

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 705

(By Mr. Savilla and Mr. Polen)



PASSED February 26, 1974

In Effect Ninety Days From Passage



FILED IN THE OFFICE
EDGAR F. METSKELL III
SECRETARY OF STATE
THIS DATE 3-5-74

705

ENROLLED

H. B. 705

(By MR. SAVILLA and MR. POLEN)

[Passed February 26, 1974; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-c, relating to emergency medical service to meet certain minimum standards promulgated pursuant to the Federal Highway Safety Act of 1966; purposes of article; definitions; exemptions; persons to be in attendance in ambulances; standards for emergency medical service attendants; promulgation of rules; issuance, renewal, validity, suspension and revocation of certificates for emergency medical service attendants; and issuance of certain temporary certificates for emergency medical service attendants; setting forth appeal procedures and authorizing judicial reviews; creating an emergency medical service advisory council; relating to the composition, appointment, duties, meetings and payment of expenses of the council; and liability for cost of emergency medical service and providing that any patient who receives ambulance service and who is unable to give his consent to, or contract for, the service, whether he has agreed or consented to liability for the service, shall be liable in implied contract to the person providing the ambulance service for the reasonable cost thereof; setting forth violations of provisions of article, providing criminal offenses and penalty and authority ^{3/1/74} in injunctive relief; and providing limitations on private rights of action against physicians, surgeons and certified emergency service medical attendants.

*1974
Cliff Savilla
by
act*

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-c, to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-1. Purposes of article.

1 The Legislature finds and declares: (1) That the safe and
2 efficient operation of life-saving and life-preserving emergency
3 medical service to meet the needs of citizens of this state is a
4 matter of general public interest and concern; (2) that, in
5 order to ensure provision of adequate emergency medical ser-
6 vice within this state for the protection of the public health,
7 safety and welfare, it is imperative that minimum standards
8 for emergency medical service attendants be established and
9 enforced by the state; (3) that emergency medical service at-
10 tendants should meet minimum training standards promulgated
11 by the state board of health; (4) that it is the public policy of
12 this state to enact legislation to carry out these purposes and
13 comply with minimum standards for emergency medical service
14 attendants specified in the Federal Highway Safety Act of
15 1966 and standards promulgated thereunder; and (5) that any
16 patient who receives emergency medical service and who is
17 unable to consent thereto should be liable for the reasonable
18 cost of such service.

§16-4C-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 "Ambulance" means any privately or publicly owned ve-
4 hicle or aircraft which is designed, constructed or modified;
5 equipped or maintained; and operated for the transportation of
6 patients.

7 "Ambulance service" means the transportation, and treat-
8 ment at the site of pickup and enroute, of a patient to or from
9 a place where medical, hospital or clinical service is normally
10 available.

11 "Emergency medical service attendant" means any person
12 who is responsible for attending, caring for and giving life-
13 saving or life-preserving treatment to a patient transported in

14 an ambulance. This term includes both the driver of an am-
15 bulance and any person assigned to the ambulance to attend
16 patients.

17 “Governing body” shall have the meaning ascribed to it
18 as applied to a municipality in subsection (b), subdivision (1),
19 section two, article one, chapter eight of this code.

20 “Municipality” shall have the meaning ascribed to it in sub-
21 section (a), subdivision (1), section two, article one, chapter
22 eight of this code.

23 “Patient” means any sick, injured, wounded or otherwise
24 incapacitated or helpless person, or an expectant mother who
25 needs medical, hospital or clinical service under an existing or
26 imminent emergency situation.

27 “State board” means the state board of health.

**§16-4C-3. Vehicles, aircraft and persons aboard them exempted
from requirements of article.**

1 The following vehicles and aircraft are exempted from the
2 application of the provisions of this article and rules promul-
3 gated pursuant to it and persons aboard them are not required
4 to comply with the provisions of section four of this article:

5 (a) Privately owned vehicles and aircraft not ordinarily
6 used in the business or service of transporting patients.

7 (b) Vehicles and aircraft used as ambulances in case of a
8 catastrophe or emergency when the ambulances normally
9 staffed by certified emergency medical service attendants
10 based in the locality of the catastrophe or emergency are insuffi-
11 cient to render the service required.

12 (c) Ambulances based outside this state, except that emer-
13 gency medical service attendants aboard any such ambulance
14 receiving a patient within this state for transportation to a lo-
15 cation within this state must comply with the provisions of this
16 article and the rules promulgated pursuant to it.

