WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 686

SENATORS BLAIR AND JEFFRIES, original sponsors

[Passed February 29, 2020; in effect 90 days from passage]
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AN ACT to amend and reenact §24A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §24A-2-5 of said code; and to amend and reenact §24A-3-2 and §24A-3-3 of said code, all relating to authorizing use of an emergency substitute motor carrier when certificate of necessity and convenience or contract carrier permit is suspended; defining terms; allowing emergency substitute carrier to operate as common carrier without certificate of necessity and convenience; authorizing Public Service Commission to suspend common carrier certificate of necessity and convenience and allow emergency service carrier to provide temporary replacement service; establishing procedure for seeking reinstitution of certificated service; prohibiting emergency service carrier from operating as a contract carrier except as authorized by Public Service Commission; allowing Public Service Commission to suspend contract carrier permit and authorize emergency substitute carrier to provide temporary replacement service; and establishing procedure for permit grantee to seek reinstitution of permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PURPOSES, DEFINITIONS, AND EXEMPTIONS.


As used in this chapter:

"Commission" means the Public Service Commission of West Virginia;

"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, and leased or rented motor vehicles, with or without drivers;

"Contract carrier by motor vehicle" means any person not included within the definition of "common carrier by motor vehicle", who under special and individual contracts or agreements,
and whether directly or by lease or any other arrangement, transports passengers or property
over the highways in this state by motor vehicles for hire;

“Driveaway operation” means an operation in which any vehicle or vehicles, operated
singly or in lawful combinations, new or used, not owned by the transporting motor carrier,
constitute the commodity being transported;

“Emergency substitute carrier” means a common carrier by motor vehicle or a contract
carrier by motor vehicle that is authorized by the Public Service Commission to provide service
on a temporary basis outside of its certificated territory or its contract because of commission
suspension of a motor carrier certificate of convenience and necessity, or contract carrier by motor
vehicle permit;

“Exempt carrier” means any person operating a motor vehicle exempt from the provisions
of §24A-1-3 of this code;

“I.C.C.” means the Interstate Commerce Commission;

“Motor carrier” includes both a common carrier by motor vehicle and a contract carrier by
motor vehicle;

“Motor vehicle” means, and includes, any automobile, truck, tractor, truck-tractor, trailer,
semitrailer, motorbus, 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;

“NARUC” means the National Association of Regulatory Utility Commissioners;

“Operations within the borders of this state” means interstate or foreign operations to,
from, within, or traversing this state;

“Person” means and includes any individual, firm, copartnership, corporation, company,
association, or joint-stock association, and includes any trustee, receiver, assignee, or personal
representative thereof;
“Planting and harvesting season” means January 1 through December 31 of each calendar year only as it relates to the administration of rules promulgated pursuant to §24A-5-5(j) of this code;

“Private commercial carrier” means and includes any person who undertakes, whether directly or by lease or other arrangement, to transport property, including hazardous materials as defined in rules and regulations promulgated by the commission, for himself or herself over the public highways of this state, in interstate or intrastate commerce, for any commercial purpose, by motor vehicle with a gross vehicle weight rating of 10,001 pounds or more, by motor vehicle designed to transport more than 15 passengers, including the driver; or by any motor vehicle used to transport hazardous materials in a quantity requiring placarding under federal hazardous material regulations as adopted by the commission;

“Power unit” means any vehicle which contains within itself the engine, motor, or other source of power by which said vehicle is propelled; and

“Public highway” means any public street, alley, road or highway, or thoroughfare of any kind in this state used by the public.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.


(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

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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.

(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.

**ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.**


No contract carrier by motor vehicle or emergency substitute carrier shall operate any
motor vehicle for the transportation of either persons or property for hire on any public highway in
this state except in accordance with the provisions of this chapter.
§24A-3-3. Permit.

(a) Required; application; hearing; granting. — 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 unless the contract carrier is an emergency substitute carrier. Upon the filing of an application for such permit, the commission shall fix a time and place for hearing thereon: Provided, That the commission may, after giving notice as hereinafter provided and if no protest is received, waive formal hearing on such application. Said notice shall be by publication which shall state that formal hearing may be waived in the absence of protest to such application. Such 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 area of operation. Such notice shall be published at least 10 days prior to the date of hearing, but not more than 30 days after the filing of the completed application. After hearing or waiver of hearing as aforesaid, as the case may be, the commission 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 purposes of this chapter. 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) Rules and regulations; evidence at hearing. — 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 employees to take evidence at the hearing on any application for a permit and submit findings of fact as a part of report or reports to be made to the commission.
(c) Permit not franchise, etc.; assignment or transfer. — No permit 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 permit issued under this chapter shall be assigned or otherwise transferred without the approval of the commission. Upon the death of a person holding a permit, his or her personal representative or representatives may operate under such permit while the same remains in force and effect and, with the consent of the commission, may transfer such permit.

(d) Suspension, revocation or amendment. — The commission may, at any time, for good cause, suspend a motor carrier permit 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 permit filed pursuant to §24A-3-3(a) of this code. Upon not less than 15 days’ notice to the grantee of any permit and an opportunity to be heard, the commission may revoke or amend any permit.

(e) Reinstitution of permit. — No sooner than 30 days after a suspension of authority, a grantee of a permit 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) Notice of cessation or abandonment. — Every contract carrier by motor vehicle who shall cease operation or abandon his or her rights under a permit issued shall notify the commission within 30 days of such cessation or abandonment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th Day of March, 2020.

Governor