

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 398

BY SENATORS TAKUBO, STOLLINGS, UNGER AND

MARONEY

[Introduced February 22, 2017; Referred
to the Committee on Health and Human Resources; and
then to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §29-30-1, §29-30-2, §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-
 3 30-8, §29-30-9, §29-30-10, §29-30-11 and §29-30-12, all relating to creating the
 4 Emergency Volunteer Health Practitioners Act; defining terms; providing for applicability
 5 of the article; regulating the practice of volunteer health practitioners during an emergency;
 6 creating a registration system; granting reciprocity to licenses issued to volunteer health
 7 practitioners in other states during an emergency; allowing for credentialing and privileges
 8 of a volunteer health practitioner; providing for sanctions; relating article to other laws of
 9 the state; providing for limitation of liability; allowing volunteer health practitioners to collect
 10 workers' compensation; and providing for rulemaking by the Secretary of the Department
 11 of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §29-30-1, §29-30-2, §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-
 3 30-8, §29-30-9, §29-30-10, §29-30-11 and §29-30-12, all to read as follows:

ARTICLE 30. EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

§29-30-1. Short title.

1 This article shall be cited as the “Emergency Volunteer Health Practitioners Act”.

§29-30-2. Definitions.

1 The following words have the following meaning:

2 (a) “Credentialing” means obtaining, verifying, and assessing the qualifications of a health
 3 practitioner to provide treatment, care or services in or for a health facility.

4 (b) “Disaster relief organization” means an entity that provides emergency or disaster relief
 5 services that include health or veterinary services provided by volunteer health practitioners and
 6 that:

7 (1) Is designated or recognized as a provider of those services pursuant to a disaster

8 response and recovery plan adopted by an agency of the federal government or by the Governor
9 of this state; or

10 (2) Regularly plans and conducts its activities in coordination with an agency of the federal
11 government or any agency designated by the Governor.

12 (c) "Emergency" means an event or condition that is an emergency, disaster or public
13 health emergency pursuant to a declaration of the Governor or any agency designated by the
14 Governor.

15 (d) "Emergency declaration" means a declaration of emergency issued by the Governor
16 or his or her designee pursuant to the laws of this state.

17 (e) "Emergency Management Assistance Compact" means the interstate compact
18 approved by Congress by Public Law No. 104-321, 110 Stat. 3877.

19 (f) "Entity" means a person other than an individual.

20 (g) "Health facility" means an entity licensed pursuant to the laws of this or another state
21 to provide health or veterinary services.

22 (h) "Health practitioner" means an individual licensed pursuant to the laws of this or
23 another state to provide health or veterinary services. For the purposes of this article, a health
24 practitioner includes a physician, a physician assistant, a dentist, a dental hygienist, a pharmacist,
25 a pharmacy technician, a pharmacy intern, a registered professional nurse, a licensed practical
26 nurse, an optometrist, an osteopathic physician, a chiropractor, a physical therapist, a
27 psychologist, an occupational therapist and a veterinarian.

28 (i) "Health services" means the provision of treatment, care, advice or guidance, or other
29 services or supplies, related to the health or death of individuals or human populations, to the
30 extent necessary to respond to an emergency, including:

31 (1) The following, concerning the physical or mental condition or functional status of an
32 individual or affecting the structure or function of the body:

33 (A) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and

34 (B) Counseling, assessment, procedures, or other services;

35 (2) Sale or dispensing of a drug, a device, equipment or another item to an individual in
36 accordance with a prescription; and

37 (3) Funeral, cremation, cemetery or other mortuary services.

38 (j) "Host entity" means an entity operating in this state which uses volunteer health
39 practitioners to respond to an emergency.

40 (k) "License" means authorization and licensing by an appropriate licensing board to
41 engage in health or veterinary services that are unlawful without the license. The term includes
42 authorization pursuant to the laws of this state to an individual to provide health or veterinary
43 services based upon a national certification issued by a public or private entity.

