seasons~~ when the bathing place is in use, be of a safe and sanitary quality, in accordance with standards ~~that shall~~ ~~be~~ established by the State Board of Health, on turbidity, chemical content, pH value, bacterial content, and such other factors which the Board deems necessary for the protection of the health and safety of the public.

~~(c)~~ C. All bathing suits and towels used by, and maintained for the use of, the public shall be thoroughly washed, sterilized, rinsed, and thoroughly dried each time they are used.

~~(d)~~ D. All persons known or suspected of being infected with any transmissible condition of a communicable disease shall be excluded from the ~~pool~~ public bathing place.

~~(e)~~ E. A complete system of artificial lighting shall be provided for all sections of public bathing places which are to be used at night, but underwater lighting in the ~~pool~~ public bathing place shall not be required.

~~(f)~~ F. All interior sections or rooms of public bathing places shall be properly ventilated.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-1016, is amended to read as follows:

Section 1-1016. A. The materials of construction and finish used throughout the premises of a public bathing place shall be such as will provide easily cleanable surfaces with due consideration being given to the safety of the patrons of such places.

Requirements regarding toilet facilities, drinking fountains, hot and cold water supplies, lavatories, and showers may be included in standards adopted by the State Board of Health.

B. The design of public bathing places shall be based on modern public health engineering practices and shall at least comply with the minimum design and operation requirements for the health and safety of patrons as set forth herein, and to this end the State Commissioner of Health shall cause to be printed for free distribution to architects, engineers, and others standards outlining in detail such minimum requirements.

C. The equipment of public bathing places shall be such as to minimize accidents and to provide for the health and safety of the patrons of public bathing places.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-1018, is amended to read as follows:

Section 1-1018. A. The State Commissioner of Health, or ~~his~~ the authorized representative of the Commissioner, or the local health officer, may at all reasonable times enter all parts of the premises of a public bathing place to make examination and investigation to determine the sanitary conditions of such places and whether legal requirement and the rules ~~and regulations~~ of the State Board of Health are being violated.

B. Any permittee or applicant for a permit shall be deemed to have given consent to any duly authorized employee or agent of the

State Department of Health to enter and inspect the public bathing place in accordance with the provisions of the Public Bathing Place Regulation Act. Refusal to allow such entry or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1020, is amended to read as follows:

Section 1-1020. A. Any public bathing place constructed, operated or maintained contrary to the foregoing provisions of this article Public Bathing Place Regulation Act, or any rules promulgated or order issued pursuant thereto is hereby declared to be a public nuisance dangerous to public health, but may be permitted to operate upon a compliance with such provisions.

B. If upon inspection or investigation, or whenever the State Department of Health determines that there are reasonable grounds to believe that a public bathing place is in violation of the Public Bathing Place Regulation Act, any standard or rule promulgated pursuant thereto or of any order of the Department, the Department shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that the matters complained of be corrected immediately or that the alleged violator appear before the Department at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection F of this section.

C. The Department shall give the notice specified by the provisions of subsection B of this section within ten (10) days of an inspection or investigation of the public bathing place if the Department determines that the public bathing place is in violation of the Public Bathing Place Regulation Act or the rules promulgated by the Board pursuant thereto.

D. The Department shall afford the alleged violator an opportunity for a fair hearing within fifteen (15) days of receipt of notice provided by subsection B of this section in accordance with the provisions of Article II of the Administrative Procedures Act.

E. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare, the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Department shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Department shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days.

F. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Department.

Every certificate or affidavit of service made and filed as in this section provided shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

G. The hearings authorized by this section may be conducted by the Department. The Department may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Department at any time and place. Such hearings shall be conducted in conformity with and records made thereof as provided by the provisions of Article II of the Administrative Procedures Act.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-1021, is amended to read as follows:

Section 1-1021. A. Public bathing places that are permanently out of service shall be deemed to be public nuisances.

B. A public bathing place is permanently out of service when it is removed from use with no intention of being reopened.

C. A public bathing place other than a wading pool will be presumed to be permanently out of service when:

1. An indoor public bathing place has not been in use for ninety (90) consecutive days;

2. An outdoor public bathing place has not been in use at any time during the period extending from June 1 to September 1 of the same year.

D. Closure or securing of a permanently out-of-service public bathing place shall be required immediately upon being presumed permanently out of service. Closure is to be completed by filling in the public bathing place with earthen material or by covering the facility with solid, rigid, weight-supporting material to make it level with the surrounding area. Securing is to be completed by constructing or utilizing an existing barrier adequate to prevent entry by unauthorized persons.

E. Municipalities ~~shall be allowed to~~ may secure public bathing places which are out of service and have not been secured in accordance with the requirements of this section, ~~and~~. Such

municipalities may charge the costs thereof against the taxes of the owner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1022 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department may impose administrative penalties against owners or operators of a public bathing place who fail, refuse or neglect to comply with the provisions of the Public Bathing Place Regulation Act, rules of the Board promulgated pursuant thereto or orders of the Commissioner.

B. Any person who has been determined by the Commissioner to have violated any provisions of the Public Bathing Place Regulation Act or any rule, or order issued pursuant thereto shall be liable for an administrative penalty of not more than One Hundred Dollars (\$100.00) for each day that said violation continues.

C. The amount of the penalty shall be assessed by the Commissioner pursuant to the provisions of subsection B of this section, after notice and hearing pursuant to Section 8 of this act. In determining the amount of the penalty, the Commissioner may include but not be limited to consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, past history of violations, and any show of good faith in attempting to achieve compliance with the provisions of the Public Bathing Place Regulation Act.

D. All penalties collected pursuant to the provisions of this subsection shall be deposited in the Public Health Fund. In addition to the administrative penalty specified by subsection B of this section, any person who willfully and knowingly violates any provision of the Public Bathing Place Regulation Act, upon conviction, shall be subject for each offense to a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment for a term

not to exceed thirty (30) days imprisonment in the county jail or both such fine and imprisonment.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1023 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Public Bathing Place Regulation Act or any rule promulgated, or order issued pursuant thereto.

B. 1. Enforcement of any action for equitable relief to redress or restrain a violation by any person of a provision of the Public Bathing Place Regulation Act or for an injunction or recovery of any administrative penalty assessed pursuant to the Public Bathing Place Regulation Act may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma,
- b. the Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or
- c. the Department on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

2. The court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

SECTION 12. REPEALER 63 O.S. 1991, Sections 1-1017 and 1-1019, are hereby repealed.

SECTION 13. RECODIFICATION 63 O.S. 1991, Sections 1-1016A and 1-1016B, shall be recodified as Sections 300 and 301

respectively of Title 61 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 14. This act shall become effective November 1, 1997.

46-1-5089

KSM