

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

House Bill 3129

BY DELEGATES CAPITO, KEATON AND L. PACK

[Passed April 10, 2021; in effect ninety days from passage.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2021 APR 21 P 4: 59

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1 AN ACT to amend §24A-5-2a of the Code of West Virginia, 1931, as amended; relating to how
2 the federal index rate increase percentage is calculated regarding solid waste motor
3 carrier rate increases; requiring revised tariff showing rate increase be filed; requiring
4 appropriate notice be provided; allowing covered carriers to correct excessive requested
5 rates in lieu of administrative hearing; and providing when such increases become
6 effective in each instance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2a. Procedure for changing rates for collection and hauling of solid waste by motor carriers; rural rates.

1 (a) Unless a motor carrier collecting and hauling solid waste elects to increase rates under
2 §24A-5-2 and the commission's existing rules and regulations, effective July 1, 2020, no solid
3 waste motor carrier subject to this chapter shall change, suspend, or annul any individual rate,
4 joint rate, fare, charge, or classification for the collection or hauling of solid waste, except after 30
5 days' notice to the commission and the carrier's customers, with such notice to customers being
6 sent as a bill insert or separately mailed statement that plainly states the changes proposed to be
7 made in the schedule then in force and the time when the changed rates or charges will go into
8 effect. The motor carrier shall file its proposed public notice with the commission for review. Within
9 five business days of the filing of the notice with the commission, the commission shall issue an
10 order approving the notice.

11 (b) Any proposed rate changes shall be shown by printing new schedules, or shall be
12 plainly indicated upon the schedules in force at the time, and kept open to public inspection:
13 *Provided,* That the commission may, in its discretion, and for good cause shown, allow changes
14 upon less time than the notice herein specified, or may modify the requirements of this section in
15 respect to publishing, posting and filing of tariffs, either by particular instructions or by general
16 order.

17 (c) Whenever a solid waste motor carrier shall file with the commission any schedule
18 stating a change in the rates or charges, or joint rates or charges, or stating a new individual or
19 joint rate or charge or joint classification or any new individual or joint regulation or practice
20 affecting any rate or charge, except as set forth in subsection (d) below, the commission shall
21 have authority, on its own initiative, or upon substantial protest filed with the commission within
22 30 days' notice of the proposed increase or change demonstrated by the complaints submitted
23 by the lesser of: (i) 25 percent of the customers impacted by the proposed change in rates or
24 charges; or (ii) 750 customers impacted by the proposed change in rates or charges to suspend
25 the rates pending a hearing and final determination that the rate, charge, classification, regulation
26 or practice is just, reasonable, and based primarily on the cost of service. At any hearing involving
27 a rate sought to be increased or involving the change of any fare, charge, classification, regulation,
28 or practice, the burden of proof to show that the increased rate or proposed increased rate, or the
29 proposed change of fare, charge, classification, regulation or practice, is just, reasonable, and
30 based primarily on the cost of service, shall be upon the motor carrier making application for such
31 change. Any suspension of a rate, charge classification, regulation, or practice under this
32 subsection shall not extend beyond such time that the commission enters a final decision in the
33 case or 120 days from the date notice was first given. The commission may extend the time in
34 which a final decision is due by an additional 30 days if a motor carrier fails to provide material
35 information requested by the commission more than 30 days in advance of the hearing.

36 (d) *Urban Consumer Garbage Trash Collection Index rate change* – Effective July 1, 2020,
37 solid waste motor carriers shall be permitted to increase rates for the collection and hauling of
38 solid waste once on or after January 1 of each year, without the filing of an application for approval
39 by the commission and such increase shall be considered just and reasonable and not unfairly
40 discriminatory, prejudicial, or preferential if: (1) the percentage increase over the prior rate is equal
41 to or less than the percentage increase in the United States Department of Labor Bureau of Labor
42 Statistics Garbage and Trash Collection Index (the "Index") between September of the year

43 preceding the effective date of the requested rate increase and September of the year prior to the
44 year preceding the effective date of the requested rate increase (the "relevant time period"); (2)
45 the carrier files a revised tariff in compliance with the commission's rules and regulations; and (3)
46 notice is provided as directed by the commission. After September 30 of each year, the
47 commission shall issue a general order stating the percentage increase in the Index and the
48 inflation factor to apply to the rates currently in effect to calculate the maximum rate increase
49 authorized under this subsection. Any rate increase that a motor carrier believes is at or below
50 the aforementioned increase in the Index shall be identified as such when filed with the
51 commission. Such rate increases shall be subject to challenge by the commission only if it
52 determines that the increase is in fact in excess of the amount of the increase in the Index for the
53 relevant time period. If the commission determines a rate increase filed pursuant to this
54 subsection is in excess of the increase in the Index for the relevant time period, it may enter an
55 order suspending the rate increase. If such an order is entered, the motor carrier shall be entitled
56 to a hearing pursuant to the process authorized in subsection (c) of this section or it may correct
57 its requested rates, in which case the suspension will be lifted and the rates may go into effect as
58 of the original requested effective date or the date that the carrier corrects its rates, whichever
59 comes later. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier
60 has already raised its rates in a given year pursuant to this subsection shall not preclude that
61 carrier from applying for and receiving from the commission a rate increase pursuant to
62 subsection (c) of this section: *Provided*, That the commission shall take into account the prior rate
63 increase taken pursuant to this subsection when considering the carrier's application to increase
64 rates. A motor carrier may implement up to four annual indexed rate increases under this
65 subsection before filing for a rate increase under chapter 24A of this code: *Provided*, That the
66 commission shall not engage in retroactive rate making.

67 (e) The commission shall prescribe such rules and regulations as to the giving of notice of
68 a change in rates pursuant to this section as are reasonable and are deemed proper in the public
69 interest.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Dean Jeffrey
.....
Chairman, House Committee

Mark R. Spang
.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve Barron
.....
Clerk of the House of Delegates

Jee Ginn
.....
Clerk of the Senate

Lynda Hanley
.....
Speaker of the House of Delegates

C. P. Blaylock
.....
President of the Senate

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SECRETARY OF STATE

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FILED

The within *is approved* this the *21st*
day of *April* 2021.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

APR 16 2021

Time 12:39pm