WEST virginia legislature

2021 REGULAR session

Originating

House Bill 3133

By Delegates Capito, Keaton, and L. Pack

[Introduced March 11, 2021; Originating in the Committee on the Judiciary]

A BILL to amend and reenact §24A-5-2 of the Code of West Virginia, 1931, as amended, and to amend and reenact §24A-2-5 of said Code; all relating to restoring language to the code setting forth the process to change rates for motor carriers that was inadvertently deleted and replaced; and to correct an erroneous exclusion to include the appropriate language relating to transfer of certificate.

*Be it enacted by the Legislature of West Virginia*

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

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

(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 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.

(1) 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; and

(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission shall fail to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.

(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 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2. ~~Certificate of convenience and necessity.~~ Procedure for changing rates, etc.

~~(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. Upon the filing of an application for such certificate, the commission shall set a time a 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 article three, chapter fifty-nine of this code and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least ten 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.~~

~~(1) 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; and~~

~~(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission fails to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.~~

~~(d)~~ *~~Suspension, revocation or amendment.~~* ~~— The commission may at any time, for good cause, suspend and, upon not less than fifteen days’ notice to the grantee of any certificate and an opportunity to be heard, revoke or amend any certificate.~~

~~(e) The commission shall have the authority, after hearing, to ratify, approve and affirm those orders issued pursuant to this section since March 10, nineteen hundred seventy-nine. 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.~~

Except for motor carriers collecting and hauling solid waste who elect to increase rates under section 2a of this chapter, no motor carrier subject to this chapter shall change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the transportation of passengers or property except after thirty days’ notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect. The commission may enter an order suspending the proposed rate and prohibiting such motor carrier from putting such proposed new rate into effect pending the hearing and final decision of the matter, in which case the proposed new rate shall stand suspended until it is determined by the commission whether or not the same is just or reasonable. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided, however,* That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the motor carrier affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided,* That if any such hearing cannot be conducted within the period of suspension, as above stated, the commission may in its discretion extend the time of suspension for a further period, not exceeding six months. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just and reasonable, shall be upon the motor carrier making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

The commission shall prescribe such rules and regulations as to the giving of notice of a change in rates as are reasonable and are deemed proper in the public interest.

NOTE: The purpose of this bill is to add back to the code language setting forth the procedure for changing rates, etc. for motor carriers, and to acknowledge new statute 24A-5-2(a) and the amendment passed in 2020 to 24A-2-5 for transfer of certificates.

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