

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 498

FISCAL NOTE

BY SENATORS GAUNCH, ASHLEY AND TRUMP

[Introduced February 3, 2016;

Referred to the Committee on Government
Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §24A-2-2b, relating to additional duties of the Public Service Commission;
 3 requiring commission to review complaint process; setting forth burden of proof on carrier;
 4 developing process for aggrieved parties to recover charges; establishing factor for
 5 commissioner to consider whether charges are fair, just and reasonable; providing
 6 commission authority to establish civil penalties for violations; prohibiting indemnification
 7 in certain instances; requiring commercial driver's license for towing services; requiring
 8 carriers to list rates on invoices; authorizing commission to suspend or revoke operating
 9 authority; and requiring commission to update Legislature.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §24A-2-2b, to read as follows:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2b. Rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles.

1 (a) The commission shall by general order, at minimum, with public notice and opportunity
 2 for comment, within one year of the effective date of this section, applicable to all carriers
 3 registered under section two-a of this article:

4 (1) Review its formal complaint process and, as necessary, develop and implement
 5 changes to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against
 6 a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are
 7 just, fair and reasonable shall be upon the carrier.

8 (2) Upon the adjudication of a complaint of any aggrieved party, including the owner,
 9 operator, or insurer of a motor vehicle, where the commission determines that a charge of charges
 10 levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled
 11 vehicle is not approved by the commission or is not otherwise just, fair or reasonable, develop

12 and implement a timely process for the aggrieved party to recover the cost of the charge or
13 charges. In determining whether a charge levied by a carrier for recovering, towing, hauling,
14 carrying, or storing a wrecked or disabled vehicle is just fair, or reasonable, the commission shall
15 consider, but shall not be limited to, the following factors:

16 (A) Tow vehicle(s) and special equipment required to complete recovery/tow;

17 (B) Total time to complete recovery/tow;

18 (C) Number of regular and extra employees required to complete recovery/tow;

19 (D) Location of vehicle recovered/towed;

20 (E) Materials or cargo involved in recovery/tow;

21 (F) Comparison with reasonable prices in the region;

22 (G) Weather conditions; and

23 (H) Any other relevant information having a direct effect on the pricing of the recovery,
24 towing and storage of a recovered or towed vehicle.

25 (3) Fix, alter and determine just, fair and reasonable civil penalties that shall be imposed
26 upon carriers who violate provisions of section two-a of this article. Any civil penalties imposed by
27 the commission shall be used by the commission to implement and enforce provisions of section
28 two-a of this article.

29 (4) Review its emergency fuel surcharge policy and, as necessary, develop and implement
30 changes to ensure that any fuel surcharge approved by the commission shall reflect only the
31 amount of fuel actually used by the carrier.

32 (5) To the extent practical, review existing maximum statewide wrecker rates and special
33 rates for the use of special equipment in towing and recovery work to ensure that rates are just,
34 fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat
35 rates for ancillary equipment.

36 (6) Develop and implement any policy that, as determined by the commission, is
37 necessary to protect consumers.

38 (b) No carrier regulated under section two-a of this article or this section shall be
39 indemnified for any or all damages arising from the recovery, towing, hauling, carrying, or storing
40 of any wrecked or disabled motor vehicle if the damages are a result of the negligence or
41 intentional acts of the carrier.

42 (c) Except as authorized by law-enforcement officers, no towing service shall engage in
43 the removal of a commercial motor vehicle that requires a commercial driver's license to operate
44 the vehicle under its own power on a highway.

45 (d) All carriers regulated under section two-a of this article or this section shall list their
46 approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of
47 a wrecker or disabled motor vehicle.

48 (e) For any carrier that violates any provision of section two-a of this article or this section,
49 including for refusal or failure to comply with any penalty imposed by the commission pursuant to
50 subdivision three of subsection a of this section, the commission is authorized to suspend or
51 revoke the operating authority of such carrier and, in coordination with appropriate entities,
52 remove such carrier from any wrecker rotation list for a period of time as determined by the
53 commission.

54 (f) As soon as practical following one year after the effective date of this section, the
55 commission shall meet with the appropriate committees of the West Virginia Legislature, or their
56 designees, to provide an update regarding the implementation of this section.

NOTE: The purpose of this bill is to establish additional duties for the Public Service Commission related to developing a process to review towing operator charges for fairness.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.