WEST VIRGINIA CODE CHAPTER 24A ARTICLE 2

WV Legislature

§24A-2-1. Subject to public utility and common carrier laws.

All common carriers by motor vehicle are hereby declared to be affected with a public interest and subject to the laws of this state now in force or that hereafter may be enacted pertaining to public utilities and common carriers as far as applicable, and not in conflict herewith.

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§24A-2-2. Provisions of chapter to govern; common carrier certificate and contract carrier permit.

No common carrier by motor vehicle shall operate any motor facility for transportation of either persons or property for hire or any public highway in this state except in accordance with the provisions of this chapter, and no person, after January 1, 1940, shall, at the same time, hold under this chapter a certificate as a common carrier and a permit as a contract carrier authorizing operations for the transportation of property by motor vehicles over the same route or within the same territory unless for good cause shown and the commission determines that such certificate and permit may be held consistent with the public interest and the policy stated in section one, article one of this chapter.

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§24A-2-2a. Regulation of business of towing, hauling or carrying wrecked or disabled vehicles.

(a) On and after July 1, 1982, common carriers by motor vehicles engaged in the business of towing, hauling or carrying wrecked or disabled vehicles shall, notwithstanding any other provision of the laws of the State of West Virginia to the contrary, be regulated by the provisions of this section and this section shall not be applicable to said carriers until such date.

(b) No common carrier by motor vehicle engaged in the business of towing, hauling or carrying wrecked or disabled vehicles and mobile homes shall be required to obtain a common carrier certificate or other certificate of authority from the commission prior to engaging in such business, however, such carrier shall not engage in such business unless and until such carrier shall have registered as a carrier with the commission in accordance with the provisions of this section.

(c) A person may not act as a common carrier by motor vehicle by engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire unless that person has registered as a carrier with the Public Service Commission as provided in this section; nor, may a person continue to act as a carrier by engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire if his registration is revoked or suspended by the commission. A person registered as a carrier under the provisions of this section may not charge, demand, collect or receive a greater remuneration for the towing, hauling or carrying of any wrecked or disabled motor vehicle than the rates, fares and charges established by the provisions of this section.

The commission shall register all carriers as may make application for registration as a common carrier by motor vehicle for the purpose of engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire upon satisfactory evidence to the commission that the carrier has complied with all applicable requirements of this chapter and all applicable rules and regulations of the commission. The commission shall by general order, applicable to all carriers registered under this section, fix, alter and determine just, fair, reasonable and sufficient maximum statewide or regional schedules of rates, fares and charges, and it shall establish reasonable classifications of carriers for which the schedules are applicable, but before the rates, fares and charges are fixed, altered or determined, the commission shall hold hearings in order to give all interested parties an opportunity to be heard, and it shall give reasonable notice of the hearings in the manner as the commission shall by rule prescribe. Carriers registered under the provisions of this section are subject to the regulatory powers of the commission as provided in section three of this article.

Upon the complaint of any aggrieved party, the commission may suspend or revoke the registration of any person registered with the commission under the provisions of this section for the violation of any rule or regulation established by the commission and applicable to that person or for the violation of any provision of this article applicable to

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persons registered under the provisions of this section: Provided, That for the first violation, suspension of registration shall be for a period of not more than thirty days; and, for a second violation the commission may revoke the registration for a period of one year; and, for a third violation the commission may revoke the registration permanently. But before any suspension or revocation is effected, the person registered under this section shall first be given reasonable notice of the charges against him and shall be granted an opportunity to be heard by the commission or its designee in accordance with the rules and regulations for hearings as may be by rule established by the commission.

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§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.

NOTE: West Virginia Code §24A-2-2b was amended by two bills passed during the 2021 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The later of the two acts, House Bill 3130 (passed on April 10 2021), amended West Virginia Code §24A-2-2b to read as follows:

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow vehicle or vehicles and the special equipment required to complete recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, and the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair, or reasonable; and

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(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this section shall sunset on July 1, 2023, unless reauthorized.

(e) On or before December 31, 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

The earlier act, Senate Bill 655 (passed on April 9, 2021) amended West Virginia Code §24A-2-2b to read as follows:

(a) On or before July 1, 2016, the commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow vehicles and the special equipment required to complete the recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery,

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towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that the charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this article shall sunset on July 1, 2023, unless reauthorized.

(e) On or before December 31, 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor considers appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

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§24A-2-3. Regulatory powers of commission.

The commission is vested with power and authority to supervise and regulate all common carriers by motor vehicle and to fix, alter, regulate, and determine just, fair, reasonable, and sufficient rates, joint rates, charges and classifications; to regulate the facilities, accounts, service and safety of operations of each such carrier, to regulate operating and time schedules so as to meet the reasonable needs of any community, so as to provide adequate transportation service to the territory traversed by such carriers, and so as to prevent unnecessary multiplication of service among common carriers by motor vehicle and between them and steam and electric railroads, to require the coordination of the service facilities and schedules of competing common carriers by motor vehicle or electric and steam railroads; to require the filing of annual and other reports, tariff, schedules, and other data by such common carriers, in all matters affecting the relation between such carriers and the public and between such carriers and other common carriers. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter applicable to any and all such common carriers by motor vehicle and to do all things necessary to carry out and enforce the provisions of this chapter.

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§24A-2-4. Rates, fares and charges.

All rates, fares and charges made by any common carrier by motor vehicle shall be just and reasonable, and shall not be unlawfully discriminatory, prejudicial nor preferential. No such carrier shall charge, demand, collect, or receive a greater or less or different remuneration for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares, and charges which have been legally established and filed with the commission; nor shall any such carrier refund, remit, discount or rebate in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with or ordered by the commission.

