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Senate Bill No. 81
(By Senator Foster)

[Introduced January 13, 2011; referred to the Committee on the
Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-43-1, §16-43-2,
12 §16-43-3, §16-43-4, §16-43-5, §16-43-6, §16-43-7, §16-43-8 and
13 §16-43-9, all relating to creating the West Virginia Pool
14 Safety Act; stating its purpose to enhance the safety of
15 residential swimming pools and prevent child drownings;
16 defining terms; establishing required safety features and
17 building requirements for residential swimming pools; setting
18 forth requirements for the Bureau for Public Health; and
19 providing exemptions.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §16-43-1, §16-43-2,
23 §16-43-3, §16-43-4, §16-43-5, §16-43-6, §16-43-7, §16-43-8 and §16-
24 43-9, all to read as follows:

25 **ARTICLE 43. WEST VIRGINIA SWIMMING POOL SAFETY ACT.**

1 **§16-43-1. Short title.**

2 This article is known as the "West Virginia Swimming Pool
3 Safety Act."

4 **§16-43-2. Purpose.**

5 This article is intended to enhance the safety of residential
6 pools and spas; encourage the use of layers of protection; prevent
7 child drowning in pools and spas; reduce the number of suction
8 entrapment incidents, injuries and deaths; and educate the public
9 on the importance of constant supervision of children in and around
10 water.

11 **§16-43-3. Definitions.**

12 As used in this article the following terms have the following
13 meanings:

14 (1) "Swimming pool" or "pool" means any structure intended for
15 swimming or recreational bathing that contains water over eighteen
16 inches deep. "Swimming pool" includes in-ground and above-ground
17 structures and includes, but is not limited to, hot tubs, spas,
18 portable spas, and nonportable wading pools.

19 (2) "Public swimming pool" means a swimming pool operated for
20 the use of the general public with or without charge, or for the
21 use of the members and guests of a private club. Public swimming
22 pool does not include a swimming pool located on the grounds of a
23 private single-family home.

24 (3) "Enclosure" means a fence, wall, or other barrier that
25 isolates a swimming pool from access to the home.

1 (4) "Approved safety pool cover" means a manually or power-
2 operated safety pool cover that meets all of the performance
3 standards of the American Society for Testing and Materials (ASTM),
4 in compliance with standard F 1346-91.

5 (5) "Exit alarms" means devices that make audible, continuous
6 alarm sounds when any door or window, that permits access from the
7 residence to the pool area that is without any intervening
8 enclosure, is opened or is left ajar. Exit alarms may be battery
9 operated or may be connected to the electrical wiring of the
10 building.

11 **§16-43-4. Required safety features.**

12 (a) Beginning July 1, 2011, except as provided in section
13 eight of this article, whenever a building permit is issued for
14 construction of a new swimming pool or spa, or any building permit
15 is issued for remodeling of an existing pool or spa, at a private,
16 single-family home, it shall be equipped with at least one of the
17 following seven drowning prevention safety features:

18 (1) The pool shall be isolated from access to a home by an
19 enclosure that meets the requirements of section five of this
20 article;

21 (2) The pool shall incorporate removable mesh pool fencing
22 that meets American Society for Testing and Materials (ASTM)
23 Specifications F 2286 standards in conjunction with a gate that is
24 self-closing and self-latching and can accommodate a key lockable
25 device;

1 (3) The pool shall be equipped with an approved safety pool
2 cover that meets all requirements of the ASTM Specifications F
3 1346;

4 (4) The residence shall be equipped with exit alarms on those
5 doors providing direct access to the pool;

6 (5) All doors providing direct access from the home to the
7 swimming pool shall be equipped with a self-closing, self-latching
8 device with a release mechanism placed no lower than fifty-four
9 inches above the floor;

10 (6) Swimming pool alarms that, when placed in pools, will
11 sound upon detection of accidental or unauthorized entrance into
12 the water. These pool alarms shall meet and be independently
13 certified to the ASTM Standard F 2208 "Standards Specification for
14 Pool Alarms" which includes surface motion, pressure, sonar, laser,
15 and infrared type alarms. For purposes of this article, "swimming
16 pool alarms" shall not include swimming protection alarm devices
17 designed for individual use, such as an alarm attached to a child
18 that sounds when the child exceeds a certain distance or becomes
19 submerged in water; and

20 (7) Other means of protection, if the degree of protection
21 afforded is equal to or greater than that afforded by any of the
22 devices set forth above, and have been independently verified by an
23 approved testing laboratory as meeting standards for those devices
24 established by the ASTM or the American Society of Mechanical
25 Engineers (ASME).