44 (l) "Person" means an individual, corporation, business trust, trust, partnership, limited
45 liability company, association, joint venture, public corporation, government or governmental
46 subdivision, agency, or instrumentality or any other legal or commercial entity.

47 (m) "Privileging" means the authorizing by an appropriate authority, such as a governing
48 body, of a health practitioner to provide specific treatment, care or services at a health facility
49 subject to limits based on factors that include license, education, training, experience,
50 competence, health status and specialized skill.

51 (n) "Scope of practice" means the extent of the authorization to provide health or veterinary
52 services granted to a health practitioner by a license issued to the practitioner in the state in which
53 the principal part of the practitioner's services is rendered, including any conditions imposed by
54 the licensing authority.

55 (o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
56 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
57 United States.

58 (p) "Veterinary services" means the provision of treatment, care, advice or guidance or
59 other services or supplies related to the health or death of an animal or to animal populations, to

60 the extent necessary to respond to an emergency, including:

61 (1) Diagnosis, treatment or prevention of an animal disease, injury or other physical or
62 mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery
63 or therapy;

64 (2) Use of a procedure for reproductive management; and

65 (3) Monitoring and treatment of animal populations for diseases that have spread or
66 demonstrate the potential to spread to humans.

67 (g) "Volunteer health practitioner" means a health practitioner who provides health or
68 veterinary services, whether or not the practitioner receives compensation for those services. The
69 term does not include a practitioner who receives compensation pursuant to a preexisting
70 employment relationship with a host entity or affiliate which requires the practitioner to provide
71 health services in this state, unless the practitioner is not a resident of this state and is employed
72 by a disaster relief organization providing services in this state while an emergency declaration is
73 in effect.

§29-30-3. Applicability.

1 This article applies to volunteer health practitioners registered with a registration system
2 pursuant to section five of this article and who provide health or veterinary services in this state
3 for a host entity while an emergency declaration is in effect.

§29-30-4. Regulation during an emergency.

1 (a) While an emergency declaration is in effect, the Governor or his or her designee may
2 limit, restrict or otherwise regulate:

3 (1) The duration of practice by volunteer health practitioners;

4 (2) The geographical areas in which volunteer health practitioners may practice;

5 (3) The types of volunteer health practitioners who may practice; and

6 (4) Any other matters necessary to coordinate effectively the provision of health or
7 veterinary services during the emergency.

8 (b) An order issued pursuant to this section may take effect immediately.

9 (c) A host entity that uses volunteer health practitioners to provide health or veterinary
10 services in this state shall:

11 (1) Consult and coordinate its activities with Governor or his or her designee to the extent
12 practicable to provide for the efficient and effective use of volunteer health practitioners; and

13 (2) Comply with any laws of this state relating to the management of emergency health or
14 veterinary services.

§29-30-5. Volunteer Health Practitioner Registration System.

1 (a) To qualify as a volunteer health practitioner registration system, a system must:

2 (1) Accept applications for the registration of volunteer health practitioners before or during
3 an emergency;

4 (2) Include information about the licensure and good standing of health practitioners which
5 is accessible by authorized persons;

6 (3) Be capable of confirming the accuracy of information concerning whether a health
7 practitioner is licensed and in good standing before health services or veterinary services are
8 provided pursuant to this article; and

9 (4) Meet one of the following conditions:

10 (A) Be an emergency system for advance registration of volunteer health-care
11 practitioners established by a state and funded through the Department of Health and Human
12 Services pursuant to Section 319l of the Public Health Services Act, 42 USC Section 247d-7b [as
13 amended];

14 (B) Be a local unit consisting of trained and equipped emergency response, public health,
15 and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42
16 U.S.C. Section 300hh [as amended];

17 (C) Be operated by a:

18 (i) Disaster relief organization;

- 19 (ii) Licensing board;
- 20 (iii) National or regional association of licensing boards or health practitioners;
- 21 (iv) Health facility that provides comprehensive inpatient and outpatient health-care
 22 services, including a tertiary care and teaching hospital; or
- 23 (v) Governmental entity; or
- 24 (D) Be designated by the Governor or his or her designee as a registration system for
 25 purposes of this article.