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§24A-2-4a. Motor carriers transporting solid waste; pass through of landfill tip fees as rate surcharge.

Any common carrier transporting solid waste in this state pursuant to authority granted under section five, article two, chapter twenty-four-a of the Code of West Virginia, 1931, as amended, may make application to the commission for approval of a rate surcharge to pass through any increase in the disposal rate charged by the landfill at which solid waste is disposed by the motor carrier, commonly known as the tip fee, to commercial and residential customers, including increases which are the direct result of fees, charges, taxes, or any other assessment imposed upon the landfill by a governmental body. The commission shall within fourteen days of receipt of said application notify the motor carrier of approval of the requested rate surcharge, or approval of a rate surcharge other than in the amount requested and the reason therefor. The effective date of the approved rate surcharge shall be the same date as the effective date of the increase in the tip fee to which the surcharge relates; except that in the event the application for approval of the rate surcharge is received by the commission more than sixty days after the effective date of the tip fee increase, then the effective date of the approved rate surcharge shall be the date said application was received by the commission.

The commission shall immediately promulgate emergency rules which set forth the procedures for the filing of the tip fee rate surcharge application. It is the purpose of this statute to provide an expedited process which will allow the subject motor carriers to pass through tip fee increases to all customers. Only that data necessary to review in accordance with this statute may be required by the commission to be submitted by the motor carrier.

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§24A-2-4b. Motor carriers transporting solid waste; origin of waste disclosure; penalties.

(a) The operator-driver of every solid waste motor carrier vehicle which arrives at a commercial solid waste facility, including, but not limited to, commercial landfills and transfer stations, in this state is required to declare, in writing and under oath, the name of the county and state of origin of the solid waste being deposited at the commercial solid waste facility. The operator-driver of the solid waste motor carrier vehicle shall give a copy of this completed declaration form to the operator of the commercial landfill or of the transfer station, to the West Virginia Public Service Commission and to the county solid waste authority.

(b) The Public Service Commission shall prepare and provide commercial solid waste facility operators with a uniform disclosure form for use in effecting this provision.

(c) Any operator-driver of a solid waste motor carrier vehicle who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

(d) Any owner of a solid waste motor carrier vehicle which deposits solid waste in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000.

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§24A-2-5. Certificate of convenience and necessity.

(a) Required; application; hearing; granting. — It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity unless the common carrier is an emergency substitute carrier. Upon the filing of an application for such certificate, the commission shall set a time and place for a hearing on the application: *Provided*, That the commission may, after giving proper notice and if no protest is received, waive formal hearing on the application. Notice shall be by publication which shall state that a formal hearing may be waived in the absence of a protest to such application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least 10 days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle, the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

(b) Rules and regulations; taking evidence at hearings; burden of proof. — The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section, and in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant. The commission may designate any of its employees to take evidence at the hearing of any application for a certificate and submit findings of fact as a part of a report or reports to be made to the commission.

(c) Certificate not franchise, etc.; assignment or transfer. — No certificate issued in accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable, or to confer any proprietary or property rights in the use of the public highways. No certificate issued under this chapter shall be assigned or otherwise transferred without the approval of the commission. Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate.

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(1) Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate; and

(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission shall fail to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.

(d) Suspension, revocation or amendment. — The commission may at any time, for good cause, suspend a common carrier certificate of convenience and necessity, and upon suspension, authorize an emergency substitute carrier to provide temporary replacement service until further order of the commission: *Provided*, That an emergency substitute carrier may continue to operate during the pendency of its application for a certificate of convenience and necessity filed pursuant to §24A-2-5(a) of this code. Upon not less than 15 days' notice to the grantee of any certificate and an opportunity to be heard, the commission may revoke or amend any certificate.

(e) Reinstitution of certificated service. — No sooner than 30 days after a suspension of authority, a common carrier may petition the commission to end the suspension and terminate the authority of an emergency substitute carrier. Upon notice to the emergency substitute carrier and an opportunity to be heard, the commission shall issue its order granting or denying the petition.

(f) The commission shall have the authority, after hearing, to ratify, approve, and affirm those orders issued pursuant to this section. For the purposes of this subsection, the commission may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers of general circulation in this state, and such other newspapers as the commission may designate.

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§24A-2-6. For hire common carriers of passengers; definitions; driving time; rules.

(a) When used in this section, the following words and phrases have the following meanings, unless the context clearly indicates a different meaning:

(1) "Driving time" means all time spent at the driving controls of a commercial for-hire vehicle designed to transport passengers;

(2) "Eight consecutive days" means the period of eight consecutive days beginning on any day at the time designated by the for-hire carrier for a twenty-four-hour period;

(3) "On duty time" means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work; and

(4) "Twenty-four-hour period" means any twenty-four- consecutive-hour period beginning at the time designated by the for-hire carrier for the terminal from which the driver is normally dispatched.

(b) The provisions of this section apply only to for-hire carriers operated by an on board driver which is designed to transport passengers exclusively on any public highway or road in this state. The provisions of this section apply only to intrastate commerce and do not apply where preempted by federal regulation.

(c) Drivers of for-hire carriers may not:

(1) Engage in driving time of a for-hire vehicle for more than ten consecutive hours without eight consecutive hours off duty;

(2) Engage in driving time of a for-hire vehicle after the driver has on duty time of fifteen hours without eight consecutive hours off duty; or

(3) Engage in driving time of a for-hire vehicle after the driver has been on duty for a total of seventy consecutive hours within eight consecutive days.

(d) For-hire carrier companies shall keep time records, for six months, indicating the time all for-hire drivers report for duty, the time of relief from duty, hours driven, hours on duty, and hours off duty. These records shall be made available to the State Police and the Public Service Commission.

(e) The Public Service Commission may promulgate rules necessary to implement the provisions of this section.

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