

By: Representative Baria

To: Municipalities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1281

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

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

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

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

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

35 (b) "Doorknob lock" means a lock that is in a doorknob
36 and that is operated from the exterior by a key, card, or
37 combination and from the interior without a key, card, or



38 combination.

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

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

50 (e) "Keyed dead bolt" means a door lock that is not in
51 the doorknob, that locks by a bolt in the doorjamb, that has a
52 bolt with at least a one (1) inch throw if installed after July 1,
53 2012, and that is operated from the exterior by a key, card, or
54 combination and operated from the interior by a knob or lever
55 without a key, card, or combination. The term includes a doorknob
56 lock that contains a bolt with at least a one (1) inch throw.

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

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

66 2. By a drop bolt system operated by
67 placing a central metal plate over a metal doorjamb restraint
68 which protrudes from the doorjamb and which is affixed to the
69 doorjamb frame by means of three (3) case-hardened screws at least
70 three (3) inches in length. One-half (1/2) of the central plate



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

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

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

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

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

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

102 (h) "Pool" means a permanent swimming pool, permanent



103 wading or reflection pool, or permanent hot tub or spa over
104 eighteen (18) inches deep, located at ground level, above ground,
105 below ground, or indoors.

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

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

110 (k) "Property owners association" means an
111 association of property owners for a residential subdivision,
112 condominium, cooperative, town home project, or other project
113 involving residential dwellings.

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

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

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

126 (o) "Tenant" means a person who is obligated to pay
127 rent or other consideration and who is authorized to occupy a
128 dwelling, to the exclusion of others, under a verbal or written
129 lease or rental agreement.

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

134 **SECTION 3.** The provisions of this act shall only apply to a
135 pool owned, controlled or maintained by the owner of a multiunit



136 rental complex or by a property owners association; and doors and
137 windows of rental dwellings opening into the pool yard of a
138 multiunit rental complex or condominium, cooperative, or town home
139 project.

140 **SECTION 4.** (a) Except as otherwise provided by Section 5 of
141 this act, the owner of a multiunit rental complex with a pool or a
142 property owners association that owns, controls or maintains a
143 pool shall completely enclose the pool yard with a pool yard
144 enclosure.

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

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

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

156 (e) If the pool yard enclosure is constructed with
157 horizontal and vertical members and the distance between the tops
158 of the horizontal members is less than forty-five (45) inches, the
159 openings may not allow a sphere one and three-fourths (1-3/4)
160 inches in diameter to pass through the enclosure.

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

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



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

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

176 (j) The wall of a building may be part of the pool yard
177 enclosure only if the doors and windows in the wall comply with
178 Sections 6 and 7 of this act.

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

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

185 (ii) Conform secondary pool yard enclosures, located
186 inside or outside the primary pool yard enclosure, to the
187 requirements of this chapter.

188 **SECTION 5.** (1) Except as otherwise provided by Section 5 of
189 this act, a gate in a fence or wall enclosing a pool yard as
190 required by Section 3 of this act shall:

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

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

195 (c) Open outward away from the pool yard.

196 (2) Except as otherwise provided by subsection (3) of this
197 section and Section 5 of this act, a gate latch must be installed
198 so that it is at least sixty (60) inches above the ground, except
199 that it may be installed lower if:



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

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

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

210 **SECTION 6.** (1) If a pool yard enclosure is constructed or
211 modified before July 1, 2012, and no municipal ordinance
212 containing standards for pool yard enclosures were applicable at
213 the time of construction or modification, the enclosure must
214 comply with the requirements of Sections 3 and 4 of this act,
215 except that:

216 (a) If the enclosure is constructed with chain link
217 metal fencing material, the openings in the enclosure may not
218 allow a sphere two and one-fourth (2-1/4) inches in diameter to
219 pass through the enclosure; or

220 (b) If the enclosure is constructed with horizontal
221 and vertical members and the distance between the tops of the
222 horizontal members is at least thirty-six (36) inches, the
223 openings in the enclosure may not allow a sphere four (4) inches
224 in diameter to pass through the enclosure.

