WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4143

(By Delegates Morgan, Stevens, Staggers, Swartzmiller, Talbott, Martin, Givens, C. Miller, Hartman, Butcher and Rowan)

Passed March 13, 2010
In Effect From Passage
AN ACT to repeal §16-4C-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-3, §16-4C-6, §16-4C-6a, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code, all relating to emergency medical services; revising definitions; revising powers and duties of the commissioner; revising rulemaking authority; revising requirement to review statewide emergency medical services implementation plan; revising requirements to operate emergency medical vehicle; revising standards for emergency medical service personnel; requiring applicants to allow the State Police access to personal background information; removing nonutilized code sections; requiring certified persons to report violations; providing immunity from civil liability for reporting violations; clarifying procedures for complaint investigation, hearings, rights of appeal and judicial review; removing automatic stay on appeal; increasing criminal penalties; clarifying limitations on immunity in the absence of required insurance policy; and removing antiquated language.
Be it enacted by the Legislature of West Virginia:

That §16-4C-5a of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-3, §16-4C-6, §16-4C-6a, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.

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

(a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing air ambulances; gsa kkk-A-1822 federal standard type I, type II and type III vehicles; and specialized multipatient medical transport vehicles operated by an emergency medical services agency;

(b) "Commissioner" means the Commissioner of the Bureau for Public Health;

(c) "Council" means the Emergency Medical Service Advisory Council created pursuant to this article;

(d) "Director" means the Director of the Office of Emergency Medical Service in the Bureau for Public Health.

(e) "Emergency Medical Services" means all services which are set forth in Public Law 93-154 "The Emergency Medical Services Systems Act of 1973" and those included
in and made a part of the emergency medical services plan of the Department of Health and Human Resources inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

(f) "Emergency medical service agency" means any agency licensed under section six-a of this article to provide emergency medical services;

(g) "Emergency medical service personnel" means any person certified by the commissioner to provide emergency medical services as set forth by legislative rule;

(h) "Emergency medical service provider" means any authority, person, corporation, partnership or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical service in this state;

(i) "Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code;

(j) "Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care;

(k) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care;

(l) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code;
"Patient" means any person who is a recipient of the services provided by emergency medical services;

"Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render those services by a neighboring state;

"Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel; and

"Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient:

Provided, That the requirement of "greater medical need" may not prohibit the transportation of a patient whose need is preventive in nature.

§16-4C-6. Powers and duties of commissioner.

The commissioner has the following powers and duties:

(a) To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That the rules have been submitted at least thirty days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

(1) Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:
(A) Age, training, testing and continuing education;

(B) Procedures for certification and recertification, and for denying, suspending, revoking, reinstating and limiting a certification or recertification;

(C) Levels of certification and the scopes of practice for each level;

(D) Standards of conduct; and,

(E) Causes for disciplinary action and sanctions which may be imposed.

(2) Standards and requirements for licensure and licensure renewals of emergency medical service agencies, including:

(A) Operational standards, levels of service, personnel qualifications and training, communications, public access, records management, reporting requirements, medical direction, quality assurance and review, and other requirements necessary for safe and efficient operation;

(B) Inspection standards and establishment of improvement periods to ensure maintenance of the standards;

(C) Fee schedules for licensure, renewal of licensure and other necessary costs;

(D) Procedures for denying, suspending, revoking, reinstating or limiting an agency licensure;

(E) Causes for disciplinary action against agencies; and

(F) Administrative penalties, fines and other disciplinary sanctions which may be imposed on agencies;
(3) Standards and requirements for emergency medical service vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a State Emergency Medical Services Medical Director and Regional Medical Directors, the establishment of a State Medical Policy and Care Committee and the designation of Regional Medical Command Centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms; and

(7) Any other rules necessary to carry out the provisions of this article.

(b) To apply for, receive and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article.

(c) To design, develop and review a Statewide Emergency Medical Services Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county and community officials and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state.
(d) To provide professional and technical assistance and to make information available to Regional Emergency Medical Services Boards of Directors and other potential applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services.

(e) To assist local government agencies, Regional Emergency Medical Services Boards of Directors and other public or private entities in obtaining federal, state or other available funds and services.

(f) To cooperate and work with federal, state and local governmental agencies, private organizations and other entities as may be necessary to carry out the purposes of this article.

