WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 65
(Originating in the Committee on the Judiciary)
(By Mr. ________________________________)

PASSED Feb. 28, 1939

In Effect ninety days from Passage
AN ACT to amend and reenact sections two and three, article one, sections two and five, article two, section three, article three, section five, article five, and sections three and six, article six, all of chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to the powers and duties of the public service commission of West Virginia for the regulation of the transportation of passengers and property for hire, and of private carriers of property by motor vehicles over the public highways in West Virginia, and the payment of special license fees.
Be it enacted by the Legislature of West Virginia:

That sections two and three, article one, sections two and five, article two, section three, article three, section five, article five, and sections three and six, article six, all of chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:


Section 2. Definitions. When used in this act: (a) the term "motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semi-trailer, motor bus, taxicab, any self-propelling motor-driven motor vehicle, or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property; (b) the term "public highway" means any public street, alley, road, or highway or thoroughfare of any kind in this state used by the public; (c) the term "commission" means the public service commission of West Virginia; (d) the term "person" means and includes any individual, firm, copartnership, corporation, company, association, or joint stock asso-
citation, and includes any trustee, receiver, assignee or personal representative thereof; (e) the term "common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air; and of express or forwarding agencies; (f) the term "contract carrier by motor vehicle" means any person not included under paragraph (e) of this section, who under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire; (g) the term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle; (h) the term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" and "contract carrier by motor vehicle" who transports over the highways in this state by motor vehicle property of which
such person is the owner, lessee, or bailee, when such transport is for the purpose of sale, lease, rent, or bailment, or the furtherance of any commercial enterprise; (i) the term "exempt carrier" means any person operating a motor vehicle exempt from the provisions of this act under section three hereof.

Sec. 3. Exemptions. The provisions of this act, except where specifically otherwise provided, shall not apply to:

(a) motor vehicles operated exclusively in the transportation of the United States mail or in the transportation of newspapers; (b) motor vehicles owned and operated by the United States of America, the state of West Virginia, or any county, municipality, or county board of education, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the commission may specifically authorize; (c) motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products from point of production to market, or in the infrequent or seasonal transportation by one farmer

Sec. 2. Provisions of Chapter to Govern. No common carrier by motor vehicle shall operate any motor facility for transportation of either persons or property for hire on any public highway in this state except in accordance with the provisions of this act, and no person, after January one, one thousand nine hundred forty, shall, at the same time, hold under this act 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 act.

Sec. 5. Certificate of Convenience and Necessity; Hearing on Application; Transfer; Revocation. (a) It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the com-
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mission a certificate of convenience and necessity. Upon the
filing of an application for such certificate and after hearing
thereon, 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 judg-
ment the public convenience and necessity may require, and
if the commission shall be of the opinion that the service ren-
dered by any common carrier holding a certificate of con-
venience 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 pro-
posing 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 facili-
ties is reasonably efficient and adequate, the commission shall
not grant such certificate.

(b) The commission shall prescribe such rules and regu-
lations as it may deem proper for the enforcement of the
provisions of this section, and in establishing that public con-
venience 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 appli-
cation for a certificate and submit findings of fact as a part
of a report or reports to be made to the commission.

(c) No certificate issued in accordance with the terms of
this act shall be construed to be either a franchise or irrevoc-
able, or, to confer any property right upon the holder thereof.

No certificate issued under this act shall be assigned or other-
wise transferred without the approval of the commission.

(d) The commission may at any time, for good cause,
suspend and, upon not less than fifteen days' notice to the
grantee of any certificate and an opportunity to be heard, re-
voke or amend any certificate.

Sec. 3. Permit; Hearing on Application; Transfer; Revocation. (a) It shall be unlawful for any contract carrier by motor vehicle to operate within this state without first having obtained from the commission a permit. Upon the filing of an application for such permit, the commission shall fix a time and place for hearing thereon and after hearing shall grant or deny the permit prayed for or grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such permit such terms and conditions as in its judgment are proper and will carry out the purpose of this act. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public or unduly interfere with the use of the highways or impair unduly the condition or unduly increase the maintenance cost of such highways, directly, or indirectly, or impair the efficient public service of any authorized common carrier or common carriers adequately serving the same territory. (b) The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the
provisions of this section and may designate any of its em-
ployees to take evidence at the hearing on any application for
a permit and submit findings of fact as a part of a report or
reports to be made to the commission.

