

1                                   **Senate Bill No. 59**

2                                   (By Senator Foster)

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4   [Introduced January 11, 2012; referred to the Committee on the

5                                   Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by

11       adding thereto a new article, designated §16-44-1, §16-44-2,

12       §16-44-3, §16-44-4, §16-44-5, §16-44-6, §16-44-7, §16-44-8 and

13       §16-44-9, all relating to creating the West Virginia Swimming

14       Pool Safety Act; stating purpose; defining terms; establishing

15       required safety features and building requirements for

16       residential swimming pools; setting forth requirements for the

17       Bureau for Public Health; and providing exemptions.

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

19       That the Code of West Virginia, 1931, as amended, be amended

20 by adding thereto a new article, designated §16-44-1, §16-44-2,

21 §16-44-3, §16-44-4, §16-44-5, §16-44-6, §16-44-7, §16-44-8 and

22 §16-44-9, all to read as follows:

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

24 **§16-44-1. Short title.**

1 This article may be known and cited as the "West Virginia  
2 Swimming Pool Safety Act."

3 **§16-44-2. Purpose.**

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

10 **§16-44-3. Definitions.**

11 As used in this article:

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

16 (2) "Enclosure" means a fence, wall or other barrier that  
17 isolates a swimming pool from access to the home.

18 (3) "Exit alarms" means devices that make audible, continuous  
19 alarm sounds when any door or window, that permits access from the  
20 residence to the pool area that is without any intervening  
21 enclosure, is opened or is left ajar. Exit alarms may be battery  
22 operated or may be connected to the electrical wiring of the  
23 building.

24 (4) "Public swimming pool" means a swimming pool operated for

1 the use of the general public with or without charge, or for the  
2 use of the members and guests of a private club. Public swimming  
3 pool does not include a swimming pool located on the grounds of a  
4 private single-family home.

5 (5) "Swimming pool" or "pool" means any structure intended for  
6 swimming or recreational bathing that contains water over eighteen  
7 inches deep. "Swimming pool" includes in-ground and above-ground  
8 structures and includes, but is not limited to, hot tubs, spas,  
9 portable spas and nonportable wading pools.

10 **§16-44-4. Required safety features.**

11 (a) Beginning July 1, 2012, except as provided in section  
12 eight of this article, whenever a building permit is issued for  
13 construction of a new swimming pool or spa, or any building permit  
14 is issued for remodeling of an existing pool or spa, at a private,  
15 single-family home, the permit shall require that the pool or home,  
16 as applicable, be equipped with at least one of the following  
17 drowning prevention safety features:

18 (1) By isolating the pool from access to the home by an  
19 enclosure that meets the requirements of section five of this  
20 article;

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

1           (3) By equipping the pool with an approved safety pool cover  
2 that meets all requirements of the ASTM Specifications F 1346;

3           (4) By equipping the home with exit alarms on those doors  
4 providing direct access to the pool;

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

9           (6) By installing swimming pool alarms that when placed in the  
10 pool sound upon detection of accidental or unauthorized entrance  
11 into the water, if the alarms meet and are independently certified  
12 to the ASTM Standard F 2208 "Standards Specification for Pool  
13 Alarms" including surface motion, pressure, sonar, laser, and  
14 infrared type alarms, but not swimming protection alarm devices  
15 that are designed for individual use, such as an alarm attached to  
16 a child that sounds when the child exceeds a certain distance or  
17 becomes submerged in water; or

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

24           (b) Prior to the issuance of any final approval for the

1 completion of permitted construction or remodeling work, the local  
2 building code official shall inspect the drowning safety prevention  
3 devices required by this article and if no violations are found,  
4 shall give final approval.

5 **§16-44-5. Enclosure requirements.**

6 An enclosure must meet all of the following characteristics:

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

10 (2) A minimum height of sixty inches;

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

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

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

19 **§16-44-6. Building permit requirements.**

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

23 (A) The suction outlet of the pool or spa for which the permit  
24 is issued must 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 must have at least two  
4 circulation drains per pump that are hydraulically balanced and  
5 symmetrically plumbed through one or more "T" fittings, and that  
6 are separated by a distance of at least three feet in any dimension  
7 between the drains.

8 (2) Suction outlets that are less than twelve inches across  
9 must 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 must be of a shape, area, and arrangement that  
13 prevent physical entrapment and do not pose any suction hazard to  
14 bathers.

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

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

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

4 **§16-44-7. 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 make available on it's  
10 web site, beginning July 1, 2012, 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 **§16-44-8. Exemptions.**

21 This article does 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

1 Performance Specification (ASTM-ES 13-89);

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

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

8 **§16-44-9. Federal grant assistance.**

9 The Bureau for Public Health shall seek a federal grant from  
10 the Consumer Product Safety Commission as provided by Section 1405  
11 of the Virginia Graeme Baker Pool and Spa Safety Act  
12 (15 U.S.C. § 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.