(g) To acquire in the name of the state by grant, purchase, gift, devise or any other methods appropriate real and personal property as may be reasonable and necessary to carry out the purposes of this article.

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article.

(i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state.

(j) To develop a program to inform the public concerning emergency medical services.
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94 (k) To review and disseminate information regarding federal grant assistance relating to emergency medical services.

97 (l) To prepare and submit to the Governor and Legislature recommendations for legislation in the area of emergency medical services.

100 (m) To review, make recommendations for and assist in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the Office of Emergency Medical Services. A review and approval shall be required for all emergency medical services projects, programs or services for which application is made to receive state or federal funds for their operation after the effective date of this act; and

108 (n) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state.

§16-4C-6a. Emergency medical services agency licensure.

1 (a) Any person who proposes to establish or maintain an emergency medical services agency shall file an application with the commissioner which includes the identity of the applicant, any parent or affiliated entity, the proposed level of service and the number of emergency medical service response vehicles of the agency or proposed agency. The commissioner may require that additional information be included on each application.

9 (b) Upon receipt and review of the application the commissioner shall issue a license if he or she finds that the applicant meets the requirements and quality standards, to be
established by the commissioner, for an emergency medical services agency license, and if the applicant has certified under penalty of perjury that he or she is current with all lawful obligations owed the State of West Virginia, excluding obligations owed in the current quarter, including, but not limited to, payment of taxes and workers' compensation premiums: Provided, That the certification set forth in this paragraph is required for the original application and subsequent renewals.

§16-4C-8. Standards for emergency medical service personnel.

(a) Every ambulance operated by an emergency medical service agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient compartment shall be certified as an emergency medical technician-basic at a minimum except that in the case of a specialized multipatient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic. The requirements of this subsection will remain in effect until revised by the legislative rule to be promulgated pursuant to subsection (b) of this section.

(b) On or before May 28, 2010, the commissioner shall submit a proposed legislative rule to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2010, shall file the proposed legislative rule with the office of the Secretary of State, in accordance with the provisions of chapter twenty-nine-a, article three of this code, to establish certification standards for emergency medical vehicle operators and to revise the requirements for emergency medical service personnel.

(c) As of the effective date of the legislative rule to be promulgated pursuant to subsection (b) of this section,
emergency medical service personnel who operate
ambulances shall meet the requirements set forth in the
legislative rule.

(d) Any person desiring emergency medical service
personnel certification shall apply to the commissioner using
forms and procedures prescribed by the commissioner. Upon
receipt of the application, the commissioner shall determine
whether the applicant meets the certification requirements
and may examine the applicant, if necessary to make that
determination.

(e) The applicant shall submit to a national criminal
background check, the requirement of which is declared to be
not against public policy.

(1) The applicant shall meet all requirements necessary
to accomplish the national criminal background check,
including submitting fingerprints, and authorizing the West
Virginia Office of Emergency Medical Services, the West
Virginia State Police and the Federal Bureau of Investigation
to use all records submitted and produced for the purpose of
screening the applicant for certification.

(2) The results of the national criminal background check
may not be released to or by a private entity.

(3) The applicant shall submit a fee of $75 for initial
certification and a fee of $50 for recertification. The fees set
forth in this subsection remain in effect until modified by
legislative rule.

(f) An application for an original, renewal or temporary
emergency medical service personnel certificate or
emergency medical services agency license, shall be acted
upon by the commissioner and the certificate or license
delivered or mailed, or a copy of any order of the commissioner denying any such application delivered or mailed to the applicant, within fifteen days after the date upon which the complete application including test scores and background checks, if applicable, was received by the commissioner.

(g) Any person may report to the commissioner or the Director of the Office of Emergency Medical Services information he or she may have that appears to show that a person certified by the commissioner may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the commissioner, who knows of or observes another person certified by the commissioner violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the commissioner or director. Any person who reports or provides information in good faith is immune from civil liability.

(h) The commissioner may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and may not be renewed unless the commissioner finds the renewal to be in the public interest.

§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The commissioner may at any time upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this
(b) An investigator or other person who, under the direction of the commissioner or the director, gathers or reports information in good faith to the commissioner or the director, is immune from civil liability.

(c) After reviewing any information obtained through an investigation, the commissioner or director shall determine if probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article, the commissioner or director shall provide a copy of the complaint to the licensee or certificate holder.