(c) No permit issued in accordance with the terms of this
act shall be construed to be either a franchise or irrevocable
or to confer any property right upon the holder thereof. No
permit issued under this act shall be assigned or otherwise
transferred without the approval of the commission.

(d) The commission may at any time, for good cause,
suspend and, upon not less than fifteen days' notice to the
grantee of any permit and an opportunity to be heard, re-
voke or amend any permit.

(e) Every contract carrier by motor vehicle who shall
cease operation or abandon his rights under a permit issued
shall notify the commission within thirty days of such cessa-
tion or abandonment.

Article 5. Powers and Duties of the Commission.

Sec. 5. Further Regulatory Powers of Commission. The

commission may:
(a) Prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations, and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matters before it.

(b) Appoint such employees as may be necessary to carry out the provisions of this act, and shall fix their respective salaries or compensation. Such employees shall hold office during the pleasure of the commission. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this act, which employees are hereby empowered to administer oaths in all parts of the state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this act.

(c) Prescribe a schedule of fees to accompany applica-
tions for certificates of convenience and necessity and per-
mits and for the filing and recordation of other papers with
the commission. The commission shall likewise prescribe a
schedule of fees to be charged for the certification of all rec-
ords and papers and sums to be paid witnesses and other
costs necessary and incident to hearings before it or its em-
ployees and order the same paid by the unsuccessful party.
Sums collected in this manner, except witness fees, shall be
paid into the state treasury and be credited to the public
service commission motor carrier fund provided for in sub-
section (e) of section six of article six of this act. The witness
fees shall be paid to the persons who are entitled thereto. The
sums to be paid into the public service commission motor
carrier fund representing the collections of any month shall
be so paid on or before the tenth of the following month.
(d) Establish a system of accounts to be kept by motor
carriers or classify motor carriers and establish a system of
accounts for each class, and prescribe the manner in which
such accounts shall be kept. It may also in its discretion pre-
scribe the form of accounts, records, and memoranda to be
kept by such motor carriers, including the accounts, records,
and memoranda for the movement of traffic as well as the receipts and expenditures of moneys, 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) Require persons subject to the provisions of this chapter, to furnish any information which may be in their possession, or obtainable from their accounting or other records, respecting rates, charges, classifications, or practices in conducting their business, and to furnish the commission at all times for inspection any books or papers or reports and statements, which reports and statements shall be under oath, when so required by the commission, and the form of all reports required under this act shall be prescribed by the commission. The commission shall collect, receive and preserve the same, and shall annually tabulate and publish the same in statistical form, together with the other acts and proceedings of the commission.

(f) Either as a commission or by any of its members, or by designated employees, subpoena witnesses and take testimony, and administer oaths to any witness in any proceed-
ing 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; and in 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. And such court, in case of 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 such motor carrier or any person to appear before the commission or designated employees and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such wit-
ness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

(g) Require common carriers by motor vehicle and contract carriers by motor vehicle subject to the provisions of this act either to procure insurance from a company authorized to write such insurance in West Virginia, or to qualify as a self-insurer, or to deposit such security, upon such terms and conditions and for such 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 such carrier may be liable, and prescribe rules and regulations governing the filing of evidence of such insurance and such security with the commission. In fixing the amount of such 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 such motor carrier operation.
(h) Cooperate with the federal government and the interstate commerce commission of the United States or any other commission or organized delegated authority to regulate interstate or foreign commerce by motor vehicles, and it shall be its duty so to do, to the end 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 of the state of West Virginia enforced and administered cooperatively in the public interest.

(i) 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 said state or states and the state of West Virginia respecting licenses, certificates and permits, and the transportation of either persons or property into and through the respective state or states and the state of West Virginia, and 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) Promulgate safety rules and regulations applicable to
motor vehicles subject to the provisions of this act and
promulgate regulations governing the qualifications and
maximum hours of service of drivers and chauffeurs of com-
mon and contract carriers by motor vehicle of passengers and
property subject to the provisions of this act, and promulgate
any other rules and regulations which the commission may
deem proper to carry out the provisions and intent of this
act.

Article 6. Duties and Privileges of Motor Carriers Subject to
Regulation of the Commission.

