

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 686**

SENATORS BLAIR AND JEFFRIES, *original sponsors*

[Originating in the Committee on Government

Organization; reported on February 14, 2020]

1 A BILL to amend and reenact §24A-1-2 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §24A-2-5 of said code; and to amend and reenact §24A-3-2 and §24A-3-3 of  
3 said code, all relating to authorizing use of an emergency substitute motor carrier when  
4 certificate of necessity and convenience or contract carrier permit is suspended; defining  
5 terms; allowing emergency substitute carrier to operate as common carrier without  
6 certificate of necessity and convenience; authorizing Public Service Commission to  
7 suspend common carrier certificate of necessity and convenience and allow emergency  
8 service carrier to provide temporary replacement service; establishing procedure for  
9 seeking reinstatement of certificated service; prohibiting emergency service carrier from  
10 operating as a contract carrier except as authorized by Public Service Commission;  
11 allowing Public Service Commission to suspend contract carrier permit and authorize  
12 emergency substitute carrier to provide temporary replacement service; and establishing  
13 procedure for permit grantee to seek reinstatement of permit.

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

**ARTICLE 1. PURPOSES, DEFINITIONS, AND EXEMPTIONS.**

**§24A-1-2. Definitions.**

1 As used in this chapter:

2 ~~(1)~~ “Commission” means the Public Service Commission of West Virginia;

3 ~~(2)~~ “Common carrier by motor vehicle” means any person who undertakes, whether  
4 directly or by lease or any other arrangement, to transport passengers or property, or any class  
5 or classes of property, for the general public over the highways of this state by motor vehicles for  
6 hire, whether over regular or irregular routes, including such motor vehicle operations of carriers  
7 by rail, water, or air, and of express or forwarding agencies, and leased or rented motor vehicles,  
8 with or without drivers;

9 ~~(3)~~ “Contract carrier by motor vehicle” means any person not included within the definition  
10 of “common carrier by motor vehicle”, who under special and individual contracts or agreements,

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11 and whether directly or by lease or any other arrangement, transports passengers or property  
12 over the highways in this state by motor vehicles for hire;

13 ~~(4)~~ "Driveaway operation" means an operation in which any vehicle or vehicles, operated  
14 singly or in lawful combinations, new or used, not owned by the transporting motor carrier,  
15 constitute the commodity being transported;

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

21 ~~(5)~~ "Exempt carrier" means any person operating a motor vehicle exempt from the  
22 provisions of §24A-1-3 of this code;

23 ~~(6)~~ "I.C.C." means the Interstate Commerce Commission;

24 ~~(7)~~ "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier  
25 by motor vehicle;

26 ~~(8)~~ "Motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor,  
27 trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle, or any  
28 combination thereof used upon any public highway in this state for the purpose of transporting  
29 persons or property;

30 ~~(9)~~ "NARUC" means the National Association of Regulatory Utility Commissioners;

31 ~~(10)~~ "Operations within the borders of this state" means interstate or foreign operations to,  
32 from, within, or traversing this state;

33 ~~(11)~~ "Person" means and includes any individual, firm, copartnership, corporation,  
34 company, association, or joint-stock association, and includes any trustee, receiver, assignee, or  
35 personal representative thereof;

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36           ~~(12)~~ “Planting and harvesting season” means January 1 through December 31 of each  
37 calendar year only as it relates to the administration of rules promulgated pursuant to §24A-5-5(j)  
38 of this code;

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

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

49           ~~(15)~~ “Public highway” means any public street, alley, road or highway, or thoroughfare of  
50 any kind in this state used by the public.

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

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

1           (a) *Required; application; hearing; granting.* — It shall be unlawful for any common carrier  
2 by motor vehicle to operate within this state without first having obtained from the commission a  
3 certificate of convenience and necessity unless the common carrier is an emergency substitute  
4 carrier. Upon the filing of an application for such certificate, the commission shall set a time and  
5 place for a hearing on the application: *Provided,* That the commission may, after giving proper  
6 notice and if no protest is received, waive formal hearing on the application. Notice shall be by  
7 publication which shall state that a formal hearing may be waived in the absence of a protest to  
8 such application. The notice shall be published as a Class I legal advertisement in compliance

9 with the provisions of §59-3-1 *et seq.* of this code and the publication area for such publication  
10 shall be the proposed area of operation. The notice shall be published at least 10 days prior to  
11 the date of the hearing. After the hearing or waiver by the commission of the hearing, if the  
12 commission finds from the evidence that the public convenience and necessity require the  
13 proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the  
14 partial exercise only of the privilege sought, and may attach to the exercise of the right granted  
15 by such certificate such terms and conditions as in its judgment the public convenience and  
16 necessity may require, and if the commission shall be of the opinion that the service rendered by  
17 any common carrier holding a certificate of convenience and necessity over any route or routes  
18 in this state is in any respect inadequate or insufficient to meet the public needs, such certificate  
19 holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency  
20 before any certificate shall be granted to an applicant proposing to operate over such route or  
21 routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle,  
22 the commission shall take into consideration existing transportation facilities in the territory for  
23 which a certificate is sought, and in case it finds from the evidence that the service furnished by  
24 existing transportation facilities is reasonably efficient and adequate, the commission shall not  
25 grant such certificate.

26 (b) *Rules and regulations; taking evidence at hearings; burden of proof.* — The  
27 commission shall prescribe such rules and regulations as it may deem proper for the enforcement  
28 of the provisions of this section, and in establishing that public convenience and necessity do  
29 exist, the burden of proof shall be upon the applicant. The commission may designate any of its  
30 employees to take evidence at the hearing of any application for a certificate and submit findings  
31 of fact as a part of a report or reports to be made to the commission.