26 (b) While an emergency declaration is in effect, the Governor or his or her designee or a
 27 host entity, may confirm whether volunteer health practitioners utilized in this state are registered
 28 with a registration system that complies with this article. Confirmation is limited to obtaining
 29 identities of the practitioners from the system and determining whether the system indicates that
 30 the practitioners are licensed and in good standing.

31 (c) Upon request of a person in this state authorized pursuant to this article, or a similarly
 32 authorized person in another state, a registration system located in this state shall notify the
 33 person of the identities of volunteer health practitioners and whether the practitioners are licensed
 34 and in good standing.

35 (d) A host entity is not required to use the services of a volunteer health practitioner even
 36 if the practitioner is registered with a registration system that indicates that the practitioner is
 37 licensed and in good standing.

§29-30-6. Recognition of volunteer health practitioners licensed in other states.

1 (a) While an emergency declaration is in effect, a volunteer health practitioner, registered
 2 with a registration system pursuant to this article and licensed and in good standing in the state
 3 upon which the practitioner’s registration is based, may practice in this state to the extent
 4 authorized by this article as if the practitioner were licensed in this state.

5 (b) A volunteer health practitioner qualified pursuant to this article is not entitled to the
 6 protections of this article if the practitioner is licensed in more than one state and any license of

7 the practitioner is suspended, revoked or subject to an agency order limiting or restricting practice
8 privileges, or has been voluntarily terminated under threat of sanction.

§29-30-7. Credentialing and privileging.

1 The provisions of this article do not affect credentialing or privileging standards of a health
2 facility and does not preclude a health facility from waiving or modifying those standards while an
3 emergency declaration is in effect.

§29-30-8. Administrative sanctions.

1 (a) Subject to subsections (b) and (c), a volunteer health practitioner shall adhere to the
2 scope of practice for a similarly licensed practitioner established by the licensing provisions,
3 practice acts, or other laws of this state.

4 (b) Except as otherwise provided in subsection (c), this section does not authorize a
5 volunteer health practitioner to provide services that are outside the practitioner's scope of
6 practice, even if a similarly licensed practitioner in this state would be permitted to provide the
7 services.

8 (c) The State Health Officer at the West Virginia Department of Health and Human
9 Resources may modify or restrict the health or veterinary services that volunteer health
10 practitioners may provide pursuant to this article. An order issued pursuant to this section takes
11 effect immediately.

12 (d) A host entity may restrict the health or veterinary services that a volunteer health
13 practitioner may provide pursuant to this article.

14 (e) A volunteer health practitioner does not engage in unauthorized practice unless the
15 practitioner has reason to know of any limitation, modification or restriction under this section or
16 that a similarly licensed practitioner in this state would not be permitted to provide the services.
17 A volunteer health practitioner has reason to know of a limitation, modification or restriction or that
18 a similarly licensed practitioner in this state would not be permitted to provide a service if:

19 (1) The practitioner knows the limitation, modification or restriction exists or that a similarly

20 licensed practitioner in this state would not be permitted to provide the service; or

21 (2) From all the facts and circumstances known to the practitioner at the relevant time, a
22 reasonable person would conclude that the limitation, modification, or restriction exists or that a
23 similarly licensed practitioner in this state would not be permitted to provide the service.

