

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

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 65

(Originating in the Committee on the Judiciary.)

[Passed February 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:

Article 1. Purposes, Definitions, and Exemptions.

Section 2. *Definitions.* When used in this act: (a) the
2 term "motor vehicle" means, and includes, any automobile,
3 truck, tractor, truck-tractor, trailer, semi-trailer, motor bus,
4 taxicab, any self-propelling motor-driven motor vehicle, or
5 any combination thereof, used upon any public highway in
6 this state for the purpose of transporting persons or property ;
7 (b) the term "public highway" means any public street,
8 alley, road, or highway or thoroughfare of any kind in this
9 state used by the public; (c) the term "commission" means the
10 public service commission of West Virginia; (d) the term
11 "person" means and includes any individual, firm, copartner-
12 ship, corporation, company, association, or joint stock asso-

13 ciation, and includes any trustee, receiver, assignee or per-
14 sonal representative thereof; (e) the term "common carrier
15 by motor vehicle" means any person who undertakes, whether
16 directly or by lease or any other arrangement, to transport
17 passengers or property, or any class or classes of property,
18 for the general public over the highways of this state by
19 motor vehicles for hire, whether over regular or irregular
20 routes, including such motor vehicle operations of carriers
21 by rail, water or air and of express or forwarding agencies;
22 (f) the term "contract carrier by motor vehicle" means any
23 person not included under paragraph (e) of this section, who
24 under special and individual contracts or agreements, and
25 whether directly or by a lease or any other arrangement,
26 transports passengers or property over the highways in this
27 state by motor vehicles for hire; (g) the term "motor carrier"
28 includes both a common carrier by motor vehicle and a con-
29 tract carrier by motor vehicle; (h) the term "private carrier
30 of property by motor vehicle" means any person not in-
31 cluded in the terms "common carrier by motor vehicle" and
32 "contract carrier by motor vehicle" who transports over the
33 highways in this state by motor vehicle property of which

34 such person is the owner, lessee, or bailee, when such trans-
35 port is for the purpose of sale, lease, rent, or bailment, or
36 the furtherance of any commercial enterprise; (i) the term
37 "exempt carrier" means any person operating a motor
38 vehicle exempt from the provisions of this act under section
39 three hereof.

Sec. 3. *Exemptions.* The provisions of this act, except
2 where specifically otherwise provided, shall not apply to:
3 (a) motor vehicles operated exclusively in the transportation
4 of the United States mail or in the transportation of news-
5 papers; (b) motor vehicles owned and operated by the United
6 States of America, the state of West Virginia, or any county,
7 municipality, or county board of education, or by any de-
8 partment thereof, and any motor vehicles operated under a
9 contract with a county board of education exclusively for the
10 transportation of children to and from school or such other
11 legitimate transportation for the schools as the commission
12 may specifically authorize; (c) motor vehicles owned and
13 operated by farmers in the transportation of their own farm,
14 orchard, or dairy products from point of production to market,
15 or in the infrequent or seasonal transportation by one farmer

16 for another in his immediate neighborhood of products of
17 the farm, orchard, or dairy, or of supplies or commodities to
18 be used on the farm, orchard, or dairy.

Article 2. Common Carriers by Motor Vehicle.

Sec. 2. *Provisions of Chapter to Govern.* No common car-
2 rier by motor vehicle shall operate any motor facility for
3 transportation of either persons or property for hire on any
4 public highway in this state except in accordance with the
5 provisions of this act, and no person, after January one, one
6 thousand nine hundred forty, shall, at the same time, hold
7 under this act a certificate as a common carrier and a per-
8 mit as a contract carrier authorizing operations for the trans-
9 portation of property by motor vehicles over the same route
10 or within the same territory unless for good cause shown
11 and the commission determines that such certificate and per-
12 mit may be held consistent with the public interest and the
13 policy stated in section one, article one of this act.

Sec. 5. *Certificate of Convenience and Necessity; Hearing*
2 *on Application; Transfer; Revocation.* (a) It shall be un-
3 lawful for any common carrier by motor vehicle to operate
4 within this state without first having obtained from the com-

