West Virginia Legislature

2017 Regular Session

Introduced

Senate Bill 488

By Senator Blair

[Introduced March 1, 2017; referred to the Committee on Government Organization; and then to the Committee on Finance]
A BILL to amend and reenact §16-4C-1, §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6,
§16-4C-6a, §16-4C-6b, §16-4C-6c, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12, §16-4C-
13, §16-4C-14, §16-4C-15, §16-4C-16, §16-4C-20, §16-4C-21 and §16-4C-23 of the Code
of West Virginia, 1931, as amended, all relating to the Office of Emergency Medical
Services; transferring the Office of Emergency Medical Services from the Department of
Health and Human Resources to the Department of Military Affairs and Public Safety;
transferring responsibilities of the Commissioner of the Bureau for Public Health;
continuing the Emergency Medical Services Advisory Council as the Emergency Medical
Services Commission; providing for composition, authority and duties of the Emergency
Medical Services Commission; and providing for qualifications for certain staff of Office of
Emergency Medical Services.

Be it enacted by the Legislature of West Virginia:

That §16-4C-1, §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6, §16-4C-6a, §16-4C-
6b, §16-4C-6c, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12, §16-4C-13, §16-4C-14, §16-4C-15,
§16-4C-16, §16-4C-20, §16-4C-21 and §16-4C-23 of the Code of West Virginia, 1931, as
amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-1. Short title.

This article shall be known as the "Emergency Medical Services Act of 1996 2017".

§16-4C-2. Purposes of article.

The Legislature finds and declares: (1) That the safe and efficient operation of life-saving
and life-preserving emergency medical service to meet the needs of citizens of this state is a
matter of general public interest and concern; (2) to ensure the provision of adequate emergency
medical services within this state for the protection of the public health, safety and welfare, it is
imperative that minimum standards for emergency medical service personnel be established and
enforced by the state; (3) that emergency medical service personnel should meet minimum

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(4) that it is the public policy of this state to enact legislation to carry out these purposes and comply with minimum standards for emergency medical service personnel as specified herein; (5) that any patient who receives emergency medical service and who is unable to consent thereto should be liable for the reasonable cost of such service; and (6) that it is the public policy of this state to encourage emergency medical service providers to do those things necessary to carry out the powers conferred in this article unless otherwise forbidden by law.

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

(h) (g) "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) (h) "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) (i) "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) (j) "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) (k) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code;

(l) "OEMS" means the Office of Emergency Medical Services;

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

(n) “Secretary” means the Secretary of the Department of Military Affairs and Public Safety;

(o) (o) "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;

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

(q) (q) "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-4. Office of emergency medical services created; director; staffing; qualifications
of director and staff; duties.

There is hereby created within state government under the commissioner of the bureau of
public health an office to be known as the office of emergency medical services.

(a) Effective July 1, 2017, the Office of Emergency Medical Services, hereto existing in
this code, is hereby transferred to the Department of Military Affairs and Public Safety. OEMS
shall continue in all respects except that all powers and duties exercised by the Commissioner of
the Bureau for Public Health within the Department of Health and Human Resources with respect
to OEMS are terminated and all such powers and duties are hereby transferred to and vested in
the Secretary of the Department of Military Affairs and Public Safety except as provided otherwise
in this article. Until the adoption of legislative rules promulgated by the commission, the secretary
and the director shall operate under the authority of this article and the authority of the rules and
regulations promulgated by the Commissioner of the Bureau for Public Health.

(b) Effective July 1, 2017, all real and personal property of OEMS held by the Department
of Health and Human Resources, including the rights and administrative authority over the
Emergency Medical services Agency Licensure Fund shall be transferred to the Department of
Military Affairs and Public Safety.

(c) Effective July 1, 2017, all employees of OEMS shall be transferred to the Department
of Military Affairs and Public Safety, at their existing hourly rate or salary and with all accrued
benefits.

