

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2906

**FISCAL
NOTE**

BY DELEGATES KESSINGER, HILL AND LANE

[Introduced March 9, 2017; referred
to the Committee on Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

1 That §16-4C-1, §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6, §16-4C-6a, §16-4C-
2 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,
3 §16-4C-16, §16-4C-20, §16-4C-21 and §16-4C-23 of the Code of West Virginia, 1931, as
4 amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-1. Short title.

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

§16-4C-2. Purposes of article.

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

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

§16-4C-3. Definitions.

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

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

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

9 ~~(c) (b) "Council" "Commission" means the Emergency Medical Service Advisory Council~~
10 ~~Commission~~ created pursuant to this article;

11 ~~(d) (c) "Director" means the Director of the Office of Emergency Medical Service Services;~~
12 ~~in the Bureau for Public Health~~

13 ~~(e) (d) "Emergency Medical Services" means all services which are set forth in Public Law~~
14 ~~93-154 "The Emergency Medical Services Systems Act of 1973" and those included in and made~~
15 ~~a part of the emergency medical services plan of the Department of Health and Human Resources~~
16 ~~inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss~~
17 ~~of life or aggravation of illness or injury;~~

18 ~~(f) (e) "Emergency Medical Service Agency" means any agency licensed under section~~

19 six-a of this article to provide emergency medical services;

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

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

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

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

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

32 ~~(l)~~ (k) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a),
33 section two, article one, chapter eight of this code;

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

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

37 (n) "Secretary" means the Secretary of the Department of Military Affairs and Public
38 Safety;

39 ~~(n)~~ (o) "Service reciprocity" means the provision of emergency medical services to citizens
40 of this state by emergency medical service personnel certified to render those services by a
41 neighboring state;

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

44 ~~(p)~~ (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

3 ~~developing, with the Commissioner, standards for emergency medical service personnel and for~~
4 ~~the purpose of providing advice to the Office of Emergency Medical Services and the~~
5 ~~Commissioner with respect to reviewing and making recommendations for, and providing~~
6 ~~assistance to, the establishment and maintenance of adequate emergency medical services for~~
7 ~~all portions of this state shall be continued as the Emergency Medical Services Commission for~~
8 ~~the purposes of developing standards for emergency medical service personal and maintaining~~
9 ~~adequate emergency medical services for this state: *Provided*, That the commission shall be~~
10 ~~reconstituted to satisfy the qualification requirements provided for herein. Notwithstanding~~
11 ~~provisions of this section to the contrary, any member of the council serving during the effective~~
12 ~~date of this section who satisfies the qualification requirements provided by subsection (b) shall~~
13 ~~continue to serve until the expiration of his or her term. Effective July 1, 2017, any appointment~~
14 ~~to the commission shall meet the qualifications provided for herein and shall be made in~~
15 ~~accordance with this section.~~

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

18 ~~(c) (b) The Council commission shall be composed of fifteen the following seventeen~~
19 ~~members appointed by the Governor by and with the advice and consent of the Senate: The~~
20 ~~Mountain State Emergency Medical Services Association shall submit to the Governor a list of six~~
21 ~~names of representatives from its Association and a list of three names shall be submitted to the~~
22 ~~Governor of representatives of their respective organizations by the county commissioners'~~
23 ~~Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia~~
24 ~~Hospital Association, the West Virginia Chapter of the American College of Emergency~~
25 ~~Physicians, the West Virginia Emergency Medical Services Administrators Association, the West~~
26 ~~Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and~~
27 ~~the state Department of Education. The Governor shall appoint from the respective lists submitted~~
28 ~~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~~ commission 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,

18 quality assurance and review, and other requirements necessary for safe and efficient operation;

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

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

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

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

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

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

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

31 (5) Standards and requirements for a State Medical Direction System, including
32 qualifications for a state emergency medical services medical director and regional medical
33 directors, the establishment of a State Medical Policy and Care Committee and the designation
34 of regional medical command centers;

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

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

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

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

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

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

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

54 (d) To provide professional and technical assistance and to make information available to
55 regional emergency medical services boards of directors and other potential applicants or
56 program sponsors of emergency medical services for purposes of developing and maintaining a
57 statewide system of services.

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

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

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

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

69 (i) To expend and distribute by grant or bailment funds and property to all state and local

70 agencies for the purpose of performing the duties and responsibilities of the agency all funds
71 which it may have so acquired or which may have been appropriated by the Legislature of this
72 state.

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

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

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

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

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

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

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

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

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

6 application.

