

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4793

FISCAL
NOTE

BY DELEGATES MAYNARD, LINVILLE, ROHRBACH, J.
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[Introduced February 11, 2020; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §49-4-202 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto two new sections, designated §49-4-201a and §49-4-
 3 206, all relating to adding fire departments, law-enforcement agencies, emergency
 4 medical services organizations, and an emergency medical service provider employed by
 5 the organization to those who may take possession of a child voluntarily delivered to them
 6 by a parent who does not wish to return for the child, providing for delivery to a newborn
 7 safety incubator; defining certain terms; requiring certain rules and providing protection
 8 from civil liability for accepting such a child.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART II. EMERGENCY POSSESSION OF CERTAIN RELINQUISHED CHILDREN.

**§49-4-201a. Additional entities which may take possession of a child voluntarily
relinquished.**

1 (a) In addition to the entities listed in section 201 of this article, the following entities or
 2 persons while acting in an official capacity on behalf of any of the entities which include a fire
 3 department, a law-enforcement agency, an emergency medical services organization or an
 4 emergency medical services provider employed by the organization may take possession of a
 5 child if the child is voluntarily delivered to them. In order to accept such a newborn, the entities'
 6 facilities must be equipped with a newborn safety incubator that meets the standard specifications
 7 and requirements that is located within the entity in a conspicuous area where the child may be
 8 placed anonymously and which provides immediate notification of the child's placement therein
 9 and which provides a controlled environment for the care and safety of the newborn.

10 (b) As used in this section, the following words mean:

11 (1) "Newborn" means a child who is less than 30 days of age;

12 (2) "Newborn safety incubator" means a device that is designed to permit a person to

13 anonymously place a newborn in the device with the intent to leave the newborn and permit
14 another person to remove the newborn from the device and take custody of the newborn; and

15 (3) "Facility" means a building in which one or more of the following are located: a hospital
16 or health care facility; a fire department or volunteer fire department; a law-enforcement agency;
17 or emergency medical service organization.

§49-4-202. Notification of possession of relinquished child; department responsibilities.

1 (a) Not later than the close of the first business day after the date on which a hospital, ~~or~~
2 health care facility, fire department, law-enforcement agency, or an emergency medical services
3 organization or an emergency medical service provider employed by the organization takes
4 possession of a child pursuant to §201 of this article, the hospital, ~~or~~ health care facility, fire
5 department, law-enforcement agency, emergency medical services organization or an
6 emergency medical service provider employed by the organization shall notify the Child Protective
7 Services division of the Department of Health and Human Resources that it has taken possession
8 of the child and shall provide the division any information provided by the parent delivering the
9 child. The hospital, ~~or~~ health care facility, fire department, law-enforcement agency, emergency
10 medical services organization or an emergency medical service provider employed by the
11 organization shall refer any inquiries about the child to the Child Protective Services division.

12 (b) The Department of Health and Human Resources shall assume the care, control and
13 custody of the child as of the time of delivery of the child to the hospital, ~~or~~ health care facility, fire
14 department, law-enforcement agency, emergency medical services organization or an
15 emergency medical service provider employed by the organization and may contract with private
16 child care agency for the care and placement of the child after the child leaves the hospital, health
17 care facility, fire department, law-enforcement agency, emergency medical services organization
18 or an emergency medical service provider employed by the organization.

19 (c) The Department of Health and Human Resources shall propose rules for promulgation
20 in accordance with the provisions of §29A-3-1 et seq. governing newborn safety incubators which

21 shall include:

22 (1) Sanitation standards;

23 (2) Procedures to provide emergency care for a child delivered to an incubator;

24 (3) Manufacturing and manufacturer standards;

25 (4) Design and function requirements that include the following:

26 (i) Take into account installation at an entity's facility

27 (ii) Allow a child to be placed anonymously from outside the facility;

28 (iii) Lock the incubator after a child is placed in it so that a person outside the facility is
29 unable to access the child;

30 (iv) Provide a controlled environment for the care and protection of the child;

31 (v) Provide notification to a centralized location in the facility within 30 seconds of a child
32 being placed in the incubator; and

33 (vi) Trigger a 9-1-1 call if a facility does not respond within a reasonable amount of time
34 after a child is placed in the facility's incubator.

35 (5) Operating policies, supervision and maintenance requirements for an incubator,
36 including requirements that only a firefighter, police officer, emergency medical service provider
37 or hospital employee supervise the incubator and take custody of a child placed in it;

38 (6) Qualifications for persons to install incubators;

39 (7) Procedures and forms for the registration of qualified incubator installers;

40 (8) Costs for registering and regulating incubators and fees to cover these costs;

41 (9) Creating and posting signs to be placed near or on incubators to provide information
42 about using them;

43 (10) Enforcement of and remedies for violations for failure to comply with the requirements
44 governing incubators; and

45 (11) Any other requirement the department considers necessary to ensure the safety and
46 welfare of a child placed in an incubator.

§49-4-206. Immunity from civil liability.

- 1 Any of the entities listed in sections 201 or 201a of this article are immune from civil liability
- 2 for an act or omission in receiving the newborn child unless the act or omission constitutes gross
- 3 negligence or willful or wanton misconduct.

NOTE: The purpose of this bill is to add fire departments, law-enforcement agencies, emergency medical services organizations or an emergency medical service provider employed by the organization to those entities which may accept a relinquished child from its parent; to define certain terms, to require certain rules and to provide immunity from civil liability for accepting the child.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.