

2010 APR -1 PM 4: 28

CLERK OF COURTS
SECRETARY OF STATE

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

HB 4143

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 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.

2010 APR -1 PM 4: 28

GEORGE A. LEE
SECRETARY OF STATE

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That §16-4C-5a of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-3, §16-4C-6, §16-4C-6a, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code be amended and reenacted, all to read as follows: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

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

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

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

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

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

18 (e) "Emergency Medical Services" means all services
19 which are set forth in Public Law 93-154 "The Emergency
20 Medical Services Systems Act of 1973" and those included

21 in and made a part of the emergency medical services plan of
22 the Department of Health and Human Resources inclusive of,
23 but not limited to, responding to the medical needs of an
24 individual to prevent the loss of life or aggravation of illness
25 or injury;

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

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

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

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

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

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

47 (l) "Municipality" has the meaning ascribed to it in
48 subdivision (1), subsection (a), section two, article one,
49 chapter eight of this code;

50 (m) "Patient" means any person who is a recipient of the
51 services provided by emergency medical services;

52 (n) "Service reciprocity" means the provision of
53 emergency medical services to citizens of this state by
54 emergency medical service personnel certified to render
55 those services by a neighboring state;

56 (o) "Small emergency medical service provider" means
57 any emergency medical service provider which is made up of
58 less than twenty emergency medical service personnel; and

59 (p) "Specialized multipatient medical transport" means a
60 type of ambulance transport provided for patients with
61 medical needs greater than those of the average population,
62 which may require the presence of a trained emergency
63 medical technician during the transport of the patient:
64 *Provided*, That the requirement of "greater medical need"
65 may not prohibit the transportation of a patient whose need
66 is preventive in nature.

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

1 The commissioner has the following powers and duties:

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

8 (1) Standards and requirements for certification and
9 recertification of emergency medical service personnel,
10 including, but not limited to:

- 11 (A) Age, training, testing and continuing education;
- 12 (B) Procedures for certification and recertification, and
13 for denying, suspending, revoking, reinstating and limiting a
14 certification or recertification;
- 15 (C) Levels of certification and the scopes of practice for
16 each level;
- 17 (D) Standards of conduct; and,
- 18 (E) Causes for disciplinary action and sanctions which
19 may be imposed.
- 20 (2) Standards and requirements for licensure and
21 licensure renewals of emergency medical service agencies,
22 including:
 - 23 (A) Operational standards, levels of service, personnel
24 qualifications and training, communications, public access,
25 records management, reporting requirements, medical
26 direction, quality assurance and review, and other
27 requirements necessary for safe and efficient operation;
 - 28 (B) Inspection standards and establishment of
29 improvement periods to ensure maintenance of the standards;
 - 30 (C) Fee schedules for licensure, renewal of licensure and
31 other necessary costs;
 - 32 (D) Procedures for denying, suspending, revoking,
33 reinstating or limiting an agency licensure;
 - 34 (E) Causes for disciplinary action against agencies; and
 - 35 (F) Administrative penalties, fines and other disciplinary
36 sanctions which may be imposed on agencies;

37 (3) Standards and requirements for emergency medical
38 service vehicles, including classifications and specifications;

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

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

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

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

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

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

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

63 (2) To develop a system for monitoring and evaluating
64 emergency medical services programs throughout the state.

65 (d) To provide professional and technical assistance and
66 to make information available to Regional Emergency
67 Medical Services Boards of Directors and other potential
68 applicants or program sponsors of emergency medical
69 services for purposes of developing and maintaining a
70 statewide system of services.

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

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

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

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

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

92 (j) To develop a program to inform the public concerning
93 emergency medical services.

94 (k) To review and disseminate information regarding
95 federal grant assistance relating to emergency medical
96 services.

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

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

108 (n) To take all necessary and appropriate action to
109 encourage and foster the cooperation of all emergency
110 medical service providers and facilities within this state.
111

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

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

9 (b) Upon receipt and review of the application the
10 commissioner shall issue a license if he or she finds that the
11 applicant meets the requirements and quality standards, to be

12 established by the commissioner, for an emergency medical
13 services agency license, and if the applicant has certified
14 under penalty of perjury that he or she is current with all
15 lawful obligations owed the State of West Virginia, excluding
16 obligations owed in the current quarter, including, but not
17 limited to, payment of taxes and workers' compensation
18 premiums: *Provided*, That the certification set forth in this
19 paragraph is required for the original application and
20 subsequent renewals.

