

Date of Hearing: April 30, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2146 (Rodriguez) – As Amended March 21, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: Product safety: personal flotation devices

SYNOPSIS

The footloose and fancy free days of playing in a pool during summer can quickly turn horrific if supervision of infants and children wanes, if even for a moment. Between 2018 and 2020, an average of 371 children under 15 years old fatally drowned in a pool or spa each year, and in 2022 there were 6,400 non-fatal drowning injuries estimated in the same age group. Individuals who suffer from a nonfatal drowning can experience long-term and costly health problems, including brain damage or permanent disability

The American Red Cross recommends that “children, inexperienced swimmers, and all boaters should wear U.S. Coast Guard-approved life jackets.” With the number of personal flotation devices (PFDs) on the market for children and adults, and the differences between a flotation device, buoyancy aid, life vest, and swim vest, finding a safe product can be an overwhelming task. Meanwhile, several agencies and experts have cautioned that certain products, such as water wings, are unsafe because they can easily deflate or slip off and create a false sense of security in children and parents. In response to a harrowing drowning incident in his district, the author has introduced this bill, which would require, beginning in 2026, that all wearable PFDs made available in California be USCG-approved. This change would help eliminate confusion for consumers when choosing a safe and reliable PFD by removing from the market certain flotation devices that do not meet this standard.

The suggested Committee amendments clarify that the “personal flotation devices” that must be USCG-approved applies only to wearable personal flotation devices designed to be worn or attached to the body. Pool toys and lounge floats would thus not be affected by this bill’s requirements.

SUMMARY: Requires wearable personal flotation devices to be approved by the United States Coast guard (USCG). Specifically, **this bill:**

- 1) On or after January 1, 2026, prohibits a person or entity from manufacturing, selling, delivering, distributing, holding, or offering for sale in commerce in this state a wearable personal flotation device that is not approved by the USCG.
- 2) Defines “wearable personal flotation device” as a lifejacket, buoyancy aid, or flotation device evaluated, tested, and approved by the United States Coast Guard, and includes flotation devices designed to be worn or attached to the body of an infant or child, such as water wings and floats.

EXISTING LAW:

- 1) Requires every person who is on board a motorboat, sailboat, or vessel when underway and who is under 13 years of age, to wear a United States Coast Guard-approved wearable personal flotation device that is used in accordance with approval labels and manufacturer's instructions, except as provided. (Harb. & Nav. Code § 658.3(a).)
- 2) Declares that no person may use a recreational boat unless at least one personal flotation device (PFD) of any of the following types is on board for each person:
 - a. Type I PFD.
 - b. Type II PFD.
 - c. Type III PFD. (Cal. Code § 6565.5.)
- 3) Under federal law, USCG sets minimum standards for recreational vessels and associated safety equipment. To meet these standards, required equipment must be USGC "approved" or "certified" by the Commandant of the USCG. This means that the product meets USCG specifications, standards, and regulations for performance, construction, or materials. (USC Code of Fed Regulations, Chap. 1, Sub. Chap. Q, §160.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS:

1) **Not all things that float are created equal.** A quick search online will bring up hundreds of flotation devices, life vests, swim vests, swim aids, water wings, puddle jumpers—the list goes on. Understanding which products are actual drowning-prevention devices can be confusing and can potentially lead parents to unwittingly rely on unsafe products to keep their child afloat.

Water wings and floaties vs. life-saving devices. According to the U.S. Consumer Product Safety Commission (CPSC), in June 2023, "drowning is the number one cause of accidental death among young children under age four. CPSC encourages all kids to learn how to swim, and parents should consider the regular use of life jackets (not inflatable water wings). Parents and caregivers should designate a Water Watcher—someone who watches children in the water at all times."¹ Similarly, the Centers for Disease Control and Prevention (CDC) state unequivocally that "'Floaties,' arm bands, or water wings do not prevent children from drowning and can easily slip off, especially when kids jump into water. Water wings can produce a false sense of safety for parents and children and can inhibit a child's ability to learn to swim. A U.S. Coast Guard-approved life jacket is more protective."¹

Prominent experts in this field have denounced water wings as a potential safety hazard that should be avoided. Although they seem like flotation devices, water wings are actually categorized as "toys" by the US Consumer Product Safety Commission, and thus must meet the American Society for Testing Materials International (ASTM) toy standards. The ASTM F963-17 toy standard has a mandatory warning requirement for aquatic toys which states:

¹ CDC, "Injury Prevention & Control: Summer Swim Safety," [Summer Swim Safety | Features | Injury Center | CDC](#).

