

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4186

(BY DELEGATES CADLE, COOPER, FOSTER, AMBLER,
HOWELL, BUTLER, HOUSEHOLDER, MOFFATT, SMITH, R.,
WESTFALL AND HAMRICK)

[Originating in the Committee on Government
Organization, February 3, 2016.]

1 A BILL to amend and reenact §29A-1-3 of the Code of West Virginia, 1931, as amended, and to
2 amend said code by adding thereto a new section, designated §24A-2-2b, all relating to
3 the Public Service Commission; establishing a complaint review process; setting forth
4 burden of proof on carrier; developing a process for aggrieved parties to recover charges;
5 establishing factors for commission to consider whether charges are fair, just, and
6 reasonable; providing commission authority to establish civil penalties for violations;
7 prohibiting indemnification in certain instances; requiring carriers to list rates on invoices;
8 authorizing commission to suspend or revoke operating authority; providing limited rule-
9 making authority to the commission as it relates to Common Carriers by Motor Vehicles;
10 sunsetting the rule and providing for its reauthorization; and providing for a legislative
11 audit.

Be it enacted by the Legislature of West Virginia:

1 That §29A-1-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new section, designated §24A-2-
3 2b, all to read as follows:

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 describing penalties.

1 (a) On or before July 1, 2016, the Commission shall propose Legislative Rules for public
2 comment, in compliance with the provisions of article three, chapter twenty-nine-a of this code to
3 effectuate the provisions of this article.

4 (b) The Legislative Rules promulgated pursuant to the provision of this section shall
5 describe:

6 (1) The methodology the Commission shall use to establish fair, effective, and reasonable
7 rates that may be charged for the recovering, towing, hauling, carrying, or storing of wrecked or
8 disabled vehicles.

9 (2) Factors determining the fair, effective, and reasonable rates levied by a carrier for
10 recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle, the commission
11 shall consider, but shall not be limited to:

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

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

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

15 (D) Location of vehicle recovered/towed;

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

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

18 (G) Weather conditions; and

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

21 (3) The process for filing a complaint, the review and investigation process to ensure it is
22 fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a
23 third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable
24 shall be upon the carrier.

25 (4) The process for aggrieved parties to recover the cost, from the carrier, for the charge
26 or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or
27 disabled vehicle where the commission determines that such charge or charges are not otherwise
28 just, fair, or reasonable.

29 (5) The civil penalties that shall be imposed upon carriers who violate any provisions of
30 this article. Any civil penalties imposed by the commission shall be used by the commission to
31 implement and enforce this article. And

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

36 (c) No carrier regulated under this article shall be indemnified for any or all damages
37 arising from the recovery, towing, hauling, carrying, or storing of any wrecked or disabled motor
38 vehicle if the damages are a result of the negligence or intentional acts of the carrier.

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

42 (e) All carriers regulated under this article shall list their approved rates, fares, and charges
43 on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

44 (f) For any carrier that violates any provision of this article, including for refusal or failure
45 to comply with any penalty imposed by the commission pursuant to this section, the commission
46 is authorized to suspend or revoke the operating authority of such carrier and, in coordination with
47 appropriate entities, remove such carrier from any wrecker rotation list for a period of time as
48 determined by the commission.

49 (g) The Legislative Rules promulgated pursuant to this article shall sunset on July 1, 2021,
50 unless reauthorized by the West Virginia Legislature.

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

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any respect whatever to executive orders
2 of the Governor, which orders to the extent otherwise lawful shall be effective according to their
3 terms: *Provided*, That the executive orders shall be admitted to record in the State Register when
4 and to the extent the Governor deems suitable and shall be included therein by the Secretary of
5 State when tendered by the Governor.

6 (b) Except as to requirements for filing in the State Register, and with the Legislature or
7 its rule-making review committee, provided in this chapter or other law, the provisions of this
8 chapter do not apply in any respect whatever to the West Virginia Board of Probation and Parole,
9 the Public Service Commission, the Board of Public Works sitting as such and the Secondary
10 Schools Activities Commission: *Provided*, That rules of such agencies shall be filed in the State
11 Register in the form prescribed by this chapter and be effective no sooner than sixty consecutive
12 days after being so filed: *Provided, however*, That the rules promulgated by the state colleges
13 and universities shall only be filed with the higher education governing boards: *Provided further*,
14 That such agencies may promulgate emergency rules in conformity with section fifteen, article
15 three of this chapter: And provided further, That the Public Service Commission is not exempt
16 from the provisions of this Chapter regarding Legislative Rules related to Common Carriers by
17 Motor Vehicles as provided for in section two-b, Article Two, Chapter Twenty-four A.

18 (c) The provisions of this chapter do not apply to rules relating to or contested cases
19 involving the conduct of inmates or other persons admitted to public institutions, the open seasons
20 and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the
21 conduct of persons in military service or the receipt of public assistance. Such rules shall be filed
22 in the State Register in the form prescribed by this chapter and be effective upon filing.

23 (d) Nothing herein shall be construed to affect, limit or expand any express and specific
24 exemption from this chapter contained in any other statute relating to a specific agency, but such
25 exemptions shall be construed and applied in accordance with the provisions of this chapter to
26 effectuate any limitations on such exemptions contained in any such other statute.

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