17 (d) Ambulances owned by or operated under the direct
18 control of a governmental agency of the United States.

19 (e) Vehicles and aircraft designed primarily for rescue
20 operations and which do not ordinarily transport patients.

21 (f) An ambulance being used to transport a person or
22 persons not in an existing or imminent emergency situation
23 where the purpose of that mode of transportation is to
24 facilitate their movement or comfort.

**§16-4C-4. Standards for emergency medical service attendants;
issuance, renewal, suspension and revocation of emer-
gency medical service attendant certificates; issuance
of temporary certificates.**

1 After the first day of January, one thousand nine hundred
2 seventy-five, every ambulance, except those vehicles and air-
3 craft exempted in section three of this article, shall have at
4 least one physician, osteopathic physician, any state licensed
5 health provider qualified to render first aid or mobile intensive
6 care paramedic duly licensed to serve in such capacity under the
7 laws of this state or one person who possesses a valid emergency
8 medical service attendant certificate issued hereunder by the
9 state board in its patient compartment at all times when a
10 patient is being transported.

11 In accordance with the provisions of chapter twenty-nine-a of
12 this code, the state board shall promulgate rules regarding the
13 age, training and physical requirements of emergency medical
14 service attendants. As a minimum training requirement, every
15 emergency medical service attendant shall have earned and pos-
16 sess a valid American red cross advanced first aid certificate, or
17 an advanced first aid certificate issued by the United States
18 bureau of mines (now referred to as the mining enforcement
19 and safety administration, United States department of the in-
20 terior) or the equivalent thereof; or have successfully completed
21 the course on emergency care and transportation of the sick and
22 injured recommended by the American academy of orthopedic
23 surgeons or the equivalent thereof, before he is issued a certifi-
24 cate: *Provided*, That any member of a rescue unit organized
25 and engaged in providing ambulance service prior to the first
26 day of January, one thousand nine hundred seventy-five, which
27 is operated by a rescue squad, fire department, police depart-
28 ment, county or municipality of this state, who on that date is
29 certified by the respective county health officer of the county
30 wherein such unit is based, or, if there is no county health of-
31 ficer, by the county court or governing body of the jurisdiction

32 wherein such unit is based, that he is adequately trained and is
33 capable of performing the service required of an emergency
34 medical service attendant, shall be issued an original emergency
35 medical service attendant certificate by the state board upon his
36 submitting proper application for such certificate. The state
37 board may promulgate rules for emergency medical service at-
38 tendants which exceed this minimum training requirement, but
39 such rules must first be approved by the emergency medical ser-
40 vice advisory council provided for in section six of this article.

41 Any person desiring certification as an emergency medical
42 service attendant shall apply to the state board using forms and
43 procedures prescribed by the state board. Upon receipt of
44 such application, the state board shall determine if the appli-
45 cant meets the requirements for certification and examine the
46 applicant as, in its discretion, is necessary to make such deter-
47 mination. If it is determined that the applicant meets all of the
48 requirements, the state board shall issue an emergency medi-
49 cal service attendant certificate to the applicant. Emergency
50 medical care attendant certificates issued by the state board
51 shall be valid for two years from the date of their issuance
52 unless sooner suspended or revoked by the state board. Certifi-
53 cates may be renewed for additional two-year periods after
54 examination of the certificate holder and determination by the
55 state board that such holder meets the requirements estab-
56 lished for emergency medical service attendants: *Provided,*
57 That if any county health officer of any county, or, if there is
58 no county health officer, the county court or governing body
59 of the jurisdiction concludes that any area of that jurisdiction
60 has not been afforded the necessary training or equipment to
61 implement this section, then this section shall not apply.

62 The state board may issue a temporary emergency medical
63 service attendant certificate to an applicant, with or without
64 examination of the applicant, when it finds such issuance to
65 be in the public interest. Unless sooner suspended or revoked,
66 a temporary certificate shall be valid initially for a period not
67 exceeding one hundred twenty days and it shall not be renewed
68 thereafter unless it be in the public interest: *Provided,* That
69 the expiration date of any such temporary certificate issued
70 shall be extended until the holder of such certificate is afforded

71 at least one opportunity to take an emergency medical care
72 attendant training course within the general area where he
73 serves as an emergency medical service attendant, but the ex-
74 piration date shall not be extended for any longer period of time
75 or for any other reason.