225 (2) If a pool yard enclosure is constructed or modified
226 before July 1, 2012, and if the enclosure is in compliance with
227 applicable municipal ordinances existing on July 1, 2012, and
228 containing standards for pool yard enclosures, Sections 3, 4 and 5
229 of this act shall not apply to the enclosure.

230 **SECTION 7.** (1) A door, sliding glass door, or french door
231 may not open directly into a pool yard if the date of electrical



232 service for initial construction of the building or pool is on or
233 after July 1, 2012.

234 (2) A door, sliding glass door, or french door may open
235 directly into a pool yard if the date of electrical service for
236 initial construction of the building or pool is before July 1,
237 2012, and the pool yard enclosure complies with subsections (3),
238 (4) or (5) of this section, as applicable.

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

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

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

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

249 (4) If french doors of a building open to the pool yard, one
250 (1) of the french doors must comply with subsection (3) (a) and the
251 other door must have:

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

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

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

264 (a) A sliding door handle latch or sliding door



265 security bar that is installed not more than forty-eight (48)
266 inches above the interior floor; and

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

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

274 (7) A keyed dead bolt, keyless bolting device, sliding door
275 pin lock, or sliding door security bar installed before July 1,
276 2012, may be installed not more than fifty-four (54) inches from
277 the floor.

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

282 **SECTION 8.** A wall of a building constructed before July 1,
283 2012, may not be used as part of a pool yard enclosure unless each
284 window in the wall has a latch and unless each window screen on a
285 window in the wall is affixed by a window screen latch, screws, or
286 similar means. This section does not require the installation of
287 window screens. A wall of a building constructed on or after July
288 1, 2012, may not be used as part of a pool yard enclosure unless
289 each ground floor window in the wall is permanently closed and
290 unable to be opened.

291 **SECTION 9.** Each door, sliding glass door, window, and window
292 screen of each dwelling unit in a residential building located in
293 the enclosed pool yard must comply with Sections 6 and 7 of this
294 act.

295 **SECTION 10.** (1) An owner of a multiunit rental complex or a
296 rental dwelling in a condominium, cooperative, or town home
297 project with a pool or a property owners association that owns,



298 controls or maintains a pool shall exercise ordinary and
299 reasonable care to inspect, maintain, repair and keep in good
300 working order the pool yard enclosures, gates and self-closing and
301 self-latching devices required by this chapter and within the
302 control of the owner or property owners association.

303 (2) An owner of a multiunit rental complex or a rental
304 dwelling in a condominium, cooperative, or town home project with
305 a pool or a property owners association that owns, controls or
306 maintains a pool shall exercise ordinary and reasonable care to
307 maintain, repair and keep in good working order the window
308 latches, sliding door handle latches, sliding door pin locks, and
309 sliding door security bars required by this chapter and within the
310 control of the owner or property owners association after request
311 or notice from the tenant that those devices are malfunctioning or
312 in need of repair or replacement. A request or notice under this
313 subsection may be given orally unless a written lease applicable
314 to the tenant or written rules governing the property owners
315 association require the request or notice to be in writing. The
316 requirement in the lease or rules must be in capital letters and
317 underlined or in 10-point boldfaced print.

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

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



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

335 (2) An owner of a multiunit rental complex or a rental
336 dwelling in a condominium, cooperative, or town home project with
337 a pool or a property owners association that owns, controls or
338 maintains a pool may, at the person's option, exceed the standards
339 of this chapter or those adopted by the State Board of Health
340 under Section 11 of this act. A tenant or occupant in a multiunit
341 rental complex and a member of a property owners association may,
342 by express written agreement, require the owner of the complex or
343 the association to exceed those standards.

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

347 **SECTION 12.** The State Board of Health may adopt rules
348 requiring standards for design and construction of pool yard
349 enclosures that exceed the requirements of this act and that apply
350 to all pools and pool yards subject to this act. An owner of a
351 multiunit rental complex or a rental dwelling in a condominium,
352 cooperative, or town home project with a pool or a property owners
353 association that owns, controls, or maintains a pool shall comply
354 with and shall be liable for failure to comply with those rules to
355 the same extent as if they were part of this act.