5 mission a certificate of convenience and necessity. Upon the
6 filing of an application for such certificate and after hearing
7 thereon, if the commission finds from the evidence that the
8 public convenience and necessity require the proposed service
9 or any part thereof, it shall issue the certificate as prayed
10 for, or issue it for the partial exercise only of the privilege
11 sought, and may attach to the exercise of the right granted
12 by such certificate such terms and conditions as in its judg-
13 ment the public convenience and necessity may require, and
14 if the commission shall be of the opinion that the service ren-
15 dered by any common carrier holding a certificate of con-
16 venience and necessity over any route or routes in this state
17 is in any respect inadequate or insufficient to meet the public
18 needs, such certificate holder shall be given reasonable time
19 and opportunity to remedy such inadequacy or insufficiency
20 before any certificate shall be granted to an applicant pro-
21 posing to operate over such route or routes as a common
22 carrier. Before granting a certificate to a common carrier by
23 motor vehicle the commission shall take into consideration
24 existing transportation facilities in the territory for which
25 a certificate is sought, and in case it finds from the evidence

26 that the service furnished by existing transportation facili-
27 ties is reasonably efficient and adequate, the commission shall
28 not grant such certificate.

29 (b) The commission shall prescribe such rules and regu-
30 lations as it may deem proper for the enforcement of the
31 provisions of this section, and in establishing that public con-
32 venience and necessity do exist the burden of proof shall be
33 upon the applicant. The commission may designate any of
34 its employees to take evidence at the hearing of any appli-
35 cation for a certificate and submit findings of fact as a part
36 of a report or reports to be made to the commission.

37 (c) No certificate issued in accordance with the terms of
38 this act shall be construed to be either a franchise or irrevoc-
39 able, or, to confer any property right upon the holder thereof.
40 No certificate issued under this act shall be assigned or other-
41 wise transferred without the approval of the commission.

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

Article 3. Contract Carriers by Motor Vehicle.

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

21 provisions of this section and may designate any of its em-
22 ployees to take evidence at the hearing on any application for
23 a permit and submit findings of fact as a part of a report or
24 reports to be made to the commission.

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

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

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

Article 5. Powers and Duties of the Commission.

Sec. 5. *Further Regulatory Powers of Commission.* The

2 commission may :

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

12 (b) Appoint such employees as may be necessary to carry
13 out the provisions of this act, and shall fix their respective
14 salaries or compensation. Such employees shall hold office
15 during the pleasure of the commission. The commission may
16 designate such employees as it deems necessary to take evi-
17 dence at any hearing held or required by the provisions of
18 this act, which employees are hereby empowered to adminis-
19 ter oaths in all parts of the state so far as the exercise of
20 such power is properly incidental to the performance of their
21 duties in connection with the provisions of this act.

22 (c) Prescribe a schedule of fees to accompany applica-

23 tions for certificates of convenience and necessity and per-
24 mits and for the filing and recordation of other papers with
25 the commission. The commission shall likewise prescribe a
26 schedule of fees to be charged for the certification of all rec-
27 ords and papers and sums to be paid witnesses and other
28 costs necessary and incident to hearings before it or its em-
29 ployees and order the same paid by the unsuccessful party.
30 Sums collected in this manner, except witness fees, shall be
31 paid into the state treasury and be credited to the public
32 service commission motor carrier fund provided for in sub-
33 section (e) of section six of article six of this act. The witness
34 fees shall be paid to the persons who are entitled thereto. The
35 sums to be paid into the public service commission motor
36 carrier fund representing the collections of any month shall
37 be so paid on or before the tenth of the following month.

38 (d) Establish a system of accounts to be kept by motor
39 carriers or classify motor carriers and establish a system of
40 accounts for each class, and prescribe the manner in which
41 such accounts shall be kept. It may also in its discretion pre-
42 scribe the form of accounts, records, and memoranda to be
43 kept by such motor carriers, including the accounts, records,

44 and memoranda for the movement of traffic as well as the
45 receipts and expenditures of moneys, and any other forms,
46 records and memoranda which in the judgment of the com-
47 mission may be necessary to carry out any of the provisions
48 of this chapter.

49 (e) Require persons subject to the provisions of this chap-
50 ter, to furnish any information which may be in their posses-
51 sion, or obtainable from their accounting or other records, re-
52 specting rates, charges, classifications, or practices in conduct-
53 ing their business, and to furnish the commission at all times
54 for inspection any books or papers or reports and statements,
55 which reports and statements shall be under oath, when so re-
56 quired by the commission, and the form of all reports required
57 under this act shall be prescribed by the commission. The com-
58 mission shall collect, receive and preserve the same, and shall
59 annually tabulate and publish the same in statistical form, to-
60 gether with the other acts and proceedings of the commission.