76 There shall be no fee or other payment required of an ap-
77 plicant for original certification as an emergency medical ser-
78 vice attendant, renewal of such certificate or of an applicant
79 for temporary certification as an emergency medical service
80 attendant.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

1 (a) The board may at any time upon its own motion and
2 shall upon the verified written complaint of any person conduct
3 an investigation to determine whether there are any grounds for
4 the suspension or revocation of a certificate or temporary
5 certificate issued under the provisions of this article.

6 (b) The board shall suspend or revoke any certificate or
7 temporary certificate when it finds the holder thereof has:

8 (1) Obtained a certificate or temporary certificate by
9 means of fraud or deceit;

10 (2) Been incompetent, grossly negligent, or guilty of other
11 malpractice as defined by the board by reasonable rules and
12 regulations; or

13 (3) Failed or refused to comply with the provisions of this
14 article or any reasonable rule and regulation promulgated by
15 the board hereunder or any order or final decision of the
16 board.

17 (c) The board shall also suspend or revoke any certificate
18 or temporary certificate if it finds the existence of any grounds
19 which would justify the denial of an application for such
20 license or temporary permit if application were then being
21 made for it.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to state board; judicial review.

1 An application for an original emergency medical service
2 attendant certificate, for the renewal of an emergency medical

3 service attendant certificate or for a temporary emergency
4 medical service attendant certificate, shall be acted upon by
5 the state board, and the state board's certificate delivered or
6 mailed, or a copy of any order of the state board denying any
7 such application delivered or mailed to the applicant, by the
8 state board within fifteen days after the date upon which
9 such application was received from the applicant.

10 Whenever the state board shall refuse to issue an emergency
11 medical service attendant certificate or a temporary emergency
12 medical service attendant certificate, or shall suspend or revoke
13 an emergency medical service attendant certificate, or a tem-
14 porary emergency medical service attendant certificate, it
15 shall make and enter an order to that effect, which order
16 shall specify the reasons for such denial, suspension or revoca-
17 tion, and shall cause a copy of such order to be served in
18 person or by certified mail, return receipt requested, on the
19 applicant or certificate holder, as the case may be.

20 Whenever a certificate is suspended or revoked, the state
21 board shall in the order of suspension or revocation direct
22 the holder thereof to return his certificate to the state board.
23 It shall be the duty of such certificate holder to comply with
24 any such order following expiration of the period provided
25 for an appeal to the state board.

26 Any applicant or certificate holder, as the case may be,
27 adversely affected by an order made and entered by the
28 state board may appeal to the state board for an order
29 vacating or modifying such order or for such order as the
30 state board should have entered. The person so appealing
31 shall be known as the appellant. An appeal shall be perfected
32 by filing a notice of appeal with the state board within
33 ten days after the date upon which the appellant received
34 the copy of such order. Said notice of appeal shall be in
35 such form and contain such information as may be prescribed
36 by the state board, but in all cases shall contain a description
37 of any order appealed from and the grounds for said appeal.
38 The filing of the notice of appeal shall operate to auto-
39 matically stay or suspend execution of any order which is the
40 subject matter of said appeal. All of the pertinent provisions
41 of article five, chapter twenty-nine-a of this code shall apply to

42 and govern the hearing on appeal and the administrative pro-
43 cedures in connection with and following such hearing, with
44 like effect as if the provisions of said article five were set
45 forth in extenso herein.

46 The state board shall set a hearing date which shall be
47 not less than ten days after it received the notice of appeal
48 unless there is a postponement or continuance. The state
49 board may postpone or continue any hearing on its own
50 motion, or for good cause shown upon the application of the
51 appellant. The appellant shall be given notice of said hearing
52 in person or by certified mail, return receipt requested.
53 Any such hearing shall be held in Charleston, Kanawha
54 county, West Virginia, unless another place is specified by
55 the state board.

56 After such hearing and consideration of all of the testi-
57 mony, evidence and record in the case, the state board shall
58 make and enter an order affirming, modifying or vacating
59 the order of the state board, or shall make and enter such
60 order as the state board should have entered. Such order
61 shall be accompanied by findings of fact and conclusions
62 of law as specified in section three, article five, chapter twenty-
63 nine-a of this code, and a copy of such order and accompany-
64 ing findings and conclusions shall be served upon the ap-
65 pellant, in person or by certified mail, return receipt requested.
66 The order of the state board shall be final unless vacated or
67 modified upon judicial review thereof.

