

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4028**

4 (By Delegate Staggers, Butcher, Mahan, Moye and Perry)

5  
6 (Originating in the Committee on the Judiciary)

7  
8 [February 21, 2012]

9  
10 A BILL to amend and reenact §16-4C-6 and §16-4C-9 of the Code of  
11 West Virginia, 1931, as amended, all relating to emergency  
12 medical services; authoring rule-making authority relating to  
13 temporary suspension of a certification or license; providing  
14 for the immediate temporary suspension of certification of  
15 emergency medical service personnel or licensure of emergency  
16 medical service in certain circumstances; and providing for  
17 a temporary emergency suspension hearing.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931,  
20 as amended, be amended and reenacted, all to read as follows:

21 **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

22 **§16-4C-6. Powers and duties of commissioner.**

23 The commissioner has the following powers and duties:

24 (a) To propose rules for legislative approval in accordance  
25 with the provisions of article three, chapter twenty-nine-a of this  
26 code: *Provided*, That the rules have been submitted at least thirty

1 days in advance for review by the Emergency Medical Services  
2 Advisory Council, who may act only in the presence of a quorum.

3 The rules may include:

4 (1) Standards and requirements for certification and  
5 recertification of emergency medical service personnel, including,  
6 but not limited to:

7 (A) Age, training, testing and continuing education;

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

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

13 (D) Standards of conduct; and

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

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

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

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

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

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

3 (E) Causes for disciplinary action against agencies; and

4 (F) Administrative penalties, fines and other disciplinary  
5 sanctions which may be imposed on agencies;

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

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

11 (5) Standards and requirements for a State Medical Direction  
12 System, including qualifications for a state emergency medical  
13 services medical director and regional medical directors, the  
14 establishment of a State Medical Policy and Care Committee and the  
15 designation of regional medical command centers;

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

18 (7) Authorization to temporarily suspend the certification of  
19 an individual emergency medical service provider or the license of  
20 an emergency medical service agency without a hearing or prior  
21 notice if there is probable cause that the conduct or continued  
22 service or practice of any certificate holder or licensee may  
23 create a danger to public health or safety, in accordance with the  
24 procedures required by section nine of this article. Upon a  
25 finding of a physician that serves as a medical director that  
26 probable cause exists that a certificate holder or licensee is a

1 danger to public health or safety, the commissioner may cause an  
2 emergency suspension and conduct an hearing within ten days; and

3 ~~(7)~~(8) Any other rules necessary to carry out the provisions  
4 of this article.

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

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

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

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

18 (d) To provide professional and technical assistance and to  
19 make information available to regional emergency medical services  
20 boards of directors and other potential applicants or program  
21 sponsors of emergency medical services for purposes of developing  
22 and maintaining a statewide system of services.

23 (e) To assist local government agencies, regional emergency  
24 medical services boards of directors and other public or private  
25 entities in obtaining federal, state or other available funds and  
26 services.

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

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

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

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

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

19 (k) To review and disseminate information regarding federal  
20 grant assistance relating to emergency medical services.

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

24 (m) To review, make recommendations for and assist in all  
25 projects and programs that provide for emergency medical services  
26 whether or not the projects or programs are funded through the

1 Office of Emergency Medical Services. A review and approval shall  
2 be required for all emergency medical services projects, programs  
3 or services for which application is made to receive state or  
4 federal funds for their operation after the effective date of this  
5 act; and

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

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

11 (a) The commissioner may at any time upon his or her own  
12 motion, and shall, upon the written complaint of any person, cause  
13 an investigation to be conducted to determine whether grounds exist  
14 for disciplinary action under this article or legislative rules  
15 promulgated pursuant to this article.

16 (b) An investigator or other person who, under the direction  
17 of the commissioner or the director, gathers or reports information  
18 in good faith to the commissioner or the director, is immune from  
19 civil liability.

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

25 (d) Upon a finding that probable cause exists that the  
26 licensee or certificate holder has violated any provision of this

1 article or rules promulgated pursuant to this article, the  
2 commissioner or director shall provide a copy of the complaint and  
3 notice of hearing to the licensee or certificate holder. Upon a  
4 finding of probable cause that the conduct or continued service or  
5 practice of any certificate holder or licensee may create a danger  
6 to public health or safety, the commissioner may temporarily  
7 suspend the certification or license without a hearing or prior  
8 notice. In such case, the commissioner shall simultaneously  
9 institute proceedings for a temporary emergency suspension hearing  
10 in accordance with the applicable rules.

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

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

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

21 (h) The commissioner shall suspend or revoke any certificate,  
22 temporary certificate or license when he or she finds the holder  
23 has:

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

26 (2) Been grossly incompetent, and/or grossly negligent as

1 defined by the commissioner in accordance with rules or by  
2 prevailing standards of emergency medical services care; or

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

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

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

16 (j) Disciplinary action may include:

17 (1) Reprimand;

18 (2) Probation;

19 (3) Administrative penalties and fines;

20 (4) Mandatory attendance at continuing education seminars or  
21 other training;

22 (5) Practicing under supervision or other restriction;

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

26 (7) Other disciplinary action considered by the commissioner



1 or director to be necessary to protect the public, including  
2 advising other parties whose legitimate interests may be at risk;  
3 or

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

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