5.4 Aquatic Toys—Aquatic toys and their packages shall carry safety labeling in accordance with 5.3, consisting of the signal word “WARNING” and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: This is not a lifesaving device. Do not leave a child unattended while the device is in use. In addition, no advertising copy or graphics shall state or imply that the child will be safe with such a toy if left unsupervised.”²

Indeed, multiple warnings labels on water wings for purchase online have variations of the suggested wording for aquatic toys, including, “WARNING! This is not a lifesaving device,” “Do not leave child unattended while in use,” “WARNING! Will not prevent drowning,” “WARNING! Choking hazard.”

The American Academy of Pediatrics Technical Report posted August 1, 2021 states:

US Coast Guard–approved life jackets now include a model similar to the inflatable arm floats popular among preschoolers because it facilitates floating (e.g., the Puddle Jumper). Parents need to check that any life jacket fits appropriately and is US Coast Guard approved because there are many similar products that do not meet safety requirements. It is important to recognize that air-filled swimming aids (such as inflatable armbands) are toys that can deflate or slip off and should not be used in place of life jackets.³

Moreover, according to Ambrose “Rowdy” Gaines IV, an Olympic swimmer and member of the Pool & Hot Tub Alliance—a non-profit organization that promotes swimming and water safety—one of the most prevalent myths is the assumption that floaties and water wings are safe. Floaties can give parents a false sense of security and keep children in a vertical position in the water, preventing them from learning the essential life-saving skill of floating on their backs.⁴ Jim Spiers, co-founder and CEO of SwimJim, an aquatics education program, and president of the nonprofit Stop Drowning Now, says about floaties: “Kids can slip them off their arms, they can tip over, so it’s a huge issue. . . . They’re an aid—they’re not a rescue device, and parents should not look at them as a rescue device or as the babysitter in the pool.”⁵

Even with numerous safety organizations, federal agencies, and expert proponents of water safety advising that water wings and floaties are not life-saving devices meant to prevent drowning, the majority of parents believe otherwise. An April 2023 Harris Poll online survey on behalf of Pool and Hot Tub Alliance found that 66% of parents believe that floaties and water wings keep children safe in the water, despite the fact that these devices are not recognized as safe personal flotation devices.⁶ This understandable gap between the perceived utility and actual function of these toys masquerading as flotation devices poses a very substantial consumer protection concern with potentially lethal consequences.

² Water Safety Council of Fresno County, “Flotation Devices”, <https://www.watersafe.org/flotation-devices>.

³ Sarah A. Denny, MD FAAP; Linda Quan, MD, FAAP; Julie Gilchrist, MD, FAAP; Tracy McCallin MD, FAAP; Rohit Sheno, MD, FAAP; Shabana Yusuf, MD, FAAP; Jeffrey Weiss, MD, FAAP; Benjamin Hoffman, MD, FAAP, “Prevention of Drowning”, American Academy of Pediatrics, August 1, 2021, publications.aap.org/pediatrics/article/148/2.

⁴ Today, “The Myth About Floaties and Water Wings That All Parents Should Know,” www.today.com/parents/parents/shouldnt-rely-floaties-water-wings-kids.

