

APPROVED AND SIGNED BY THE GOVERNOR

Date 2-21-80

Time 9:30 A.M.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



# ENROLLED

HOUSE BILL No. 890

(By Mr. Martin (35<sup>th</sup>) and Mr. Caudle)



Passed February 15, 1980

In Effect - from - Passage



770: 890

**ENROLLED**

**H. B. 890**

(By MR. MARTIN, 35th Dist., and MR. CAUDLE)

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(Originating in the House Committee on the Judiciary)

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[Passed February 15, 1980; in effect from passage.]

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AN ACT to amend and reenact section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of convenience and necessity for common carriers by motor vehicles; giving the public service commission the duty to prescribe rules for conducting certificate hearings; placing the burden of proof on the applicant; requiring public service commission permission to transfer a certificate including after the death of the person holding the certificate; authorizing the commission to suspend, revoke or amend a certificate; and authorizing the reaffirmation of said certificates issued since the tenth day of March, one thousand nine hundred seventy-nine.

*Be it enacted by the Legislature of West Virginia:*

That section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

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

- 1 (a) *Required; application; hearing; granting.*—It shall
- 2 be unlawful for any common carrier by motor vehicle to
- 3 operate within this state without first having obtained from

4 the commission a certificate of convenience and necessity.  
5 Upon the filing of an application for such certificate, the  
6 commission shall set a time and place for a hearing on the  
7 application: *Provided*, That the commission may, after giving  
8 proper notice and if no protest is received, waive formal  
9 hearing on the application. Notice shall be by publication  
10 which shall state that a formal hearing may be waived in the  
11 absence of a protest to such application. The notice shall be  
12 published as a Class I legal advertisement in compliance with  
13 the provisions of article three, chapter fifty-nine of this code  
14 and the publication area for such publication shall be the  
15 proposed area of operation. The notice shall be published  
16 at least ten days prior to the date of the hearing. After the  
17 hearing or waiver by the commission of the hearing, if the  
18 commission finds from the evidence that the public con-  
19 venience and necessity require the proposed service or any  
20 part thereof, it shall issue the certificate as prayed for, or  
21 issue it for the partial exercise only of the privilege sought,  
22 and may attach to the exercise of the right granted by such  
23 certificate such terms and conditions as in its judgment the  
24 public convenience and necessity may require, and if the  
25 commission shall be of the opinion that the service rendered  
26 by any common carrier holding a certificate of convenience  
27 and necessity over any route or routes in this state is in any  
28 respect inadequate or insufficient to meet the public needs,  
29 such certificate holder shall be given reasonable time and  
30 opportunity to remedy such inadequacy or insufficiency before  
31 any certificate shall be granted to an applicant proposing to  
32 operate over such route or routes as a common carrier. Be-  
33 fore granting a certificate to a common carrier by motor vehicle  
34 the commission shall take into consideration existing trans-  
35 portation facilities in the territory for which a certificate is  
36 sought, and in case it finds from the evidence that the service  
37 furnished by existing transportation facilities is reasonably  
38 efficient and adequate, the commission shall not grant such  
39 certificate.

40 (b) *Rules and regulations; taking evidence at hearings;*  
41 *burden of proof.*—The commission shall prescribe such  
42 rules and regulations as it may deem proper for the  
43 enforcement of the provisions of this section and in

44 establishing that public convenience and necessity do exist  
45 the burden of proof shall be upon the applicant. The com-  
46 mission may designate any of its employees to take evidence  
47 at the hearing of any application for a certificate and submit  
48 findings of fact as a part of a report or reports to be made to  
49 the commission.

50 (c) *Certificate not franchise, etc.; assignment or transfer.*—  
51 No certificate issued in accordance with the terms of this  
52 chapter shall be construed to be either a franchise or  
53 irrevocable or to confer any proprietary or property rights  
54 in the use of the public highways. No certificate issued under  
55 this chapter shall be assigned or otherwise transferred without  
56 the approval of the commission. Upon the death of a person  
57 holding a certificate, his personal representative or representa-  
58 tives may operate under such certificate while the same  
59 remains in force and effect and, with the consent of the com-  
60 mission, may transfer such certificate.

61 (d) *Suspension, revocation or amendment.*—The com-  
62 mission may at any time, for good cause, suspend and, upon  
63 not less than fifteen days' notice to the grantee of any certifi-  
64 cate and an opportunity to be heard, revoke or amend any  
65 certificate.

66 (e) The commission shall have the authority, after hearing,  
67 to ratify, approve and affirm those orders issued pursuant to  
68 this section since the tenth day of March, nineteen hundred  
69 seventy-nine. For the purposes of this subsection the com-  
70 mission may give notice by a Class I legal advertisement of  
71 such hearing in any newspaper or newspapers of general  
72 circulation in this state, and such other newspapers as the  
73 commission may designate.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence B. Chutkan*  
Chairman House Committee

Originated in the House.

Takes effect from passage.

*Judd C. Miles*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*H. D. Brantley Jr*  
President of the Senate

*Clyde H. Lee Jr*  
Speaker House of Delegates

The within *is approved* this the *21*  
day of *February*, 1980.

*John D. Royle*  
Governor

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