

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Originating

House Bill 3559

By Delegates Westfall, Fluharty, Hillenbrand, Steele,
Ward, Ridenour, Warner, Martin, Kump, Marple and
Kimble

[Originating in the Committee on the Judiciary;

Reported on February 23, 2023]

1 A BILL to amend and reenact §49-4-201 of the Code of West Virginia, 1931, as amended, all
2 relating to defining a newborn safety device; describing the installation and location of a
3 newborn safety device; granting anonymity to the person placing a child in a newborn
4 safety device; outlining the monitoring of a newborn safety device; requiring the
5 transportation of a child found in a newborn safety device to a hospital or medical facility;
6 waiving rights of notification and standing by the person placing a child in a newborn safety
7 device; granting immunity to the emergency service medical provider who removes the
8 child from the newborn safety device; and removing the anonymity provision if child abuse
9 or neglect are evident.

Be it enacted by the Legislature of West Virginia:

§49-4-201. Accepting possession of certain relinquished children.

1 (a) A hospital or health care facility operating in this state, or a fire department that has
2 been designated a safe-surrender site under §49-4-206 of this code, shall, without a court order,
3 take possession of a child if the child is voluntarily delivered to the hospital, health care facility, or
4 fire department by the child's parent within 30 days of the child's birth, and the parent did not
5 express an intent to return for the child.

6 (b) A hospital, health care facility, or fire department that takes possession of a child under
7 this article shall perform any act necessary to protect the physical health or safety of the child. In
8 accepting possession of the child, the hospital, health care facility, or fire department may not
9 require the person to identify himself or herself and shall otherwise respect the person's desire to
10 remain anonymous.

11 (c) A "newborn safety device" means a device:

12 (1) Designed to permit a person to anonymously place a child within 30 days of the child's
13 birth in the device with the intent to leave the child and for a licensed emergency medical services
14 provider to remove the child from the device and take custody of the child;

15 (2) Installed with an adequate dual alarm system connected to the physical location where
16 the device is physically installed. The dual alarm system shall be:

17 (A) Tested at least one time per month to ensure the alarm system is in working order; and

18 (B) Visually checked at least two times per day to ensure the alarm system is in working
19 order;

20 (3) Approved by and physically located with outside access at a participating hospital or
21 medical facility, or a fire department that has been designated a safe-surrender site under §49-4-
22 206 of this code, that:

23 (A) Is licensed or otherwise legally operating in this state; and

24 (B) Is staffed continuously on a 24-hour basis every day by a licensed emergency medical
25 services provider; and

26 (4) Located in an area that is conspicuous and visible to a hospital, a medical facility or a
27 fire department.

28 (d) A person who relinquishes a child in a newborn safety device shall have the right to
29 remain anonymous and shall not be pursued, and the relinquishment of a child pursuant to the
30 provisions of this section shall not, in and of itself, be considered child abuse or neglect as that
31 term is defined in §49-1-201 of this code.

32 (e) Any emergency medical services provider who physically retrieves a child from a
33 newborn safety device shall immediately arrange for the child to be taken to the nearest hospital
34 emergency room and shall have implied consent to any and all appropriate medical treatment.

35 (f) By placing a child in a newborn safety device the person:

36 (1) Waives the right to notification required by subsequent court proceedings; and

37 (2) Waives legal standing to make a claim of action against any person who accepts
38 physical custody of the child.

39 (g) Actions taken in good faith by an emergency medical services provider with the duty
40 granted in this article shall be immune from criminal or civil liability, unless his or her actions were

- 41 the result of gross negligence or willful misconduct. The grant of immunity in this section extends
42 to all employees and administrators of the emergency medical services provider.
43 (h) The provisions of subsection (d) of this section shall not apply when indicators of child
44 physical abuse or child neglect are present.

NOTE: The purpose of this bill is to allow for the installation of newborn safety devices at a hospital, medical facility or participating fire department.

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