
WEST VIRGINIA CODE CHAPTER 24A
ARTICLE 5

WV Legislature

§24A-5-1. Powers of commission as to rates, schedules, etc.

The commission shall have power to originate, establish, promulgate, change, investigate and enforce tariffs, rates, joint rates, classifications and schedules for all motor carriers, except urban mass transportation authorities established and maintained pursuant to article twenty-seven, chapter eight of this code, and the practices, services and facilities of all motor carriers. And whenever the commission shall, after hearing, find any existing rates, tariffs, joint rates, classifications, schedules, practices, services or facilities unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall, by order, fix and require reasonable rates, joint rates, tariffs, classifications, schedules, practices, services or facilities to be followed or established in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law.

§24A-5-2. Procedure for changing rates, etc.

Except for motor carriers collecting and hauling solid waste who elect to increase rates under section 2a of this chapter, no motor carrier subject to this chapter shall change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the transportation of passengers or property except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect. The commission may enter an order suspending the proposed rate and prohibiting such motor carrier from putting such proposed new rate into effect pending the hearing and final decision of the matter, in which case the proposed new rate shall stand suspended until it is determined by the commission whether or not the same is just or reasonable. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, however, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the motor carrier affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That if any such hearing cannot be conducted within the period of suspension, as above stated, the commission may in its discretion extend the time of suspension for a further period, not exceeding six months. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just and reasonable, shall be upon the motor carrier making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within

three months, render a decision in such case.

The commission shall prescribe such rules and regulations as to the giving of notice of a change in rates as are reasonable and are deemed proper in the public interest.

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

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

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

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

(d) Urban Consumer Garbage Trash Collection Index rate change - Effective July 1, 2020, solid waste motor carriers shall be permitted to increase rates for the collection and hauling of solid waste once on or after January 1 of each year, without the filing of an application for

approval by the commission and such increase shall be considered just and reasonable and not unfairly discriminatory, prejudicial, or preferential if: (1) the percentage increase over the prior rate is equal to or less than the percentage increase in the United States Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (the "Index") between September of the year preceding the effective date of the requested rate increase and September of the year prior to the year preceding the effective date of the requested rate increase (the "relevant time period"); (2) the carrier files a revised tariff in compliance with the commission's rules and regulations; and (3) notice is provided as directed by the commission. After September 30 of each year, the commission shall issue a general order stating the percentage increase in the Index and the inflation factor to apply to the rates currently in effect to calculate the maximum rate increase authorized under this subsection. Any rate increase that a motor carrier believes is at or below the aforementioned increase in the Index shall be identified as such when filed with the commission. Such rate increases shall be subject to challenge by the commission only if it determines that the increase is in fact in excess of the amount of the increase in the Index for the relevant time period. If the commission determines a rate increase filed pursuant to this subsection is in excess of the increase in the Index for the relevant time period, it may enter an order suspending the rate increase. If such an order is entered, the motor carrier shall be entitled to a hearing pursuant to the process authorized in subsection (c) of this section or it may correct its requested rates, in which case the suspension will be lifted and the rates may go into effect as of the original requested effective date or the date that the carrier corrects its rates, whichever comes later. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier has already raised its rates in a given year pursuant to this subsection shall not preclude that carrier from applying for and receiving from the commission a rate increase pursuant to subsection (c) of this section: *Provided*, That the commission shall take into account the prior rate increase taken pursuant to this subsection when considering the carrier's application to increase rates. A motor carrier may implement up to four annual indexed rate increases under this subsection before filing for a rate increase under chapter 24A of this code: *Provided*, That the commission shall not engage in retroactive rate making.

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

§24A-5-2b. Authorizing Public Service Commission to approve alternative pick-up due to adverse conditions.

Every motor carrier of solid waste in residential service shall provide and maintain regularly scheduled pickup service. Exceptions to the regularly scheduled pickup service may be made for reasons beyond the motor carrier's control, including, but not limited to, dangerous road conditions, inclement weather, flooding, road closures. Exceptions to the regularly scheduled pickup service based on such conditions will be at the motor carrier's discretion: Provided, That nothing herein changes the universal service obligation of any motor carrier. Any interruption of service in this regard that lasts beyond five days shall be reported by the motor carrier to the commission and the motor carrier and the staff of the commission shall establish a contingency pickup arrangement for the affected customers that the motor carrier shall implement until the condition causing the service interruption is alleviated.

§24A-5-3. Through rates; joint rates and service.

The commission shall have power and authority to require a common carrier by motor vehicle, railroad, express, air, or water to establish reasonable through rates with other common carriers by motor vehicle, railroad, express, air, or water and to provide safe and adequate service, equipment, and facilities for the transportation of passengers and property; to establish and enforce just and reasonable individual and joint rates, charges, and classifications, and just and reasonable regulations and practices relating thereto; and in case of such joint rates, fares, and charges to establish just and reasonable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

§24A-5-4. Merger, consolidation or joint ownership.

(a) It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers to consolidate or merge their property, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore owned, managed, and operated separately; or for any such motor carrier or two or more such carriers jointly, to purchase, lease or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person, not a motor carrier, to acquire control of two or more motor carriers through ownership of their stock; or for any person in control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, air, or water to consolidate or merge with, purchase, or acquire control of, any motor carrier, or lease or contract to operate its properties or any part thereof.