(d) The commissioner director of OEMS may employ any technical, clerical, stenographic
and other personnel as may be necessary to carry out the purposes of this article. The personnel
may be paid from funds appropriated therefor or from other funds as may be made available for carrying out the purposes of this article.

(e) The director, who shall serve at the discretion and direction of the commission, shall be responsible for the administration and supervision of the day-to-day operations of OEMS. The director, acting on behalf of the commission, may enter into, sign and execute any agreements, and do and perform any acts that may be necessary, useful, desirable or convenient to effectuate the purposes of this article.

(f) The director and any deputy director of OEMS must possess a minimum of five years of experience in the administration of an emergency medical services program and any other requirements as determined by the commission.

(g) Any medical director employed by the commission and OEMS must be licensed physician with experience in emergency medicine, and shall be responsible for the formulation of medical protocol for emergency medical service personnel within OEMS.

(h) The office of emergency medical services as created by former section four, article four-d of this chapter, shall continue in existence as the office of emergency medical services established by this section.

(i) It shall be the duty of OEMS and its director to carry out and administer the policies, rules and regulations of the Emergency Medical Services Commission. The secretary and director shall coordinate with the commission on the implementation and administration of all commission policies, rules and regulations.

(j) The director and other personnel of OEMS shall be provided with appropriate office space, furniture, equipment and supplies by the Secretary of Military Affairs and Public Safety.

§16-4C-5. Emergency Medical Services Advisory Council; Commission; duties; composition; appointment; meetings; compensation and expenses.

(a) Effective July 1, 2017, the Emergency Medical Services Advisory Council, heretofore created and established by former section seven of this article, is continued for the
purpose of developing, with the Commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the Office of Emergency Medical Services and the Commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state shall be continued as the Emergency Medical Services Commission for the purposes of developing standards for emergency medical service personal and maintaining adequate emergency medical services for this state: Provided, That the commission shall be reconstituted to satisfy the qualification requirements provided for herein. Notwithstanding provisions of this section to the contrary, any member of the council serving during the effective date of this section who satisfies the qualification requirements provided by subsection (b) shall continue to serve until the expiration of his or her term. Effective July 1, 2017, any appointment to the commission shall meet the qualifications provided for herein and shall be made in accordance with this section.

(b) The Council shall have the duty to advise the Commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

(c) The Council shall be composed of fifteen members appointed by the Governor by and with the advice and consent of the Senate: The Mountain State Emergency Medical Services Association shall submit to the Governor a list of six names of representatives from its Association and a list of three names shall be submitted to the Governor of representatives of their respective organizations by the county commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the state Department of Education. The Governor shall appoint from the respective lists submitted two persons who represent the Mountain State Emergency Medical Services Association, one of
whom shall be a paramedic and one of whom shall be an emergency medical technician-basic; and one person from the county commissioners’ Association of West Virginia, the West Virginia State Firemen’s Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the state Department of Education. In addition, the Governor shall appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and three persons to represent the general public. Not more than six of the members may be appointed from any one congressional district.

(1) One paramedic currently certified in West Virginia who is not serving in an educational, management or supervisory capacity;

(2) One emergency medical technician-basic currently certified in West Virginia who is not serving in an educational, management or supervisory capacity;

(3) One first responder currently certified in West Virginia who is not serving in an educational, management or supervisory capacity;

(4) One mobile critical care paramedic or mobile critical care nurse currently certified in West Virginia;

(5) One physician licensed in West Virginia having a primary practice in the delivery of emergency medical care, coming from a list of three qualifying physicians submitted by the West Virginia Chapter of the American College of Emergency Physicians;

(6) One physician licensed in West Virginia currently serving as medical director of an advanced life support ambulance service, coming from a list of three qualifying physicians submitted by the West Virginia Medical Association;

(7) One physician licensed in West Virginia who routinely is involved in the emergency care of ill and injured children, coming from a list of three qualifying physicians submitted by the
West Virginia Chapter of the American Academy of Pediatrics;