1 (b) Prior to the issuance of any final approval for the
2 completion of permitted construction or remodeling work, the local
3 building code official shall inspect the drowning safety prevention
4 devices required by this act and if no violations are found, shall
5 give final approval.

6 **§16-43-5. Enclosure requirements.**

7 An enclosure shall have all of the following characteristics:

8 (1) Any access gates through the enclosure open away from the
9 swimming pool, and are self-closing with a self-latching device
10 placed no lower than sixty inches above the ground;

11 (2) A minimum height of sixty inches.

12 (3) A maximum vertical clearance from the ground to the bottom
13 of the enclosure of two inches;

14 (4) Gaps or voids, if any, do not allow passage of a sphere
15 equal to or greater than four inches in diameter; and

16 (5) An outside surface free of protrusions, cavities, or other
17 physical characteristics that would serve as handholds or footholds
18 that could enable a child below the age of five years to climb
19 over.

20 **§16-43-6. Building permit requirements.**

21 (a) (1) Whenever a building permit is issued for the
22 construction of a new swimming pool or spa, the pool or spa shall
23 meet all of the following requirements:

24 (A) The suction outlet of the pool or spa for which the permit
25 is issued shall be equipped to provide circulation throughout the

1 pool or spa as prescribed in subdivision (2) of this subsection;
2 and

3 (B) The swimming pool or spa shall have at least two
4 circulation drains per pump that shall be hydraulically balanced
5 and symmetrically plumbed through one or more "T" fittings, and
6 that are separated by a distance of at least three feet in any
7 dimension between the drains.

8 (2) Suction outlets that are less than twelve inches across
9 shall be covered with antientrapment grates, as specified in the
10 ASME/ANSI Standard A 112.19.8, that cannot be removed except with
11 the use of tools. Slots or openings in the grates or similar
12 protective devices shall be of a shape, area, and arrangement that
13 would prevent physical entrapment and would not pose any suction
14 hazard to bathers.

15 (3) Any backup safety system that an owner of a new swimming
16 pool or spa may choose to install in addition to the requirements
17 set forth in subdivisions (1) and (2) of this subsection shall meet
18 the standards as published in the document, "Guidelines for
19 Entrapment Hazards: Making Pools and Spas Safer," Publication
20 Number 363, March 2005, United States Consumer Product Safety
21 Commission.

22 (b) Whenever a building permit is issued for the remodel or
23 modification of an existing swimming pool, toddler pool, or spa,
24 the permit shall require that the suction outlet of the existing
25 swimming pool, toddler pool, or spa be upgraded so as to be

1 equipped with an antientrapment cover meeting current standards of
2 the American Society for Testing and Materials (ASTM) or the
3 American Society of Mechanical Engineers (ASME).

4 **§16-43-7. Notice to consumers.**

5 (a) Any person entering into an agreement to build a swimming
6 pool or spa, or to engage in permitted work on a pool or spa
7 covered by this article, shall give the consumer notice of the
8 requirements of this article.

9 (b) The Bureau for Public Health shall have available on it's
10 web site, beginning July 1, 2011, approved pool safety information
11 available for consumers to download. Pool contractors are
12 encouraged to share this information with consumers regarding the
13 potential dangers a pool or spa poses to toddlers. Additionally,
14 pool contractors may provide the consumer with swimming pool safety
15 materials produced from organizations such as the United States
16 Consumer Product Safety Commission, Drowning Prevention Foundation,
17 California Coalition for Children's Safety & Health, Safe Kids
18 Worldwide, Association of Pool and Spa Professionals, or the
19 American Academy of Pediatrics.

20 **§16-43-8. Exemptions.**

21 This article shall not apply to any of the following:

22 (1) Public swimming pools.

23 (2) Hot tubs or spas with locking safety covers that comply
24 with the American Society for Testing Materials-Emergency
25 Performance Specification (ASTM-ES 13-89).

1 (3) Any pool within the jurisdiction of any political
2 subdivision that adopts an ordinance for swimming pool safety that
3 includes requirements that are at least as stringent as this
4 article.

5 (4) An apartment complex, or any residential setting other
6 than a single-family home.

7 **§16-43-9. Federal grant assistance.**

8 The Bureau for Public Health shall seek a federal grant from
9 the Consumer Product Safety Commission as provided by Section 1405
10 of the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. §
11 8004) to assist in its implementation of this article.

NOTE: The purpose of this bill is to create the West Virginia Pool Safety Act. The bill states it's purpose to enhance the safety of private swimming pools and prevent child drownings. The bill also defines terms. The bill establishes required safety features and building requirements for private swimming pools. The bill sets forth requirements for the Bureau for Public Health and for it to seek available federal grants. The bill also provides exemptions.

This article is new; therefore, strike-throughs and underscoring have been omitted.