

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2867

BY DELEGATES HAMILTON, MILEY, PYLES, R. ROMINE,

IAQUINTA, PETHTEL AND WILLIAMS

[Introduced March 8, 2017; Referred
to the Committee on Roads and Transportation then
the Judiciary.]

1 A BILL to amend and reenact §17C-14-9a of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §17C-15-26 of said code; and to amend and reenact §24A-2-2b of
 3 said code, all related to emergency vehicles; increasing penalties for failure to use due
 4 caution when approaching an emergency vehicle while using emergency signals;
 5 authorizing the use of red flashing lights by tow trucks and wreckers; and providing that
 6 Public Service Commission publish guidelines for use of certain safety equipment and a
 7 fee schedule for use of secondary vehicle.

Be it enacted by the Legislature of West Virginia:

1 That §17C-14-9a of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §17C-15-26 of said code be amended and reenacted; and that §24A-2-2b of said
 3 code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-9a. Approaching authorized emergency vehicles; penalties.

1 (a) The driver of any vehicle approaching a stationary authorized emergency vehicle,
 2 when the authorized emergency vehicle is giving a signal by displaying alternately flashing red,
 3 red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

4 (1) Proceed with due caution, yield the right-of-way by making a lane change not adjacent
 5 to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions,
 6 if on a highway having at least four lanes with not less than two lanes proceeding in the same
 7 direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

8 (2) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed
 9 not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles
 10 per hour on any divided highway depending on road conditions, if changing lanes would be
 11 impossible or unsafe.

12 (b) (l) Any person who violates any subsection of this section is guilty of a misdemeanor
13 and, upon conviction thereof, shall be fined not more than ~~\$500~~ \$1,000 or confined in the county
14 or regional jail not more than sixty days, or both fined and imprisoned.

15 (2) If violation of this section results in property damage in addition to any other penalty
16 imposed, driving privileges of the persons causing the property damage shall be suspended for
17 ninety days.

18 (3) If violation of this section results in injury to another person in addition to any other
19 penalty imposed, the driving privileges of the person causing the injury shall be suspended for six
20 months.

21 (4) If violation of this section results in the death of another person in addition to any other
22 penalty imposed, the driving privileges of the person causing the death shall be suspended for
23 two years.

24 (5) Any person who violates any provision of this section and while doing so also violates
25 section two, article five of this chapter is guilty of a misdemeanor and, upon conviction thereof,
26 shall, in addition to the penalties set out in section two of said article and this section, be fined not
27 less than ~~\$1,000~~ \$2,000 nor more than \$5,000, or confined in the county or regional jail for a
28 period not more than six months, or both fined and imprisoned.

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps,
2 spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an
3 intensity greater than three hundred candlepower shall be so directed that no part of the beam
4 will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-
5 five feet from the vehicle.

6 (b) No person may drive or move any vehicle or equipment upon any highway with any
7 lamp or device on the vehicle displaying other than a white or amber light visible from directly in

8 front of the center of the vehicle except as authorized by subsection (d) of this section.

9 (c) Except as authorized in subsections (d) and (g) of this section and authorized in section
10 nineteen of this article, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle
11 as a means for indicating right or left turn or any vehicle as a means of indicating the same is
12 disabled or otherwise stopped for an emergency may have blinking or flashing lights.

13 (d) Notwithstanding any other provisions of this chapter, the following colors of flashing
14 warning lights are restricted for the use of the type of vehicle designated:

15 (1) Blue flashing warning lights are restricted to police vehicles. Authorization for police
16 vehicles shall be designated by the chief administrative official of each police department.