61 (f) Either as a commission or by any of its members, or
62 by designated employees, subpoena witnesses and take testi-
63 mony, and administer oaths to any witness in any proceed-

64 ing or examination instituted before it or conducted by it
65 with reference to any matter within its jurisdiction. In all
66 hearings or proceedings before the commission or its desig-
67 nated employees the evidence of witnesses and the produc-
68 tion of documentary evidence may be required at any desig-
69 nated place of hearing within the state; and in case of diso-
70 bedience to a subpoena or other process the commission or any
71 party to the proceedings before the commission may invoke
72 the aid of any circuit court in the state in requiring the evi-
73 dence and testimony of witnesses and the production of pa-
74 pers, books, and documents. And such court, in case of re-
75 fusal to obey the subpoena issued to any person or to any
76 motor carrier subject to the provisions of this chapter, shall
77 issue an order requiring such motor carrier or any person to
78 appear before the commission or designated employees and
79 produce all books and papers, if so ordered, and give evi-
80 dence touching the matter in question. Any failure to obey
81 such order of the court may be punished by such court as
82 contempt thereof. A claim that any such testimony or evi-
83 dence may tend to incriminate the person giving the same
84 shall not excuse such witness from testifying, but such wit-

85 ness shall not be prosecuted for any offense concerning which
86 he is compelled hereunder to testify.

87 (g) Require common carriers by motor vehicle and con-
88 tract carriers by motor vehicle subject to the provisions of
89 this act either to procure insurance from a company author-
90 ized to write such insurance in West Virginia, or to qualify
91 as a self-insurer, or to deposit such security, upon such terms
92 and conditions and for such limits of liability as the com-
93 mission shall determine to be necessary for the reasonable
94 protection of the traveling, shipping, and general public
95 against injury, loss, damage, or default for which such car-
96 rier may be liable, and prescribe rules and regulations gov-
97 erning the filing of evidence of such insurance and such se-
98 curity with the commission. In fixing the amount of such in-
99 surance policy or policies, the qualifications as a self-insurer,
100 or the deposit of security, the commission shall give due con-
101 sideration to the character and amount of traffic, the value of
102 the property transported, the number of persons affected, and
103 the degree of danger involved in any such motor carrier op-
104 eration.

105 (h) Cooperate with the federal government and the in-
106 terstate commerce commission of the United States or any
107 other commission or organized delegated authority to regu-
108 late interstate or foreign commerce by motor vehicles, and
109 it shall be its duty so to do, to the end that the transporta-
110 tion of persons and property by motor vehicles in interstate
111 and foreign commerce into and through the state of West
112 Virginia may be regulated and the laws of the United States
113 and of the state of West Virginia enforced and adminis-
114 tered cooperatively in the public interest.

115 (i) Make agreements on behalf of the state of West Vir-
116 ginia with any other state or states providing for reciprocal
117 rights, privileges, and courtesies between the licensees or hold-
118 ers of certificates and permits of the said state or states and the
119 state of West Virginia respecting licenses, certificates and per-
120 mits, and the transportation of either persons or property
121 into and through the respective state or states and the state of
122 West Virginia, and all existing agreements between a state or
123 states and the state of West Virginia for reciprocal rights,
124 privileges, and courtesies may, provided constitutional and

125 contractual rights are not violated, be declared void by the
126 commission and new agreements negotiated.

127 (j) Promulgate safety rules and regulations applicable to
128 motor vehicles subject to the provisions of this act and
129 promulgate regulations governing the qualifications and
130 maximum hours of service of drivers and chauffeurs of com-
131 mon and contract carriers by motor vehicle of passengers and
132 property subject to the provisions of this act, and promulgate
133 any other rules and regulations which the commission may
134 deem proper to carry out the provisions and intent of this
135 act.

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

*Sec. 3. Procedure as to Certificates of Convenience and
2 Necessity and Permits Prior to Act.* Certificates of convenience
3 and necessity and permits issued to motor carriers by state au-
4 thorities under the authority of the laws of this state in effect
5 prior to the date this act becomes effective shall remain in effect
6 until confirmed, revoked or suspended by the commission, but
7 persons who are the holders of such certificates and permits
8 shall be subject to all provisions of this act. The procedure for

9 confirming such certificates and permits shall be the same as is
10 herein provided for issuing certificates and permits in the first
11 instance: *Provided*, That if any common or contract carrier by
12 motor vehicle of passengers, except by taxicab, was in operation
13 on or prior to March one, one thousand nine hundred thirty-
14 seven, and any common or contract carrier by motor vehicle
15 of property and of passengers by taxicab for hire was in
16 operation on or prior to January one, one thousand nine
17 hundred thirty-nine, over the route or routes or within the
18 territory for which application is made and has so operated
19 since the respective dates, except as to interruptions over
20 which the applicant has no control, the commission shall issue
21 such certificate or permit without requiring further proof
22 that the public convenience and necessity will be served by
23 such operation and without further proceedings if application
24 for such certificate or permit to operate is made to the com-
25 mission within ninety days from the effective date of this act:
26 *Provided, however*, That the applicant in the case of a com-
27 mon or contract carrier by motor vehicle of passengers, except
28 by taxicab, shall be required to submit proof of operation
29 on or prior to March one, one thousand nine hundred thirty-