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

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

13 (b) On or before May 28, 2010, the commissioner shall
14 submit a proposed legislative rule to the Emergency Medical
15 Services Advisory Council for review, and on or before June
16 30, 2010, shall file the proposed legislative rule with the
17 office of the Secretary of State, in accordance with the
18 provisions of chapter twenty-nine-a, article three of this code,
19 to establish certification standards for emergency medical
20 vehicle operators and to revise the requirements for
21 emergency medical service personnel.

22 (c) As of the effective date of the legislative rule to be
23 promulgated pursuant to subsection (b) of this section,

24 emergency medical service personnel who operate
25 ambulances shall meet the requirements set forth in the
26 legislative rule.

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

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

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

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

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

50 (f) An application for an original, renewal or temporary
51 emergency medical service personnel certificate or
52 emergency medical services agency license, shall be acted
53 upon by the commissioner and the certificate or license

54 delivered or mailed, or a copy of any order of the
55 commissioner denying any such application delivered or
56 mailed to the applicant, within fifteen days after the date
57 upon which the complete application including test scores
58 and background checks, if applicable, was received by the
59 commissioner.

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

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

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

1 (a) The commissioner may at any time upon his or her
2 own motion, and shall, upon the written complaint of any
3 person, cause an investigation to be conducted to determine
4 whether grounds exist for disciplinary action under this

5 article or legislative rules promulgated pursuant to this
6 article.

7 (b) An investigator or other person who, under the
8 direction of the commissioner or the director, gathers or
9 reports information in good faith to the commissioner or the
10 director, is immune from civil liability.

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

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

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

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

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

31 (h) The commissioner shall suspend or revoke any
32 certificate, temporary certificate or license when he or she
33 finds the holder has:

34 (1) Obtained a certificate, temporary certificate or license
35 by means of fraud or deceit; or

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

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

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

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

54 (j) Disciplinary action may include:

55 (1) Reprimand;

56 (2) Probation;

57 (3) Administrative penalties and fines;

58 (4) Mandatory attendance at continuing education
59 seminars or other training;

60 (5) Practicing under supervision or other restriction;

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

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

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

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

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

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

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

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

12 may accept, reject or modify the decision of the
13 Administrative Law Judge.

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

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

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

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

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

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

1 (a) When, as a result of an investigation under this article
2 or otherwise, the commissioner or director has reason to
3 believe that a licensee or certificate holder has committed a
4 criminal offense, the commissioner or director may bring the

5 information to the attention of an appropriate law-
6 enforcement official.

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

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

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

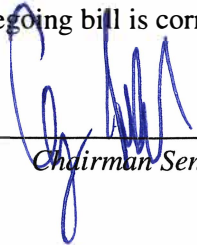
12 (b) No emergency medical service personnel or
13 emergency medical service provider is liable for civil
14 damages or injuries in excess of the amounts for which the
15 person or entity is actually insured, unless the damages or
16 injuries are intentionally or maliciously inflicted.

17 (c) Every person or entity required by this section to
18 obtain a policy of insurance shall furnish proof of the

19 existence of the policy to the commissioner on or before
20 January 1 of each calendar year.

21 (d) Any person or entity who fails to secure a policy of
22 insurance before providing emergency medical services is not
23 entitled to the limited liability created by subsection (b) of
24 this section: *Provided*, That any physician, who gives
25 instructions to emergency medical service personnel without
26 being compensated, or who treats any patient transported in
27 an ambulance or treats any patient prior to the transport,
28 without being compensated, is entitled to the limited liability
29 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



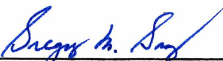
Chairman House Committee

Originating in the House.

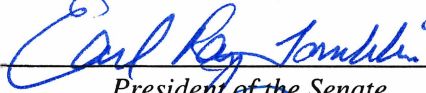
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

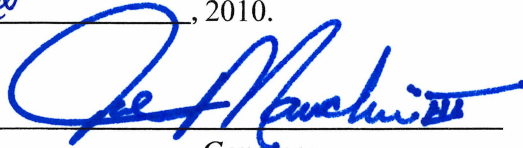


President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2010

Time 10:05 AM