17 (2) Except for standard vehicle equipment authorized by section nineteen of this article,
18 red flashing warning lights are restricted to the following:

19 (A) Ambulances;

20 (B) Firefighting vehicles;

21 (C) Hazardous material response vehicles;

22 (D) Industrial fire brigade vehicles;

23 (E) Rescue squad vehicles not operating out of a fire department;

24 (F) School buses;

25 (G) Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this
26 code, of those firefighters who are authorized by their fire chiefs to have the lights;

27 (H) Class A vehicles of members of duly chartered rescue squads not operating out of a
28 fire department;

29 (I) Class A vehicles of members of ambulance services or duly chartered rescue squads
30 who are authorized by their respective chiefs to have the lights;

31 (J) Class A vehicles of out-of-state residents who are active members of West Virginia fire
32 departments, ambulance services or duly chartered rescue squads who are authorized by their
33 respective chiefs to have the lights;

34 (K) West Virginia Department of Agriculture emergency response vehicles;

35 (L) Vehicles designated by the Secretary of the Department of Military Affairs and Public
36 Safety for emergency response or emergency management by the Division of Corrections,
37 Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of
38 Homeland Security and Emergency Management; and

39 (M) Class A vehicles of emergency response or emergency management personnel as
40 designated by the Secretary of the Department of Military Affairs and Public Safety and the county
41 commission of the county of residence.

42 Red flashing warning lights attached to a Class A vehicle may be operated only when
43 responding to or engaged in handling an emergency requiring the attention of the firefighters,
44 members of the ambulance services or chartered rescue squads.

45 (3) The use of red flashing warning lights is authorized as follows:

46 (A) Authorization for all ambulances shall be designated by the Department of Health and
47 Human Resources and the sheriff of the county of residence.

48 (B) Authorization for all fire department vehicles shall be designated by the fire chief and
49 the State Fire Marshal's Office.

50 (C) Authorization for all hazardous material response vehicles and industrial fire brigades
51 shall be designated by the chief of the fire department and the State Fire Marshal's Office.

52 (D) Authorization for all rescue squad vehicles not operating out of a fire department shall
53 be designated by the squad chief, the sheriff of the county of residence and the Department of
54 Health and Human Resources.

55 (E) Authorization for school buses shall be designated as set out in section twelve, article
56 fourteen of this chapter.

57 (F) Authorization for firefighters to operate Class A vehicles shall be designated by their
58 fire chiefs and the State Fire Marshal's office.

59 (G) Authorization for members of ambulance services or any other emergency medical

60 service personnel to operate Class A vehicles shall be designated by their chief official, the
61 Department of Health and Human Resources and the sheriff of the county of residence.

62 (H) Authorization for members of duly chartered rescue squads not operating out of a fire
63 department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of
64 the county of residence and the Department of Health and Human Resources.

65 (I) Authorization for out-of-state residents operating Class A vehicles who are active
66 members of a West Virginia fire department, ambulance services or duly chartered rescue squads
67 shall be designated by their respective chiefs.

68 (J) Authorization for West Virginia Department of Agriculture emergency response
69 vehicles shall be designated by the Commissioner of the Department of Agriculture.

70 (K) Authorization for vehicles for emergency response or emergency management by the
71 Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile
72 Services and Division of Homeland Security and Emergency Management shall be designated
73 by the Secretary of the Department of Military Affairs and Public Safety.

74 (L) Authorization for Class A vehicles of emergency response or emergency management
75 personnel as designated by the Secretary of the Department of Military Affairs and Public Safety
76 and the county commission of the county of residence.

77 (M) Authorization for tow trucks and wreckers registered with the Public Service
78 Commission, pursuant to article two, chapter twenty-four-a of this code.

79 (4) Yellow or amber flashing warning lights are restricted to the following:

80 (A) All other emergency vehicles, including tow trucks and wreckers, authorized by this
81 chapter and by section twenty-seven of this article;

82 (B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this
83 article;

84 (C) Rural newspaper delivery vehicles;

85 (D) Flag car services;

86 (E) Vehicles providing road service to disabled vehicles;

87 (F) Service vehicles of a public service corporation;

88 (G) Snow removal equipment;

89 (H) School buses; and

90 (I) Automotive fire apparatus owned by a municipality or other political subdivision, by a
91 volunteer or part-volunteer fire company or department or by an industrial fire brigade.

92 (5) The use of yellow or amber flashing warning lights shall be authorized as follows:

93 (A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car
94 services, vehicles providing road service to disabled vehicles, service vehicles of a public service
95 corporation and postal service vehicles shall be designated by the sheriff of the county of
96 residence.

97 (B) Authorization for snow removal equipment shall be designated by the Commissioner
98 of the Division of Highways.

99 (C) Authorization for school buses shall be designated as set out in section twelve, article
100 fourteen of this chapter.