⁵ *Ibid.*

⁶ *Ibid.*

2) **Author's statement.** The author notes:

As a public servant, some of the most difficult conversations are those where constituents share their tragic experiences. Last year, a young child in my district suffered from a harrowing drowning incident. While he fortunately survived, he and his family have started the long and costly process of recovery and adapting to living with new disabilities. Drownings are preventable, and nobody should endure the pain and difficulty that come from these tragedies. Therefore, I introduced AB 2146 to prevent one of the most common causes of drowning, a false sense of security.

According to the Center of Disease Control and Prevention (CDC), drowning is the leading cause of death for children between the ages of one and four, and the second leading cause of death for children between the ages of five and fourteen. In recent years, the state has taken several steps to promote water safety to prevent drowning incidents, including requiring youth to wear life jackets when traveling on a water vessel and requiring homes with pools to install safety measures. Despite these efforts, there are consumer products, such as water wings and floaties, on the market that fail to keep children safe while in the water.

As a former emergency medical technician for more than 30 years, I have responded to different types of medical emergencies, including tragic drowning events. At times, parents are under the belief that water wings are life-saving devices. Unfortunately, this misconception could not be further from the truth. The CDC has stated that these products create a false sense of safety for parents and children, and could impede a child's ability to learn to swim. By banning personal flotation devices not approved by the U.S. Coast Guard, AB 2146 would protect families from purchasing products not intended to preserve a life.

3) **Coast Guard approval of flotation devices.** The USCG approves life vests and life preservers that meet certain specifications, standards, and regulations for performance, construction, or materials. The USCG-approved devices are categorized into 4 types:

- a) **TYPE I:** This type of life jacket has the greatest required inherent buoyancy and turns most unconscious persons in the water from a face down position to a vertical and slightly backward position, therefore, greatly increasing one's chance of survival. It is for use in open water and oceans.
- b) **TYPE II:** This jacket intended to turn some unconscious persons from a face down position in the water to a position where the wearer's respiration is not impeded.
- c) **TYPE III:** This jacket is designed to support a conscious user in the water in an upright position. It is very comfortable and comes in many styles. This life jacket is often used for water sports and should be used only when it is expected that the rescue can be done quickly.
- d) **Type V:** This jacket is approved for restricted uses or activities such as boardsailing, or commercial white water rafting. These devices may not be suitable for other boating

activities. The label indicates whether a particular design of Type V can be used in specific application, what restrictions or limitations apply, and its performance type.

The types of wearable flotation devices approved by the USCG are categorized by their performance in the conditions for which they're designed to be worn. For community and backyard pools and calm interior waterways, Types III and V are appropriate choices. Most infant and children's puddle jumpers and wearable personal flotation devices fall under these types and USCG has approved certain puddle jumpers that can be worn in place of a Type III life jacket in calm, shallow waters. These flotation devices are more comfortable than types I and II, less restrictive to better facilitate movement, and come in more sizes and configurations.

Several brands including Body Glove, Aqua Leisure, Airhead, and Puddle Jumper offer USCG-approved wearable personal flotation devices in sizes ranging from infant through adult. Many can be purchased online directly from these companies, online retailers like Amazon, and at brick and mortar retailers such as Walmart, Kohl's, and Dick's Sporting Goods.

4) **Water safety and equity.** Some consumers have grown up with a pool, competed on swim team, or perhaps they read up on safety products and recalls affecting infant and child products on the market. Other consumers lack the time or access to resources to read publications or articles on product safety; some might also face language barriers when shopping for products, water recreation may not be common within their community, and economic barriers can lead to purchasing the least expensive flotation device that may not be intended to prevent drowning. Such factors can lead to disproportionate impacts on vulnerable communities. According to the CDC and CPSC, some racial and ethnic groups experience higher rates of drowning. For example, CPSC's data reveals:

Stark racial disparities in drowning fatalities. Where race was identified, African American children made up 21% of all fatal drownings while making up only 15% of the population. Forty-five percent of 5-14 year-olds who fatally drowned were African Americans. Data from collaborator organizations confirms that Black and Hispanic children continue to drown at higher rates and have disproportionately lower swimming ability than white children.⁷

5) **Analysis.** The state has taken many measures to promote water safety to prevent drowning incidents including requiring youths to wear life jackets when travelling on a water vessel, requiring homes to install safety measures such as fencing with self-closing gates and alarms, and increasing awareness and education on water safety. This bill is an additional measure to ensure water safety for young Californians and their families by requiring wearable personal flotation devices commercially available in California to be approved by the U.S. Coast Guard. Such approvals apply to the types of flotation devices, such as puddle jumpers, commonly used in pools.

