

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4186**

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

[Introduced January 20, 2016;  
referred to Committee on Government Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §24A-2-2b, relating to additional duties of the Public Service Commission;  
 3 requiring commission to review complaint process; setting forth burden of proof on carrier;  
 4 developing process for aggrieved parties to recover charges; establishing factor for  
 5 commissioner to consider whether charges fair, just and reasonable; providing  
 6 commission authority to establish civil penalties for violations; prohibiting indemnification  
 7 in certain instances; requiring commercial driver’s license for towing services; requiring  
 8 carriers to list rates on invoices; authorizing commission to suspend or revoke operating  
 9 authority; and requiring commission to update legislature.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §24A-2-2b, to read as follows:

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

**§24A-2-2b. Rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles.**

1 (a) The commission shall by general order, at minimum, with public notice and opportunity  
 2 for comment, within one year of the effective date of this section, applicable to all carriers  
 3 registered under section two-a of this article:

4 (1) Review its formal complaint process and, as necessary, develop and implement  
 5 changes to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against  
 6 a carrier relating to a third-party tow, the burden of proof to show that the carrier’s charges are  
 7 just, fair, and reasonable shall be upon the carrier.

8 (2) Upon the adjudication of a complaint of any aggrieved party, including the owner,  
 9 operator, or insurer of a motor vehicle, where the commission determines that a charge of charges  
 10 levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled  
 11 vehicle is not approved by the commission or is not otherwise just, fair, or reasonable, develop

12 and implement a timely process for the aggrieved party to recover the cost of the charge or  
13 charges. In determining whether a charge levied by a carrier for recovering, towing, hauling,  
14 carrying, or storing a wrecked or disabled vehicle is just fair, or reasonable, the commission shall  
15 consider, but shall not be limited to, the following factors:

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

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

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

19 (D) Location of vehicle recovered/towed;

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

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

22 (G) Weather conditions; and

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

25 (3) Fix, alter, and determine just, fair, and reasonable civil penalties that shall be imposed  
26 upon carriers who violate provisions of section two-a of this section. Any civil penalties imposed  
27 by the commission shall be used by the commission to implement and enforce provisions of  
28 section two-a of this section.

29 (4) Review its emergency fuel surcharge policy and, as necessary, develop and implement  
30 changes to ensure that any fuel surcharge approved by the commission shall reflect only the  
31 amount of fuel actually used by the carrier.

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

36 (6) Develop and implement any policy that, as determined by the commission, is  
37 necessary to protect consumers.

38 (b) No carrier regulated under section two-a of this article or this section shall be  
39 indemnified for any or all damages arising from the recovery, towing, hauling, carrying, or storing  
40 of any wrecked or disabled motor vehicle if the damages are a result of the negligence or  
41 intentional acts of the carrier.

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

45 (d) All carriers regulated under section two-a of this article or this section shall list their  
46 approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of  
47 a wrecker or disabled motor vehicle.

48 (e) For any carrier that violates any provision of section two-a of this article or this section,  
49 including for refusal or failure to comply with any penalty imposed by the commission pursuant to  
50 subdivision three of subsection a of this section, the commission is authorized to suspend or  
51 revoke the operating authority of such carrier and, in coordination with appropriate entities,  
52 remove such carrier from any wrecker rotation list for a period of time as determined by the  
53 commission.

54 (f) As soon as practical following one year after the effective date of this section, the  
55 commission shall meet with the appropriate committees of the West Virginia Legislature, or their  
56 designees, to provide an update regarding the implementation of this section.

NOTE: The purpose of this bill is to establish additional duties for the Public Service Commission related to developing a process to review towing operator charges for fairness.

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