30 seven, and in the case of a common or contract carrier by
31 motor vehicle of property and of passengers by taxicab, of
32 operation on or prior to January one, one thousand nine
33 hundred thirty-nine, and continuously thereafter: *Provided*
34 *further*, That pending determination of any application here-
35 under, the continuance of operation in which a common or
36 contract carrier by motor vehicle of passengers, except by
37 taxicab, was so engaged on or prior to March one, one thou-
38 sand nine hundred thirty-seven, and the continuance of opera-
39 tion in which any common or contract carrier by motor vehicle
40 of property and of passengers by taxicab was so engaged on
41 or prior to January one, one thousand nine hundred thirty-
42 nine, shall be lawful.

Sec. 6. *Special License Fees.* In addition to the license
2 fees, registration fees, or taxes now required by law of com-
3 mon carriers by motor vehicle and of contract carriers by
4 motor vehicle, subject to the provisions of this act, there
5 shall be assessed against and collected from each such carrier
6 annually a special license fee for the administration of this
7 act, in an amount to be computed, to be collected, and to be
8 used, as follows:

9 (a) Upon each motor vehicle, except semi-trailers, of such
10 carriers of property, in accordance with its capacity as rated
11 by its manufacturer,

12	Of one ton or less capacity.....	\$ 9.00
13	Of over one ton to one and one-half tons capacity.....	\$13.50
14	Of over one and one-half tons to two tons capacity...	\$18.00
15	Of over two tons to three tons capacity.....	\$22.50
16	Of over three tons to four tons capacity.....	\$27.00
17	Of over four tons to five tons capacity.....	\$31.50
18	Of over five tons to six tons capacity.....	\$36.00
19	Of over six tons to seven tons capacity.....	\$40.50
20	Of over seven tons to eight tons capacity.....	\$45.00
21	Of over eight tons to nine tons capacity.....	\$49.50
22	Of over nine tons to ten tons capacity.....	\$54.00
23	Of over ten tons capacity, \$54.00 plus \$4.50 for each addi-	
24	itional ton of capacity in excess of ten tons.	

25 (b) Upon each semi-trailer of such carriers of property,
26 in accordance with its capacity as rated by its manufacturer,
27 in an amount of two-thirds of the amount provided for ve-
28 hicles of its capacity in sub-section (a) of this section.

29 (c) Upon each motor vehicle of such carriers of passen-
30 gers, in accordance with the seating capacity thereof,

31 Of ten passengers or less.....\$13.50

32 Of eleven to twenty passengers, inclusive.....\$22.50

33 Of twenty-one to thirty passengers, inclusive.....\$31.50

34 Of thirty-one to forty passengers, inclusive.....\$45.00

35 Of over forty passengers.....\$54.00

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

45 (e) All special license fees collected by the state road com-
46 mission by virtue of this act shall be paid into the state
47 treasury and credited to the special fund designated public
48 service commission motor carrier fund, to be appropriated
49 as provided by law for the purpose of paying the expenses

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50 of the commission and the salaries, compensation, costs and
51 expenses of administering this act. Each member of the com-
52 mission shall receive a salary of fifteen hundred dollars per
53 annum as compensation for the administration of this act in
54 addition to all other salary or compensation provided by law,
55 to be paid in monthly installments from said fund, but in
56 no event shall the salary of a commissioner exceed six thou-
57 sand dollars per annum.

58 All acts or parts of acts inconsistent herewith are hereby
59 repealed.

Filed in the office of the Secretary of State
MAY 9 1933
Wm. S. ORRICK
Secretary of State

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

E. Wiseman
.....
Chairman Senate Committee

Repb. Walker
.....
Chairman House Committee

Originated in the *House of Delegates*.....

Takes effect *ninety days from*..... passage.

Thomas H. ...
.....
Clerk of the Senate

Geo. S. Stace
.....
Clerk of the House of Delegates


Wm. ...
.....
President of the Senate

James ...
.....
Speaker House of Delegates

The within *Approved*..... this the *9th*.....

day of *March*....., 1933.

Sam ...
.....

Governor. 

Filed in the office of the Secretary of State
of West Virginia. **MAR 9 1939**
Wm. S. O'BRIEN,
Secretary of State