356 **SECTION 13.** (1) A tenant of an owner of a multiunit rental
357 complex, a member of a property owners association, a governmental
358 entity, or any other person or the person's representative may
359 maintain an action against the owner or property owners
360 association for failure to comply with the requirements of this
361 act. In that action, the person may obtain:

362 (a) A court order directing the owner or property



363 owners association to comply with this chapter;

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

367 (c) A judgment against the owner or property owners
368 association for punitive damages resulting from the failure to
369 comply with the requirements of this chapter if the actual damages
370 to the person were caused by the owner's or property owners
371 association's intentional, malicious or grossly negligent actions;

372 (d) A judgment against the owner or property owners
373 association for actual damages, and if appropriate, punitive
374 damages, where the owner or association was in compliance with
375 this act at the time of the pool-related damaging event but was
376 consciously indifferent to access being repeatedly gained to the
377 pool yard by unauthorized persons; or

378 (e) A judgment against the owner or property owners
379 association for a civil penalty of not more than Five Thousand
380 Dollars (\$5,000.00) if the owner or property owners association
381 fails to comply with this chapter within a reasonable time after
382 written notice by a tenant of the multiunit rental complex or a
383 member of the property owners association.

384 (2) A court may award reasonable attorney fees and costs to
385 the prevailing party in an action brought under subsection (1)(e)
386 of this section.

387 (3) The Attorney General, a local health department, a
388 municipality, or a county having jurisdiction may enforce this
389 chapter by any lawful means, including inspections, permits, fees,
390 civil fines, criminal prosecutions, injunctions, and after
391 required notice, governmental construction or repair of pool yard
392 enclosures that do not exist or that do not comply with this
393 chapter.

394 **SECTION 14.** A tenant in a multiunit rental complex with a
395 pool may verbally request repair of a keyed dead bolt, keyless



396 bolting device, sliding door latch, sliding door pin lock, sliding
397 door security bar, window latch or window screen latch unless a
398 provision of a written lease executed by the tenant requires that
399 the request be made in writing and the provision is in capital
400 letters and underlined or in 10-point boldfaced print. A request
401 for repair may be given to the owner or the owner's managing
402 agent.

403 **SECTION 15.** The owner of a multiunit rental complex or a
404 property owners association is not required to enclose a body of
405 water or construct barriers between the owner's or property owners
406 association's property and a body of water such as an ocean, bay,
407 lake, pond, bayou, river, creek, stream, spring, reservoir, stock
408 tank, culvert, drainage ditch, detention pond, or other flood or
409 drainage facility.

410 **SECTION 16.** (1) The duties established by this act for an
411 owner of a multiunit dwelling project, an owner of a dwelling in a
412 condominium, cooperative, or town home project and a property
413 owners' association supersede those established by common law and
414 any local or state agency regulation and local ordinances relating
415 to duties to inspect, install, repair or maintain:

416 (a) Pool yard enclosures;

417 (b) Pool yard enclosure gates and gate latches,
418 including self-closing and self-latching devices;

419 (c) Keyed dead bolts, keyless bolting devices, sliding
420 door handle latches, sliding door security bars, self-latching and
421 self-closing devices, and sliding door pin locks on doors that
422 open into a pool yard area and that are owned and controlled by
423 the owner or property owners association; and

424 (d) Latches on windows that open into a pool yard area
425 and that are owned and controlled by the owner or property owners
426 association.

427 (2) This act does not affect any duties of a rental



428 dwelling owner, lessor, sublessor, management company or managing
429 agent.

430 **SECTION 17.** The remedies contained in this act are not
431 exclusive and are not intended to affect existing remedies allowed
432 by law or other procedures available to remedy.

433 **SECTION 18.** The provisions of this act shall be liberally
434 construed to promote its underlying purpose which is to prevent
435 swimming pool deaths and injuries in this state.

436 **SECTION 19.** Notwithstanding any provision of law to the
437 contrary, the provisions of this act shall supersede any other
438 provision of law that conflicts with any section of this act.

439 **SECTION 20.** This act shall take effect and be in force from
440 and after July 1, 2012.