24 (f) In addition to the authority granted by law of this state other than this to regulate the
25 conduct of health practitioners, a licensing board or other disciplinary authority in this state:

26 (1) May impose administrative sanctions upon a health practitioner licensed in this state
27 for conduct outside of this state in response to an out-of-state emergency;

28 (2) May impose administrative sanctions upon a practitioner not licensed in this state for
29 conduct in this state in response to an in-state emergency; and

30 (3) Shall report any administrative sanctions imposed upon a practitioner licensed in
31 another state to the appropriate licensing board or other disciplinary authority in any other state
32 in which the practitioner is known to be licensed.

33 (g) In determining whether to impose administrative sanctions under subsection (f), a
34 licensing board or other disciplinary authority shall consider the circumstances in which the
35 conduct took place, including any exigent circumstances, and the practitioner's scope of practice,
36 education, training, experience and specialized skill.

§29-30-9. Relation to other laws.

1 (a) Nothing contained in this article limits rights, privileges or immunities provided to
2 volunteer health practitioners by laws other than this article. Except as otherwise provided in
3 subsection (b), this article does not affect requirements for the use of health practitioners pursuant
4 to the Emergency Management Assistance Compact.

5 (b) The West Virginia Department of Health and Human Resources pursuant to the
6 Emergency Management Assistance Compact, may incorporate into the emergency forces of this
7 state volunteer health practitioners who are not officers or employees of this state, a political
8 subdivision of this state or a municipality or other local government within this state.

§29-30-10. Limitation of liability.

1 (a) Subject to subsection (b), a volunteer health practitioner who provides health or
2 veterinary services pursuant to this article is not liable for damages for an act or omission of the
3 practitioner in providing those services unless the act or omission is an intentional tort or is willful
4 misconduct or wanton, grossly negligent reckless or criminal conduct.

5 (b) This section does not limit the liability of a volunteer health practitioner for:

6 (1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

7 (2) An intentional tort;

8 (3) Breach of contract;

9 (4) A claim asserted by a host entity or by an entity located in this or another state which
10 employs or uses the services of the practitioner; or

11 (5) An act or omission relating to the operation of a motor vehicle, vessel, aircraft or other
12 vehicle.

13 (c) A person that operates, uses or relies upon information provided by a volunteer health
14 practitioner registration system is not liable for damages for an act or omission relating to that
15 operation, use or reliance unless the act or omission is an intentional tort or is willful misconduct
16 or wanton, grossly negligent reckless or criminal conduct.

§29-30-11. Workers compensation coverage.

1 (a) For the purposes of this section, “injury” means a physical or mental injury or disease
2 for which an employee of this state who is injured or contracts the disease in the course of the
3 employee’s employment would be entitled to benefits under the workers’ compensation laws of
4 this state.

5 (b) A volunteer health practitioner who dies or is injured as the result of providing health
6 or veterinary services pursuant to this article is considered to be an employee of this state for the
7 purpose of receiving benefits for the death or injury under the workers’ compensation laws of this
8 state if:

9 (1) The practitioner is not otherwise eligible for the benefits for the injury or death under
10 the law of this or another state; and

11 (2) The practitioner, or in the case of death the practitioner's personal representative,
12 elects coverage under the workers' compensation law of this state by making a claim under that
13 law.

§29-30-12. Rulemaking.

14 The Secretary of the Department of Health and Human Resources may promulgate rules
15 pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this
16 article. These rules shall include measures to facilitate the receipt of benefits for injury or death
17 pursuant to the workers' compensation laws of this state by volunteer health practitioners who
18 reside in other states.

NOTE: The purpose of this bill is to create The Emergency Volunteer Health Practitioners Act. The bill defines terms and to whom the article applies. The bill regulates the practice of volunteer health practitioners during an emergency and creates a registration system; grants reciprocity to licenses issued to volunteer health practitioners in other states during an emergency. The bill allows for credentialing and privileges of a volunteer health practitioner. The bill provides sanctions for violations. It sets out when the article applies to other laws of the state. It provides for limitation of liability. The bill allows volunteer health practitioners to collection Workers Compensation. And, the bill provides for rulemaking by the Secretary of the Department of Health and Human Resources.

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