101 (D) Authorization for automotive fire apparatus shall be designated by the fire chief in
102 conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the
103 National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the State Fire
104 Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

105 (i) With the approval of the State Fire Marshal, used automotive fire apparatus may be
106 conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later
107 NFPA standard; and

108 (ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

109 (e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a
110 county board of education, an organization receiving funding from the state or Federal Transit
111 Administration for the purpose of providing general public transportation or hauling solid waste

112 may be equipped with a white flashing strobotron warning light. This strobe light may be installed
 113 on the roof of a school bus, a public transportation vehicle or a vehicle hauling solid waste not to
 114 exceed one-third the body length forward from the rear of the roof edge. The light shall have a
 115 single clear lens emitting light three hundred sixty degrees around its vertical axis and may not
 116 extend above the roof more than six and one-half inches. A manual switch and a pilot light must
 117 be included to indicate the light is in operation.

118 (f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as
 119 defined in section eleven, article six of this chapter may be equipped with yellow or amber flashing
 120 warning lights.

121 (g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used
 122 on a vehicle other than as specified in this section, except that a police vehicle may be equipped
 123 with either or both blue or red warning lights.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.

1 (a) On or before ~~July 1, 2016~~, July 1, 2017, the commission shall promulgate rules to
 2 effectuate the provisions of this article.

3 (b) The rules promulgated pursuant to the provisions of this section shall describe:

4 (1) Factors determining the fair, effective and reasonable rates levied by a carrier for
 5 recovering, towing, hauling, carrying or storing a wrecked or disabled vehicle. The commission
 6 shall consider, but shall not be limited to:

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

8 (B) Total time to complete the recovery or tow;

- 9 (C) Number of regular and extra employees required to complete the recovery or tow;
- 10 (D) Location of vehicle recovered or towed;
- 11 (E) Materials or cargo involved in recovery or tow;
- 12 (F) Comparison with reasonable prices in the region;
- 13 (G) Weather conditions; ~~and~~
- 14 (H) Guidelines and a fee schedule for the use of a second wrecker or other vehicle to
- 15 assist in providing a safe area on or adjacent to a public road to undertake a vehicle recovery;
- 16 (I) Requirements for the instillation and use of a siren or other warning devices by wreckers
- 17 responding to emergency calls; and
- 18 ~~(H)~~ (J) Any other relevant information having a direct effect on the pricing of the recovery,
- 19 towing and storage of a recovered or towed vehicle.
- 20 (2) The process for filing a complaint, the review and investigation process to ensure it is
- 21 fair, effective and timely: *Provided*, That in any formal complaint against a carrier relating to a
- 22 third-party tow, the burden of proof to show that the carrier's charges are just, fair and reasonable
- 23 shall be upon the carrier;
- 24 (3) The process for aggrieved parties to recover the cost, from the carrier, for the charge
- 25 or charges levied by a carrier for recovering, towing, hauling, carrying or storing a wrecked or
- 26 disabled vehicle where the commission determines that such charge or charges are not otherwise
- 27 just, fair or reasonable; and
- 28 (4) The process to review existing maximum statewide wrecker rates and special rates for
- 29 the use of special equipment in towing and recovery work to ensure that rates are just, fair and
- 30 reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for
- 31 ancillary equipment.
- 32 (c) All carriers regulated under this article shall list their approved rates, fares and charges
- 33 on every invoice provided to an owner, operator or insurer of a wrecker or disabled motor vehicle.

34 (d) The rules promulgated pursuant to this article shall sunset on July 1, 2021, unless
35 reauthorized.

36 (e) On or before December 31, 2020, the Legislative Auditor shall review the rules
37 promulgated by the Public Service Commission under this section. The audit shall evaluate the
38 rate-making policy for reasonableness, the complaint process for timeliness, the penalties for
39 effectiveness and any other metrics the Legislative Auditor deems appropriate. The Legislative
40 Auditor may recommend that the rule be reauthorized, reauthorized with amendment or repealed.

NOTE: The purpose of this bill is to enhance penalties for failure to use due caution when approaching an emergency vehicle using emergency signals; and authorizing tow trucks and wreckers to use red emergency lights when responding to an accident, and use another vehicle to assist in a safe recovery of a vehicle.

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