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

**§16-4C-6b. Establishment of Emergency Medical Services Agency Licensure Fund;
authorized expenditures; annual report.**

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

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

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

10 (d) On or before January 1 of each year, the ~~commissioner~~ commission shall provide the
11 Legislature with an annual fiscal year report on the emergency medical services agency licensure
12 account including, but not limited to, the previous fiscal year's expenditures; projected
13 expenditures for the current and next fiscal years; the number of agency licenses and personnel
14 certifications and recertifications issued, denied, suspended or revoked; and, the status of
15 licensure and certification hearings and court actions.

§16-4C-6c. Certification requirements for emergency medical technician - mining.

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

3 (1) Be at least eighteen years old;

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

5 (3) Pay the application fee;

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

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

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

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

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

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

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

19 (2) Pay the application fee;

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

21 (4) Successfully complete one of the following:

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

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

~~(e)~~ (c) The applicant shall submit to a national criminal background check, the requirement

of which is declared to be not against public policy.

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

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

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

~~(f)~~ (d) 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~~ commission and the certificate or license delivered or mailed, or a copy of any order of the ~~commissioner~~ commission 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~~ commission.

~~(g)~~ (e) Any person may report to the ~~commissioner~~ commission 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~~ commission may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the ~~commissioner~~ commission, who knows of or observes another person certified by the ~~commissioner~~ commission violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the ~~commissioner~~ commission or director. Any person who reports or provides information in good faith is immune from civil liability.

~~(h)~~ (f) The ~~commissioner~~ commission may issue a temporary emergency medical service

50 personnel certificate to an applicant, with or without examination of the applicant, when he or she
51 finds that issuance to be in the public interest. Unless suspended or revoked, a temporary
52 certificate shall be valid initially for a period not exceeding one hundred twenty days and may not
53 be renewed unless the ~~commissioner~~ commission finds the renewal to be in the public interest.

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

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

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

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

11 (d) Upon a finding that probable cause exists that the licensee or certificate holder has
12 violated any provision of this article or rules promulgated pursuant to this article, the ~~commissioner~~
13 commission or director shall provide a copy of the complaint and notice of hearing to the licensee
14 or certificate holder. Upon a finding of probable cause that the conduct or continued service or
15 practice of any individual certificate holder may create a danger to public health or safety, the
16 ~~commissioner~~ commission may temporarily suspend the certification prior to a hearing or notice:
17 *Provided, That the ~~commissioner~~ commission may rely on information received from a physician*
18 *that serves as a medical director in finding that probable cause exists to temporarily suspend the*
19 *certification: *Provided, however, That the ~~commissioner~~ commission shall simultaneously institute**
20 *proceedings for a hearing in accordance with section ten of this article.*

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

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

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

29 (h) The ~~commissioner~~ commission shall suspend or revoke any certificate, temporary
30 certificate or license when he or she finds the holder has:

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

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

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

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

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

45 (j) Disciplinary action may include:

46 (1) Reprimand;

- 47 (2) Probation;
- 48 (3) Administrative penalties and fines;
- 49 (4) Mandatory attendance at continuing education seminars or other training;
- 50 (5) Practicing under supervision or other restriction;
- 51 (6) Requiring the licensee or holder of a certificate to report to the ~~commissioner~~
- 52 commission or director for periodic interviews for a specified period of time;
- 53 (7) Other disciplinary action considered by the ~~commissioner~~ commission or director to be
- 54 necessary to protect the public, including advising other parties whose legitimate interests may
- 55 be at risk; or
- 56 (8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.
- 57 (k) The ~~commissioner~~ commission shall suspend or revoke any certificate, temporary
- 58 certificate or license if he or she finds the existence of any grounds which would justify the denial
- 59 of an application for the certificate, temporary certificate or license if application were then being
- 60 made for it.

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

- 1 (a) Hearings are governed by the provisions of article five, chapter twenty-nine a of this
- 2 code.
- 3 (b) The ~~commissioner~~ commission or director may conduct the hearing or elect to have an
- 4 Administrative Law Judge conduct the hearing.
- 5 (c) If the hearing is conducted by an Administrative Law Judge, the Administrative Law
- 6 Judge shall prepare a proposed written order at the conclusion of a hearing containing findings of
- 7 fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the
- 8 ~~commissioner~~ commission or director so directs. The ~~commissioner~~ commission may accept,
- 9 reject or modify the decision of the Administrative Law Judge.
- 10 (d) The ~~commissioner~~ commission or director has the authority to administer oaths,
- 11 examine any person under oath and issue subpoenas and subpoenas duces tecum.