(b) When a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section the carrier, or carriers, or person, seeking authority therefor shall present an application to the commission and, after hearing, if the commission deems a hearing necessary, if the commission finds that the transaction proposed will be consistent with the public interest, it shall enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consenting to the entering into or doing of the things hereinabove provided without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

(c) Every consolidation, merger, purchase, lease, operating contract, or acquisition of control, or other transaction referred to in this section made otherwise than as hereinabove provided, shall be void.

§24A-5-5. Further regulatory powers of the commission.

(a) The commission shall prescribe rules of practice and procedure including, the method and manner of holding hearings, taking evidence, and entering orders. In the investigation, preparation and hearing of cases, the commission is not bound by the technical rules of pleading and evidence, but may exercise discretion to facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matters before it.

(b) The commission shall employ personnel as may be necessary to carry out the provisions of this chapter and fix their respective salaries or compensation. The commission may designate employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter. These employees are empowered to administer oaths in all parts of the state so far as the exercise of this power is properly incidental to the performance of their duties in accordance with the provisions of this chapter.

(c) The commission shall prescribe a schedule of fees to accompany (i) applications for certificates of convenience and necessity, (ii) applications for permits, and (iii) other filings and recordings of other papers with the commission. The commission shall prescribe a schedule of fees to be charged for (i) the certification of all records and papers (ii) the payment of witnesses and (iii) other costs necessary and incident to hearings before it or its employees. Sums collected in accordance with this subsection, except witness fees, are to be paid into the State Treasury and credited to the Public Service Commission motor carrier fund provided for in section six, article six of this chapter. Witness fees are to be paid to the persons entitled to them.

(d) The commission shall establish a system of accounts to be kept by motor carriers; or classify motor carriers and establish a system of accounts for each class. The commission shall prescribe the manner in which the accounts are to be kept. It may prescribe the form of accounts, records, and memoranda to be kept by the motor carriers, including the accounts, records, and memoranda for the movement of traffic, the receipts and expenditures of money, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter.

(e) The commission shall require persons subject to the provisions of this chapter to furnish any information in their possession or obtainable from their accounting or other records, respecting rates, charges, classifications or practices in conducting their business. The commission has the authority to inspect any books, papers or reports. Any statements required by this subsection are to be under oath when required by the commission. The form of all reports required under this chapter are to be prescribed by the commission.

(f) The commission as a whole or any of its members or designated employees, shall subpoena witnesses, take testimony and administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the commission or its designated employees, the evidence of witnesses and the production of documentary evidence may be

required at any designated place of hearing within the state. In the case of disobedience to a subpoena or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in the state in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. The court, in the case of a refusal to obey the subpoena issued to any person or to any motor carrier subject to the provisions of this chapter, shall issue an order requiring the person or motor carrier to appear before the commission or its designated employees and produce all requested books and papers and give evidence relating to the matter in question. Any failure to obey the order of the court may be punished by the court as contempt. A claim that testimony or evidence may tend to incriminate the person giving the testimony or evidence does not excuse the person from testifying, but the person may not be prosecuted for any offense concerning which he or she has been compelled to testify.

(g) The commission shall require common carriers by motor vehicle and contract carriers by motor vehicle subject to the provisions of this chapter either to procure insurance from a company authorized to write insurance in West Virginia, to qualify as a self-insurer, or to deposit security upon terms and conditions and for limits of liability as the commission shall determine to be necessary for the reasonable protection of the traveling, shipping, and general public against injury, loss, damage or default for which the carrier may be liable. It shall prescribe rules and regulations governing the filing of evidence of insurance and security with the commission. In fixing the amount of the insurance policy or policies, the qualifications as a self-insurer, or the deposit of security, the commission shall give due consideration to the character and amount of traffic, the value of the property transported, the number of persons affected, and the degree of danger involved in any motor carrier operation: Provided, That the amount set by the commission for for-hire vehicles, that haul nonhazardous property with a gross vehicle weight of ten thousand or more pounds, shall be at least \$750,000.

(h) The commission shall cooperate with the federal government or any other commission or organized delegated authority to regulate interstate or foreign commerce by motor vehicles to ensure that the transportation of persons and property by motor vehicles in interstate and foreign commerce into and through the State of West Virginia may be regulated and the laws of the United States and the State of West Virginia enforced and administered cooperatively in the public interest.

(i) The commission shall make agreements on behalf of the State of West Virginia with any other state or states providing for reciprocal rights, privileges, and courtesies between the licensees or holders of certificates and permits of the state or states and the State of West Virginia. These agreements may include provisions regarding certificates and permits, fees, assessments, and uniform vehicle identification cards, and the transportation of either persons or property into or through the respective state or states and the State of West Virginia. All existing agreements between a state or states and the State of West Virginia for reciprocal rights, privileges, and courtesies may, provided Constitutional and contractual rights are not violated, be declared void by the commission, and new agreements negotiated.

(j) The commission shall promulgate (i) safety rules applicable to motor vehicles subject to the provisions of this chapter, (ii) rules governing the qualifications and maximum hours of service of drivers and chauffeurs of common and contract carriers by motor vehicle of passengers and property subject to the provisions of this chapter and (iii) any other rules that the commission may deem proper to carry out the provisions and intent of this chapter.

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