

# CLIENT ALERTS

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## Federal Law Requires Pools and Spas To Upgrade Safety Measures

In December 2007, the United States Congress passed and President Bush signed into law the Virginia Graeme Baker Pool and Spa Safety Act (the "Act"), which takes effect December 2008. The Act addresses dangers associated with pool and spa intake drains. Intake drains have been known to exert extreme pressure when covered and have caused numerous severe injuries, as well as deaths, when persons are trapped by the drain's suction and held beneath the water. The Act requires that all public pools and spas mitigate intake entrapment concerns by December 2008. Congress intends to include all pools, even those owned by community associations, private clubs, hotels, and apartment buildings, within the definition of "public pools." (15 U.S.C. §8003(c)(B)(2)) This client alert summarizes: (1) new federal requirements to mitigate the dangers of intake drain entrapments; and (2) the minimum state law requirements to which public pool owners will be required to comply.

### Federal Act

Effective December 19, 2008, all public pools and spas in the United States must be equipped with anti-entrapment devices or systems that comply with the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A112.19.8 performance standard. Additionally, every existing public pool or spa in the United States with a single main drain (other than an unblockable drain) must be equipped with at least one or more devices or systems designed to prevent entrapment by pool or spa drains ("Anti-Entrapment Devices"). The Act defines an unblockable drain as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard." (15 U. S.C. §8002(7)).

The following is a list of Anti-Entrapment Devices acceptable under the Act, all of which must meet ASME/ANSI or American Society for Testing and Materials (ASTM) performance standards (or any other applicable consumer product safety standard) if such a standard exists:

- Safety Vacuum Release System - A 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. In

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addition to meeting the ASME/ANSI performance standards, a vacuum release system must also be tested by an independent third party.

- Suction-Limiting Vent System - A system with a tamper-resistant atmospheric opening.
- Gravity Drainage System - A system that utilizes a collector tank.
- Automatic Pump Shut-off System - A system with an automatic shut off system.
- Drain Disablement - A system that disables the drain.

The Act does allow other Anti-Entrapment Devices to be used so long as the Consumer Product Safety Commission has determined that the proposed Anti-Entrapment Device is as effective, or better than, the five Anti-Entrapment Devices listed above, at preventing or eliminating the risk of injury or death associated with pool drainage systems. (15 U.S.C. §8003(c)(1)(A)(ii)(VI).

In addition to the Federal Act requirements discussed above, each state may enact more stringent pool and spa safety laws.

## State Law Requirements

The Act also authorizes the establishment of a grant program to provide assistance to each state's pool safety program. To be eligible for the grant program, states must promulgate or revise statutes regarding pool and spa safety standards to meet the minimum standards of the Act. Each state's statute must require pool and spa owners to (1) enclose all outdoor residential pools and spas with barriers that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa; (2) equip all pools and spas with Anti-Entrapment Device(s); (3) include more than one drain, to have one or more unblockable drains, or have no main drain (applicable to all pools and spas constructed more than one year after the enactment of the state's statute); and (4) equip all pools and spas with a drain cover that meets the ASME/ANSI A112.19.8 performance standard (applicable to all pools and/or spas with a main drain other than an unblockable drain). Please be advised that the above-referenced state law requirements are minimum requirements; some states may choose to enact stricter pool and spa safety standards. It is important that all pool and spa owners consult their legal counsel to determine if they are, in fact, in compliance with their state's pool and spa safety requirements.

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If you have any questions please contact M. Maxine Hicks or Brooke Parris in the Atlanta office of Epstein Becker & Green, P.C., at 404/923-9020 or [mhicks@ebglaw.com](mailto:mhicks@ebglaw.com) and 404/923-9058 or [bparris@ebglaw.com](mailto:bparris@ebglaw.com).

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