

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]

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

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 (1) Upon the death of a person holding a certificate, his or her personal representative or
40 representatives may operate under such certificate while the same remains in force and effect
41 and, with the consent of the commission, may transfer such certificate; and

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

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

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

61 (f) The commission shall have the authority, after hearing, to ratify, approve, and affirm
62 those orders issued pursuant to this section. For the purposes of this subsection, the commission
63 may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers
64 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.

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. Upon the filing of an application for such certificate, the~~
4 ~~commission shall set a time a place for a hearing on the application: *Provided*, That the~~
5 ~~commission may, after giving proper notice and if no protest is received, waive formal hearing on~~
6 ~~the application. Notice shall be by publication which shall state that a formal hearing may be~~
7 ~~waived in the absence of a protest to such application. The notice shall be published as a Class~~
8 ~~I legal advertisement in compliance with the provisions of article three, chapter fifty nine of this~~
9 ~~code and the publication area for such publication shall be the proposed area of operation. The~~
10 ~~notice shall be published at least ten days prior to the date of the hearing. After the hearing or~~
11 ~~waiver by the commission of the hearing, if the commission finds from the evidence that the public~~
12 ~~convenience and necessity require the proposed service or any part thereof, it shall issue the~~
13 ~~certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may~~
14 ~~attach to the exercise of the right granted by such certificate such terms and conditions as in its~~
15 ~~judgment the public convenience and necessity may require, and if the commission shall be of~~
16 ~~the opinion that the service rendered by any common carrier holding a certificate of convenience~~
17 ~~and necessity over any route or routes in this state is in any respect inadequate or insufficient to~~
18 ~~meet the public needs, such certificate holder shall be given reasonable time and opportunity to~~
19 ~~remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant~~
20 ~~proposing to operate over such route or routes as a common carrier. Before granting a certificate~~
21 ~~to a common carrier by motor vehicle the commission shall take into consideration existing~~
22 ~~transportation facilities in the territory for which a certificate is sought, and in case it finds from the~~
23 ~~evidence that the service furnished by existing transportation facilities is reasonably efficient and~~
24 ~~adequate, the commission shall not grant such certificate.~~

25 ~~(b) *Rules and regulations; taking evidence at hearings; burden of proof.* — The~~
26 ~~commission shall prescribe such rules and regulations as it may deem proper for the enforcement~~
27 ~~of the provisions of this section and in establishing that public convenience and necessity do exist~~
28 ~~the burden of proof shall be upon the applicant. The commission may designate any of its~~

29 employees to take evidence at the hearing of any application for a certificate and submit findings
30 of fact as a part of a report or reports to be made to the commission.

31 ~~(c) Certificate not franchise, etc.; assignment or transfer. — No certificate issued in~~
32 ~~accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable~~
33 ~~or to confer any proprietary or property rights in the use of the public highways. No certificate~~
34 ~~issued under this chapter shall be assigned or otherwise transferred without the approval of the~~
35 ~~commission.~~

36 ~~(1) Upon the death of a person holding a certificate, his or her personal representative or~~
37 ~~representatives may operate under such certificate while the same remains in force and effect~~
38 ~~and, with the consent of the commission, may transfer such certificate; and~~

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

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

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

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

69 Whenever there shall be filed with the commission any schedule stating a change in the
70 rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or
71 joint classification or any new individual or joint regulation or practice affecting any rate or charge,
72 the commission shall have authority, either upon complaint or upon its own initiative without
73 complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification,
74 regulation or practice; and, if the commission so orders, it may proceed without answer or other
75 form of pleading by the interested parties, but upon reasonable notice, and pending such hearing
76 and the decision thereon the commission, upon filing with such schedule and delivering to the
77 motor carrier affected thereby a statement in writing of its reasons for such suspension, may
78 suspend the operation of such schedule and defer the use of such rate, charge, classification,
79 regulation or practice, but not for a longer period than one hundred and twenty days beyond the

80 time when such rate, charge, classification, regulation or practice would otherwise go into effect;
81 and after full hearing, whether completed before or after the rate, charge, classification, regulation,
82 or practice goes into effect, the commission may make such order in reference to such rate,
83 charge, classification, regulation or practice as would be proper in a proceeding initiated after the
84 rate, charge, classification, regulation or practice had become effective: *Provided*, That if any such
85 hearing cannot be conducted within the period of suspension, as above stated, the commission
86 may in its discretion extend the time of suspension for a further period, not exceeding six months.
87 At any hearing involving a rate sought to be increased or involving the change of any fare, charge,
88 classification, regulation or practice, the burden of proof to show that the increased rate or
89 proposed increased rate, or the proposed change of fare, charge, classification, regulation or
90 practice, is just and reasonable, shall be upon the motor carrier making application for such
91 change. When in any case pending before the commission all evidence shall have been taken,
92 and the hearing completed, the commission shall, within three months, render a decision in such
93 case.
94 The commission shall prescribe such rules and regulations as to the giving of notice of a
95 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.