(8) One trauma surgeon licensed in West Virginia, coming from a list of three qualifying physicians submitted by the West Virginia Medical State Trauma Audit Review;

(9) One emergency medical services provider certified as an EMS educator;

(10) One county commissioner of a county that operates, whether directly or through contract services, a licensed ground ambulance service, coming from a list of three qualifying nominees submitted by the County Commissioners Association of West Virginia;

(11) One volunteer-staffed, licensed ground ambulance service representative currently certified as an emergency medical technician or a licensed paramedic;

(12) One fire-service-based, licensed ground ambulance service representative who is currently certified as an emergency medical technician or a licensed paramedic, coming from a list of three qualified nominees submitted by the West Virginia State Fireman’s Association;

(13) One licensed air ambulance service representative for a licensed air ambulance service in a West Virginia based program;

(14) One hospital administrator, coming from a list of three qualified nominees submitted by the West Virginia Hospital Association;

(15) One ground ambulance service administrator currently certified as an emergency medical technician or a licensed paramedic;

(16) One licensed ground critical care transport service representative for a licensed ground critical care service in West Virginia; and

(17) One citizen representing the general public who has no involvement in the delivery of medical or emergency services.

(c) Each member shall be a resident of West Virginia.

(d) Each term is to be for three years and no member may serve more than four consecutive terms.

(e) The Council shall choose its own chairman and vice chairman, and meet
at the call of the Commissioner chairman or director at least twice a year quarterly.

(f) No business may be transacted by the commission in the absence of a quorum which shall be nine members, one of whom must be the chairman or vice chairman.

(f)-(g) The members of the Council commission shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or substantial portion thereof engaged in the performance of official duties.

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

The commissioner commission 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;

(7) Authorization to temporarily suspend the certification of an individual emergency medical service provider prior to a hearing or notice if the commissioner finds there is probable cause that the conduct or continued service or practice of any individual certificate holder has or may create a danger to public health or safety: Provided, That the commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification; and

(8) 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.

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

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

(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

(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;

(o) To appoint a director of OEMS, who shall serve at the will and pleasure of the
commission and is exempt from coverage under the classified civil service system; and

(p) To delegate any authority the commission deems necessary to the director, and
authorize him or her to act on behalf of the commission, execute any agreements, and perform
acts that may be necessary, useful, or convenient to effectuate the purposes of this article.

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

(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.

(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-6b. Establishment of Emergency Medical Services Agency Licensure Fund; authorized expenditures; annual report.

(a) There is established in the State Treasury a special revenue fund designated the "Emergency Medical Services Agency Licensure Fund", which shall be administered by the Commissioner of the Bureau of Public Health director.

(b) All application, personnel certification and recertification and agency licensing fees collected pursuant to the provisions of sections six, six-a and eight of this article shall be deposited into the fund and expended in accordance with the agency licensure and personnel certification and recertification duties imposed in this article.

(c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the account.

(d) On or before January 1 of each year, the commissioner shall provide the Legislature with an annual fiscal year report on the emergency medical services agency licensure account including, but not limited to, the previous fiscal year's expenditures; projected expenditures for the current and next fiscal years; the number of agency licenses and personnel certifications and recertifications issued, denied, suspended or revoked; and, the status of licensure and certification hearings and court actions.
§16-4C-6c. Certification requirements for emergency medical technician - mining.

(a) Commencing July 1, 2016, an applicant for certification as an emergency medical technician - mining shall:

(1) Be at least eighteen years old;

(2) Apply on a form prescribed by the Director of Miners’ Health, Safety and Training;

(3) Pay the application fee;

(4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(5) Successfully complete an emergency medical technician - mining education program authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(6) Successfully complete emergency medical technician - mining cognitive and skills examinations authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(b) The emergency medical technician - mining certification is valid for three years.