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

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

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

22 (h) The judgment of the circuit court is final unless reversed, vacated or modified on appeal
23 to the Supreme Court of Appeals in accordance with the provisions of section one, article six,
24 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 or otherwise, the ~~commissioner~~
2 commission or director has reason to believe that a licensee or certificate holder has committed
3 a criminal offense, the ~~commissioner~~ commission or director may bring the information to the
4 attention of an appropriate law-enforcement official.

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

§16-4C-13. Actions to enjoin violations; injunctive relief.

1 Whenever it appears to the ~~commissioner~~ commission that any person has been or is

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

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

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

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

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

1 Notwithstanding any other provision of law, emergency medical service personnel may
2 provide the services as determined by the ~~commissioner~~ commission by legislative rule pursuant
3 to the provisions of article three, chapter twenty-nine-a of this code. Legislative rules governing
4 provision of these services in a hospital emergency room setting shall be developed by the
5 ~~commissioner~~ commission and shall include provisions allowing paramedics to function under the
6 direct supervision of a registered professional nurse in a hospital emergency room setting.
7 Provision of these services in an emergency room hospital setting shall not be initiated until a
8 legislative rule establishing training requirements, standards and requirements for these functions

9 is in effect. ~~The Legislature therefore directs the commissioner to propose this legislative rule on~~
10 ~~or before July 1, 2006. Further, the Commissioner may promulgate this rule as an emergency rule~~
11 ~~pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Any~~
12 ~~rule so promulgated shall provide that paramedics are under the jurisdiction of the commissioner.~~
13 The West Virginia Board of Registered Professional Nurses may propose legislative rules,
14 pursuant to article three, chapter twenty-nine-a of the code relating to the scope of practice for
15 nurses as those practices relates to overseeing these paramedics. The provisions of this section
16 and any rules promulgated thereunder may not be construed to alter in any manner the duties,
17 role or responsibilities of attending physicians regarding the providing and oversight of patient
18 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.**

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

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

11 (c) In the event that services are provided under subsection (a) or (b) of this section, the
12 emergency medical services personnel shall, within five days, provide a report to the
13 ~~commissioner~~ director, on the forms prescribed by ~~him or her~~ the commission, of the services

performed, the identity of the patient and the circumstances justifying the provision of the services.

The ~~commissioner~~ commission 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~~ director of OEMS 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

4 service providers, county, municipal or other governmental units or in counties contiguous to the
5 State of West Virginia, in the state of Ohio, the commonwealth of Pennsylvania, the state of
6 Maryland, the commonwealth of Virginia or the commonwealth of Kentucky, in order to establish
7 and carry into effect a plan to provide mutual aid across state lines, through the furnishing of
8 properly certified personnel and equipment for the provision of emergency medical services in
9 this state and the counties contiguous to this state upon written approval by the ~~commissioner~~
10 commission.

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

18 The ~~commissioner~~ director is hereby authorized to enter into service reciprocity
19 agreements with appropriate officials in other states for the purpose of providing emergency
20 medical services to the citizens of this state by emergency medical service personnel properly
21 certified in their respective state or states. A formal agreement between the ~~commissioner~~ director
22 and an authorized official of another state shall be in effect prior to the service being provided.
23 Individual certification of other state emergency medical service personnel is not required for
24 purposes of providing services to West Virginia citizens following the creation of the agreement
25 by the responsible officials. Any agreements entered into prior to the effective date of this section
26 by the Commissioner of the Bureau for Public Health shall continue and remain in effect, but shall
27 be administered by the director: *Provided*, That all rights and responsibilities assigned to the
28 Commissioner of the Bureau for Public Health by such agreements shall be transferred to the
29 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.

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

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

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

3 (b) Notwithstanding the provisions of subsection (a), section six of this article, the
4 ~~commissioner~~ commission shall propose for promulgation a legislative rule regulating fire
5 department rapid response services, pursuant to article three, chapter twenty-nine-a of this code
6 which: (1) Establishes licensure and certification requirements for fire department rapid response
7 services who do not charge for their services or transport patients; (2) incorporates necessary
8 applicable emergency medical services requirements for licensure for "emergency medical
9 services" as the requirements apply to fire departments and as defined in subsection (d), section
10 three of this article; and (3) creates an exemption from license and inspection fees for fire
11 departments that do not charge fees for their services and which authorizes such fire departments
12 to conduct self inspections of their emergency vehicles in accordance with any applicable state
13 or federal requirements for emergency medical service vehicles. ~~The commissioner shall file the~~
14 ~~rule required by this subsection as an emergency rule on or before July 1, 1999. The Legislature~~
15 ~~hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent~~
16 ~~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.