Tellingly, the Coast Guard does not approve water wings and floaties, which have been denounced by experts as unsafe both because they can be unreliable and they can induce a false sense of confidence. Given the widespread misperception by parents that water wings and floaties are legitimate flotation devices rather than mere pool toys, as well the fact that the

⁷ U.S. Consumer Product Safety Commission, "New CPSC Drowning Data Calls for Caution This Swim Season", Poolsafely.gov.

leading cause of death for children ages one to four is drowning, limiting the market to flotation devices that are actually safe to use as flotation devices seems prudent. Moreover, such protections could help protect disadvantaged communities most likely to be affected by child drownings.

6) **Proposed Amendments.** The suggested amendments agreed to by the author narrow the bill to apply only to wearable flotation devices:

108670. *For purposes of this article, “wearable personal flotation device” is a lifejacket, buoyancy aid, or flotation device evaluated, tested, and approved by the United States Coast Guard, and includes flotation devices **designed to be worn or attached to the body of** ~~used by~~ infants ~~and~~ or children, such water wings and floats.*

108670.5. *On or after January 1, 2026, a person or entity shall not manufacture, sell, deliver, distribute, hold, or offer for sale in commerce in this state a **wearable personal flotation device that is not approved by the United States Coast Guard.***

Going forward, the author is encouraged to continue to refine the bill to clarify which products would be exempt from this measure, such as water toys and pool floats and to further clarify that puddle jumpers and arm floats are included as devices to be USCG- approved as wearable flotation devices designed to be worn or attached to the body.

7) **Related Legislation.** AB 1445 (Arambula, Chapter 370, Statutes of 2023) authorized a drowning or injury prevention organization to provide informational materials on water safety and education to a public school, and authorized, beginning with the 2024-25 school year and upon receipt of the materials, a public school to provide the materials to parents of pupils.

AB 638 (Frazier, Chapter 75, Statutes of 2015) prohibited a person from operating a motorboat, sailboat, or vessel of any length unless every person on board under the age of 13 is wearing a personal flotation device (PFD) while the vessel is underway.

SB 717 (Runner, Chapter 610, Statutes of 2009) made numerous changes to the Harbors and Navigation Code, which increased age requirement for use of a United States Coast Guard-approved life vest when aboard a motorboat, sailboat, or vessel from a person under the age of 11 years to a person under the age of 13 years.

AB 2538 (Brewer, Chapter 398, Statutes of 2000) required that any person who is being towed behind a vessel, who is using a personal watercraft (PWC) wear a United States Coast Guard-approved life vest. Increased the age requirement for use of a United States Coast Guard-approved life vest when aboard a motorboat, sailboat, or vessel from a person under the age of 6 years to a person under the age of 11.

ARGUMENTS IN SUPPORT: California Coalition for Children’s Safety and Health writes:

The California Coalition for Children’s Safety and Health (CCCSH) supports your bill AB 2146 that will bring long overdue updates and reforms not only protect consumers but elevate the correct life vests as life-saving flotation drowning prevention devices. Life vests play a significant role in helping all ages of Californians be safe when around not just pools, but the many open bodies of water in our state – lakes, rivers, and ocean fronts. Everyone who is not proficient at swimming needs to wear a coast guard approved life vest to prevent them from

drowning. AB 2146 will help ensure the life vest floatation device is an approved life vest. For everyone boating or engaging in water sports or recreation involving moving water such as rivers, ocean, around canals, etc. should have an approved and certified life vest.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Children's Safety and Health

Opposition

None on file.

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