68 Any appellant adversely affected by a final order made
69 and entered by the state board is entitled to judicial review
70 thereof. All of the pertinent provisions of section four, article
71 five, chapter twenty-nine-a of this code shall apply to and
72 govern such review with like effect as if the provisions
73 of said section four were set forth in extenso herein. The
74 judgment of the circuit court shall be final unless reversed,
75 vacated or modified on appeal to the supreme court of appeals
76 in accordance with the provisions of section one, article six,
77 chapter twenty-nine-a of this code.

**§16-4C-7. Emergency medical service advisory council created;
duties, composition, appointment, meetings, expenses.**

1 For the purpose of assisting the state board in developing

2 standards for emergency medical service attendants, there
3 is hereby created the emergency medical service advisory
4 council.

5 The council shall be composed of ten members appointed
6 by the governor. The governor shall appoint one representa-
7 tive each from the West Virginia association of county
8 officials, West Virginia council of towns and cities, West
9 Virginia state firemen's association, American red cross, West
10 Virginia hospital association, West Virginia state medical as-
11 sociation, West Virginia funeral directors association, gover-
12 nor's highway safety administration, one person to represent
13 private commercial ambulance services within the state and one
14 person to represent emergency rescue squads operating within
15 the state. The person appointed from the West Virginia funeral
16 directors association shall be a person who provides ambulance
17 service at the time of his appointment and throughout his term.

18 Initially, the governor shall appoint four members of the
19 council for terms of two years and five for terms of four years.
20 Thereafter, appointments shall be for terms of four years and
21 made in a manner to preserve the representation of the council
22 as it was originally comprised.

23 The council shall choose its own chairman and meet at the
24 call of the director of the state department of health but the
25 council shall not meet more than five times in any one year.
26 Council members shall not receive any compensation for their
27 services as council members but shall be reimbursed by the state
28 board for all reasonable and necessary expenses actually in-
29 curred by them in the discharge of their official duties.

§16-4C-8. Liability for cost of ambulance service.

1 Any patient who receives ambulance service and who is
2 unable to give his consent to, or contract for, the service,
3 whether or not he has agreed or consented to liability for the
4 service, shall be liable in implied contract to the person pro-
5 viding the ambulance service for the reasonable cost thereof.

§16-4C-9. Violations; criminal penalties.

1 Any person who operates an ambulance or who provides
2 ambulance service not in compliance with the provisions of

3 this article or the rules promulgated by the state board pur-
4 suant to this article, or who operates an ambulance with un-
5 certified emergency medical service attendants aboard when
6 not lawfully permitted to do so shall be guilty of a misde-
7 meanor, and, upon conviction thereof, shall be fined not less
8 than one hundred dollars nor more than three hundred dol-
9 lars, or imprisoned in the county jail not more than one month,
10 or both fined and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

1 Whenever it appears to the state board that any person has
2 been or is violating or is about to violate any provision of this
3 article or any final order of the state board, the state board
4 may apply in the name of the state, to the circuit court of the
5 county in which the violation or violations or any part thereof
6 has occurred, is occurring or is about to occur, for an injunc-
7 tion against such person and any other persons who have
8 been, are or are about to be, involved in, or in any way parti-
9 cipating in, any practices, acts or omissions, so in violation,
10 enjoining such person or persons from any such violation or
11 violations. Such application may be made and prosecuted to
12 conclusion whether or not any such violation or violations have
13 resulted or shall result in prosecution or conviction under the
14 provisions of section eight of this article.

15 Upon application by the state board, the circuit courts of
16 this state may by mandatory or prohibitory injunction compel
17 compliance with the provisions of this article and all final
18 orders of the state board.

19 The court may issue a temporary injunction in any case
20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application per-
22 mitted by the provisions of this section shall be final unless
23 reversed, vacated or modified on appeal to the supreme court
24 of appeals. Any such appeal shall be sought in the manner and
25 within the time provided by law for appeals from circuit courts
26 in other civil cases.

§16-4C-11. Private rights of action.

1 No physician or surgeon who in good faith gives emergency

2 instructions to a certified emergency service medical attendant,
3 nor any certified emergency service medical attendant who in
4 good faith cares for or gives life saving or life preserving treat-
5 ment to a patient transported in an ambulance, shall be liable
6 for any civil damage or injury resulting from such treatment,
7 unless such damage or injury be intentionally inflicted or the
8 result of gross negligence.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Merril Darby

Chairman Senate Committee

Lawrence B. Thurston

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Robinson

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. T. Bratherton, Jr.

President of the Senate

Levin J. W. Menden

Speaker House of Delegates

The within *approved* this the *5th*
day of *March*, 1974.

Arch A. Phares, Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/1/74

Time 4:20 P.M.