(c) A certified emergency medical technician - mining may only practice on mining operations, as defined in section three, article thirteen-c, chapter eleven of this code.

(d) To be recertified as an emergency medical technician - mining, a certificate holder shall:

(1) Apply on a form prescribed by the Director of Miners’ Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(4) Successfully complete one of the following:

(A) A one-time thirty-two hour emergency medical technician - mining recertification course authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; or

(B) Three annual eight-hour retraining and testing programs authorized by the Director of
Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(5) Successfully complete emergency medical technician-mining cognitive and skills recertification examinations authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician-miner, also known as emergency medical technician-mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician-industrial until they are changed by legislative rule by the commissioner in consultation with the Board of Miner Training, Education and Certification.

(f) The administration of the emergency medical technician mining certification and recertification program by the Director of Miners’ Health, Safety and Training shall be done in consultation with the Board of Miner Training, Education and Certification.

(g) The Director of Miners’ Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification and may propose emergency rules, to:

(1) Establish emergency medical technician—mining certification and recertification courses and examinations;

(2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): Provided, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;

(3) Establish a fee schedule: Provided, That the application fee may not exceed $10 and
there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

§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) (d) 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) (e) 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) (f) 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) (g) 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 article or legislative rules promulgated pursuant to this article.

(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 and notice of hearing to the licensee or certificate holder. Upon a finding of probable cause that the conduct or continued service or practice of any individual certificate holder may create a danger to public health or safety, the commissioner may temporarily suspend the certification prior to a hearing or notice: Provided, That the commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification: Provided, however, That the commissioner shall simultaneously institute proceedings for a hearing in accordance with section ten of this article.
(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 may 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 commission 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 commission 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 commission 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 commission or director has reason to believe that a licensee or certificate holder has committed a criminal offense, the commissioner commission 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-13. Actions to enjoin violations; injunctive relief.

Whenever it appears to the commissioner commission that any person has been or is
violating or is about to violate any provision of this article or any final order of the commissioner, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or any part thereof has occurred, is occurring or is about to occur, for an injunction against the person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining the person or persons from any such violation. The application may be made and prosecuted to conclusion whether or not any such violation has resulted or shall result in prosecution or conviction under the provisions of section twelve of this article.

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

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

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

§16-4C-14. Services that may be performed by emergency medical service personnel.

Notwithstanding any other provision of law, emergency medical service personnel may provide the services as determined by the commissioner by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of this code. Legislative rules governing provision of these services in a hospital emergency room setting shall be developed by the commissioner and shall include provisions allowing paramedics to function under the direct supervision of a registered professional nurse in a hospital emergency room setting. Provision of these services in an emergency room hospital setting shall not be initiated until a legislative rule establishing training requirements, standards and requirements for these functions
is in effect. The Legislature therefore directs the commissioner to propose this legislative rule on or before July 1, 2006. Further, the Commissioner may promulgate this rule as an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Any rule so promulgated shall provide that paramedics are under the jurisdiction of the commissioner.

The West Virginia Board of Registered Professional Nurses may propose legislative rules, pursuant to article three, chapter twenty-nine-a of the code relating to the scope of practice for nurses as those practices relates to overseeing these paramedics. The provisions of this section and any rules promulgated thereunder may not be construed to alter in any manner the duties, role or responsibilities of attending physicians regarding the providing and oversight of patient care.

§16-4C-15. Powers of emergency medical service attendants, emergency medical technicians-basic and emergency medical technicians-paramedic during emergency communications failures and disasters.

(a) In the event of a communications failure between the certified emergency medical services agency personnel, as defined in section three of this article, and the physician during an emergency situation, the certified personnel is authorized to deliver the services as authorized in section fourteen of this article.

(b) In the event of a disaster or other occurrence which renders the communication system ineffective for purposes of adequate individual direction between the physician and the certified emergency medical services agency personnel, the personnel may perform the services as authorized pursuant to the provisions of section fourteen and may release immediate control of the patient to any other emergency medical service personnel in order to provide immediate services to other patients affected by the disaster or other occurrence.