(e) The commissioner or the director may enter into a consent decree or hold a hearing for the suspension or revocation of the license or certification or the imposition of sanctions against the licensee or certificate holder.

(f) The commissioner or the director issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person or agency regulated by the article.

(g) The commissioner or the director may sign a consent decree or other legal document related to the complaint.

(h) The commissioner shall suspend or revoke any certificate, temporary certificate or license when he or she finds the holder has:
(1) Obtained a certificate, temporary certificate or license by means of fraud or deceit; or

(2) Been grossly incompetent, and/or grossly negligent as defined by the commissioner in accordance with rules or by prevailing standards of emergency medical services care; or

(3) Failed or refused to comply with the provisions of this article or any legislative rule promulgated by the commissioner or any order or final decision of the commissioner; or

(4) Engaged in any act during the course of duty which has endangered or is likely to endanger the health, welfare or safety of the public.

(i) The commissioner or the director may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or certification of, impose probationary conditions upon or take disciplinary action against, any licensee or certificate holder for any violation of this article or any rule promulgated pursuant to this article, once a violation has been proven by a preponderance of the evidence.

(j) Disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative penalties and fines;

(4) Mandatory attendance at continuing education seminars or other training;
(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or holder of a certificate to report to the commissioner or director for periodic interviews for a specified period of time;

(7) Other disciplinary action considered by the commissioner or director to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk; or

(8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.

(k) The commissioner shall suspend or revoke any certificate, temporary certificate or license if he or she finds the existence of any grounds which would justify the denial of an application for the certificate, temporary certificate or license if application were then being made for it.

§16-4C-10. Procedures for hearing; right of appeal; judicial review.

(a) Hearings are governed by the provisions of article five, chapter twenty-nine a of this code.

(b) The commissioner or director may conduct the hearing or elect to have an Administrative Law Judge conduct the hearing.

(c) If the hearing is conducted by an Administrative Law Judge, the Administrative Law Judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the commissioner or director so directs. The commissioner
may accept, reject or modify the decision of the Administrative Law Judge.

(d) The commissioner or director has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the commissioner or director determines the licensee or holder of a certificate has violated any provision of this article or the legislative rules promulgated pursuant to this article, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

(f) The order of the Commissioner or director is final unless vacated or modified upon judicial review.

(g) Any licensee or certificate holder adversely affected by a final order made and entered by the commissioner or director is entitled to judicial review. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the review with like effect as if the provisions of the section were set forth herein.

(h) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-4C-12. Violations; criminal penalties.

(a) When, as a result of an investigation under this article or otherwise, the commissioner or director has reason to believe that a licensee or certificate holder has committed a criminal offense, the commissioner or director may bring the
information to the attention of an appropriate law-enforcement official.

(b) Any person who violates any law or rule or operates an ambulance with an insufficient number of emergency medical service personnel aboard when not lawfully permitted to do so, or who represents himself or herself as a certified emergency medical service personnel knowing the representation to be untrue, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000: Provided, That after July 1, 2010, the fine shall not be more than $5,000.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

(a) Every person, corporation, ambulance service, emergency medical service provider, emergency ambulance authority, emergency ambulance service or other person which employs emergency medical service personnel with or without wages for ambulance service or provides ambulance service in any manner, shall obtain a policy of insurance insuring the person or entity and every employee, agent or servant, against loss from the liability imposed by law for damages arising from any error or omission in the provision of emergency medical services as enumerated by this article, in an amount no less than $1,000,000 per incident.

(b) No emergency medical service personnel or emergency medical service provider is liable for civil damages or injuries in excess of the amounts for which the person or entity is actually insured, unless the damages or injuries are intentionally or maliciously inflicted.

(c) Every person or entity required by this section to obtain a policy of insurance shall furnish proof of the
existence of the policy to the commissioner on or before January 1 of each calendar year.

(d) Any person or entity who fails to secure a policy of insurance before providing emergency medical services is not entitled to the limited liability created by subsection (b) of this section: Provided, That any physician, who gives instructions to emergency medical service personnel without being compensated, or who treats any patient transported in an ambulance or treats any patient prior to the transport, without being compensated, is entitled to the limited liability provided in subsection (b) of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill approved this the 15th day of April, 2010.

Governor
PRESENTED TO THE GOVERNOR

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