32 (c) *Certificate not franchise, etc.; assignment or transfer.* — No certificate issued in  
33 accordance with the terms of this chapter shall be construed to be either a franchise or  
34 irrevocable, or to confer any proprietary or property rights in the use of the public highways. No

35 certificate issued under this chapter shall be assigned or otherwise transferred without the  
36 approval of the commission. Upon the death of a person holding a certificate, his or her personal  
37 representative or representatives may operate under such certificate while the same remains in  
38 force and effect and, with the consent of the commission, may transfer such certificate.

39 (d) *Suspension, revocation or amendment.* — The commission may at any time, for good  
40 cause, suspend a common carrier certificate of convenience and necessity, and upon suspension,  
41 authorize an emergency substitute carrier to provide temporary replacement service until further  
42 order of the commission: *Provided, That an emergency substitute carrier may continue to operate*  
43 during the pendency of its application for a certificate of convenience and necessity filed pursuant  
44 to §24A-2-5(a) of this code. and, upon-Upon not less than 15 days' notice to the grantee of any  
45 certificate and an opportunity to be heard, the commission may revoke or amend any certificate.

46 (e) *Reinstitution of certificated service.* — No sooner than 30 days after a suspension of  
47 authority, a common carrier may petition the commission to end the suspension and terminate  
48 the authority of an emergency substitute carrier. Upon notice to the emergency substitute carrier  
49 and an opportunity to be heard, the commission shall issue its order granting or denying the  
50 petition.

51 ~~(e)~~(f) The commission shall have the authority, after hearing, to ratify, approve, and affirm  
52 those orders issued pursuant to this section. ~~since March 10, nineteen hundred seventy-nine.~~ For  
53 the purposes of this subsection, the commission may give notice by a Class I legal advertisement  
54 of such hearing in any newspaper or newspapers of general circulation in this state, and such  
55 other newspapers as the commission may designate.

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

#### **§24A-3-2. Provisions of chapter to govern.**

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

**§24A-3-3. Permit.**

1           (a) *Required; application; hearing; granting.* — It shall be unlawful for any contract carrier  
2 by motor vehicle to operate within this state without first having obtained from the commission a  
3 permit unless the contract carrier is an emergency substitute carrier. Upon the filing of an  
4 application for such permit, the commission shall fix a time and place for hearing thereon:  
5 *Provided,* That the commission may, after giving notice as hereinafter provided and if no protest  
6 is received, waive formal hearing on such application. Said notice shall be by publication which  
7 shall state that formal hearing may be waived in the absence of protest to such application. Such  
8 notice shall be published as a Class I legal advertisement in compliance with the provisions of  
9 §59-3-1 *et seq.* of this code and the publication area for such publication shall be the area of  
10 operation. Such notice shall be published at least 10 days prior to the date of hearing, but not  
11 more than 30 days after the filing of the completed application. After hearing or waiver of hearing  
12 as aforesaid, as the case may be, the commission shall grant or deny the permit prayed for or  
13 grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the  
14 privilege granted by such permit such terms and conditions as in its judgment are proper and will  
15 carry out the purposes of this chapter. No permit shall be granted unless the applicant has  
16 established to the satisfaction of the commission that the privilege sought will not endanger the  
17 safety of the public or unduly interfere with the use of the highways or impair unduly the condition  
18 or unduly increase the maintenance cost of such highways, directly or indirectly, or impair the  
19 efficient public service of any authorized common carrier or common carriers adequately serving  
20 the same territory.

21           (b) *Rules and regulations; evidence at hearing.* — The commission shall prescribe such  
22 rules and regulations as it may deem proper for the enforcement of the provisions of this section  
23 and may designate any of its employees to take evidence at the hearing on any application for a  
24 permit and submit findings of fact as a part of report or reports to be made to the commission.

25           (c) *Permit not franchise, etc.; assignment or transfer.* — No permit issued in accordance  
26 with the terms of this chapter shall be construed to be either a franchise or irrevocable or to confer  
27 any proprietary or property rights in the use of the public highways. No permit issued under this  
28 chapter shall be assigned or otherwise transferred without the approval of the commission. Upon  
29 the death of a person holding a permit, his or her personal representative or representatives may  
30 operate under such permit while the same remains in force and effect and, with the consent of  
31 the commission, may transfer such permit.

32           (d) *Suspension, revocation or amendment.* — The commission may, at any time, for good  
33 cause, suspend a motor carrier permit and upon suspension authorize an emergency substitute  
34 carrier to provide temporary replacement service until further order of the commission: *Provided,*  
35 That an emergency substitute carrier may continue to operate during the pendency of its  
36 application for a permit filed pursuant to §24A-3-3(a) of this code. ~~and upon~~ Upon not less than  
37 15 days' notice to the grantee of any permit and an opportunity to be heard, the commission may  
38 revoke or amend any permit.

39           (e) *Reinstitution of permit.* — No sooner than 30 days after a suspension of authority, a  
40 grantee of a permit may petition the commission to end the suspension and terminate the authority  
41 of an emergency substitute carrier. Upon notice to the emergency substitute carrier and an  
42 opportunity to be heard, the commission shall issue its order granting or denying the petition.

43           ~~(e)~~(f) *Notice of cessation or abandonment.* — Every contract carrier by motor vehicle who  
44 shall cease operation or abandon his or her rights under a permit issued shall notify the  
45 commission within 30 days of such cessation or abandonment.

NOTE: The purpose of this bill is to authorize the use of an emergency substitute motor carrier when a certificate of convenience and necessity or contract carrier permit is suspended so that service to the customer may continue during the period of the



emergency.

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