(c) In the event that services are provided under subsection (a) or (b) of this section, the emergency medical services personnel shall, within five days, provide a report to the commissioner, on the forms prescribed by him or her, of the services
performed, the identity of the patient and the circumstances justifying the provision of the services. The commissioner may require any other information deemed necessary.

§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 million 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.

§16-4C-20. Service reciprocity agreements for mutual aid.

Any persons or entities providing lawful emergency medical services under the provisions of this article are hereby authorized in their discretion to enter into and renew service reciprocity agreements, for any period as they may deem advisable, with the appropriate emergency medical
service providers, county, municipal or other governmental units or in counties contiguous to the
State of West Virginia, in the state of Ohio, the commonwealth of Pennsylvania, the state of
Maryland, the commonwealth of Virginia or the commonwealth of Kentucky, in order to establish
and carry into effect a plan to provide mutual aid across state lines, through the furnishing of
properly certified personnel and equipment for the provision of emergency medical services in
this state and the counties contiguous to this state upon written approval by the commissioner.

No person or entity may enter into any such agreement unless the agreement provides
that each of the parties to the agreement shall waive any and all claims against the other parties
thereto, which may arise out of their activities outside of their respective jurisdictions under the
agreement and shall indemnify and save harmless the other parties to the agreement from all
claims by third parties for property damages or personal injuries which may arise out of the
activities of the other parties to the agreement outside their respective jurisdictions under the
agreement.

The commissioner director is hereby authorized to enter into service reciprocity
agreements with appropriate officials in other states for the purpose of providing emergency
medical services to the citizens of this state by emergency medical service personnel properly
certified in their respective state or states. A formal agreement between the commissioner director
and an authorized official of another state shall be in effect prior to the service being provided.
Individual certification of other state emergency medical service personnel is not required for
purposes of providing services to West Virginia citizens following the creation of the agreement
by the responsible officials. Any agreements entered into prior to the effective date of this section
by the Commissioner of the Bureau for Public Health shall continue and remain in effect, but shall
be administered by the director: Provided, That all rights and responsibilities assigned to the
Commissioner of the Bureau for Public Health by such agreements shall be transferred to the
director.
§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.

The commissioner may issue an order on his or her own motion upon written request of any emergency medical service provider or county commission in this state, to restrict an out-of-state provider of emergency medical services or an out-of-state emergency medical service personnel to a particular geographic area of the State of West Virginia or prohibit the provider or personnel from providing emergency medical services within the borders of this state when in the opinion of the commissioner the services are not required or do not meet the standards set forth herein or those established by rules as authorized by this article.

§16-4C-23. Authority of the commissioner to make rules.

(a) The commissioner shall propose for promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code to carry out the purposes of this article.

(b) Notwithstanding the provisions of subsection (a), section six of this article, the commissioner shall propose for promulgation a legislative rule regulating fire department rapid response services, pursuant to article three, chapter twenty-nine-a of this code which: (1) Establishes licensure and certification requirements for fire department rapid response services who do not charge for their services or transport patients; (2) incorporates necessary applicable emergency medical services requirements for licensure for "emergency medical services" as the requirements apply to fire departments and as defined in subsection (d), section three of this article; and (3) creates an exemption from license and inspection fees for fire departments that do not charge fees for their services and which authorizes such fire departments to conduct self inspections of their emergency vehicles in accordance with any applicable state or federal requirements for emergency medical service vehicles. The commissioner shall file the rule required by this subsection as an emergency rule on or before July 1, 1999. The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this subsection.
NOTE: The purpose of this bill is to move the Office of Emergency Medical Services from the Bureau for Public Health to the Department of Military Affairs and Public Safety, and to provide the Emergency Medical Services Council with authority and oversight over the Office of Emergency Medical Services.

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