Sec. 3. Procedure as to Certificates of Convenience and
Necessity and Permits Prior to Act. Certificates of convenience
and necessity and permits issued to motor carriers by state au-
thorities under the authority of the laws of this state in effect
prior to the date this act becomes effective shall remain in effect
until confirmed, revoked or suspended by the commission, but
persons who are the holders of such certificates and permits
shall be subject to all provisions of this act. The procedure for
confirming such certificates and permits shall be the same as is herein provided for issuing certificates and permits in the first instance: \(\textit{Provided, That if any common or contract carrier by motor vehicle of passengers, except by taxicab, was in operation on or prior to March one, one thousand nine hundred thirty-seven, and any common or contract carrier by motor vehicle of property and of passengers by taxicab for hire was in operation on or prior to January one, one thousand nine hundred thirty-nine, over the route or routes or within the territory for which application is made and has so operated since the respective dates, except as to interruptions over which the applicant has no control, the commission shall issue such certificate or permit without requiring further proof that the public convenience and necessity will be served by such operation and without further proceedings if application for such certificate or permit to operate is made to the commission within ninety days from the effective date of this act: \(\textit{Provided, however, That the applicant in the case of a common or contract carrier by motor vehicle of passengers, except by taxicab, shall be required to submit proof of operation on or prior to March one, one thousand nine hundred thirty-}
seven, and in the case of a common or contract carrier by motor vehicle of property and of passengers by taxicab, of operation on or prior to January one, one thousand nine hundred thirty-nine, and continuously thereafter: Provided further, That pending determination of any application hereunder, the continuance of operation in which a common or contract carrier by motor vehicle of passengers, except by taxicab, was so engaged on or prior to March one, one thousand nine hundred thirty-seven, and the continuance of operation in which any common or contract carrier by motor vehicle of property and of passengers by taxicab was so engaged on or prior to January one, one thousand nine hundred thirty-nine, shall be lawful.

Sec. 6. Special License Fees. In addition to the license fees, registration fees, or taxes now required by law of common carriers by motor vehicle and of contract carriers by motor vehicle, subject to the provisions of this act, there shall be assessed against and collected from each such carrier annually a special license fee for the administration of this act, in an amount to be computed, to be collected, and to be used, as follows:
(a) Upon each motor vehicle, except semi-trailers, of such carriers of property, in accordance with its capacity as rated by its manufacturer,

- Of one ton or less capacity: $9.00
- Of over one ton to one and one-half tons capacity: $13.50
- Of over one and one-half tons to two tons capacity: $18.00
- Of over two tons to three tons capacity: $22.50
- Of over three tons to four tons capacity: $27.00
- Of over four tons to five tons capacity: $31.50
- Of over five tons to six tons capacity: $36.00
- Of over six tons to seven tons capacity: $40.50
- Of over seven tons to eight tons capacity: $45.00
- Of over eight tons to nine tons capacity: $49.50
- Of over nine tons to ten tons capacity: $54.00
- Of over ten tons capacity, $54.00 plus $4.50 for each additional ton of capacity in excess of ten tons.

(b) Upon each semi-trailer of such carriers of property, in accordance with its capacity as rated by its manufacturer, in an amount of two-thirds of the amount provided for vehicles of its capacity in sub-section (a) of this section.
(c) Upon each motor vehicle of such carriers of passengers, in accordance with the seating capacity thereof,

- Of ten passengers or less.......................... $13.50
- Of eleven to twenty passengers, inclusive........... $22.50
- Of twenty-one to thirty passengers, inclusive...... $31.50
- Of thirty-one to forty passengers, inclusive........ $45.00
- Of over forty passengers................................ $54.00

(d) The special license fee herein provided for shall be paid to, and collected by, the state road commission of West Virginia at the same time and in the same manner as registration fees and license fees required by the motor vehicle laws of the state of West Virginia are now paid and collected and no license or permit shall be issued by the state road commission to any motor carrier subject to the provisions of this act until it has paid to the state road commission of West Virginia the special license fee as herein provided.

(e) All special license fees collected by the state road commission by virtue of this act shall be paid into the state treasury and credited to the special fund designated public service commission motor carrier fund, to be appropriated as provided by law for the purpose of paying the expenses
of the commission and the salaries, compensation, costs and
expenses of administering this act. Each member of the com-
mission shall receive a salary of fifteen hundred dollars per
annum as compensation for the administration of this act in
addition to all other salary or compensation provided by law,
to be paid in monthly installments from said fund, but in
no event shall the salary of a commissioner exceed six thou-
sand dollars per annum.

All acts or parts of acts inconsistent herewith are hereby
repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within .................. this the .................. day of March, 1933.

[Signature]
Governor.

Filed in the office of the Secretary of State of West Virginia, MAR 9 1939

Wm. S. O'BRIEN, Secretary of State