§ 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes. 1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Grounds of a family day care home or group family day care home" shall mean in, on or within any building, structure or land contained within the real property boundary line of a family day care home or a group family day care home.

(b) "Swimming pool" shall mean any outdoor pool or tub intended for swimming, bathing or wading purposes.

(c) "Bodies of water" shall include, but not limited to, ponds, springs, streams, creeks, lakes, rivers and oceans.

(d) "Barriers" shall mean all fences, enclosures or other materials sufficient to form an obstruction to the free passage of persons through such materials.

2. (a) Any swimming pool or body of water located on the grounds of a family day care home or group family day care home shall be surrounded by a barrier sufficient to form an obstruction to the free passage of children through such barrier into such swimming pool or body of water. Such barrier shall be adequate to make such swimming pool or body of water inaccessible to children which, including gates thereto, shall be at least four feet high from the adjacent ground. All such gates shall include a locked barrier which shall be located at least four feet high above the adjacent ground or otherwise made inaccessible to children from the outside.

(b) Where a body of water is present and not wholly contained within the grounds of family day care home or group family day care home, the grounds of such home must be surrounded and enclosed by a barrier sufficient to make such body of water inaccessible to children.

(c) All pathways, walkways, decks or any other connecting entrance to such swimming pool or body of water shall be obstructed by a barrier sufficient to impede the free passage of children into or around the area immediately adjacent to such swimming pool or body of water.

(d) Swimming pools or bodies of water that are entirely covered by a solid object which is secured by sufficient weight, locking apparatus, and/or other device that would prevent a child in care from removing the

solid object and accessing the swimming pool or body of water, shall be considered a sufficient barrier for the purposes of this section.

(e) As an alternative to surrounding the pool or other body of water located on the grounds of a family day care home or group family day care home with a barrier as described in paragraph (a) of this subdivision, the day care provider may use the property for day care if the provider bars access to such pool or other body of water by surrounding a part of the grounds not including such pool or other body of water with a barrier as described in paragraph (a) of this subdivision provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the pool or other body of water.

(f) Where a natural barrier or other obstacle located on the property lies between the pool or body of water and the building in which the family or group family day care is provided such that the natural barrier or other obstacle prevents access by children in care to the pool or body of water, a fence or additional barrier as otherwise required by this section shall not be required and the day care provider may use the property for day care provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the body of water.

In determining what constitutes a natural barrier or other obstacle for purposes of this paragraph, the presence of natural and artificial terrain features or constructs may be considered along with the distance between the building in which the family or group family day care is provided and the pool or body of water.

3. Where a swimming pool or body of water is located on a property adjacent to a family or group family day home, the child day care provider must take suitable precautions to prevent the children in care from having access to the adjacent swimming pool or body of water, including taking any precautions specifically required by the office of children and family services to protect the safety of children receiving day care.

4. Nothing in this section shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.