

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Enrolled

Senate Bill 446

BY SENATOR TARR

[Passed March 11, 2023; to take effect July 1, 2023]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:24

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1 AN ACT to amend and reenact §11-14C-2 of the Code of West Virginia, 1931, as amended,
2 relating to removing methanol and methanol fuel from the definition of special fuel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires otherwise, the following terms have
2 the meaning ascribed herein.

3 (1) "Agricultural purposes" means the activities of:

4 (A) Cultivating the soil, including the planting and harvesting of crops, for the commercial
5 production of food, fiber and ornamental woodland products;

6 (B) Using land for breeding and management of farm livestock including dairy, apiary,
7 equine or poultry husbandry; and

8 (C) Using land for the practice of horticulture including the growing of Christmas trees,
9 orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing of
10 timber for commercial purposes or other activity that normally would not be included in subdivision
11 (A), (B) or (C) of this definition.

12 (2) "Aircraft" includes any airplane or helicopter.

13 (3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and
14 methanol, excluding denaturant and water that is a minimum of 98 percent ethanol or methanol
15 by volume.

16 (4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as
17 a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,
18 machine or mechanical contrivance and includes, but is not limited to, products commonly known
19 as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas,
20 natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series

21 fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation
22 fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

23 (5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for
24 alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

25 (6) "Alternative-fuel commercial refueling infrastructure" means property owned by a
26 commercial establishment and used for storing alternative fuels and for dispensing such
27 alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the
28 alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned
29 vehicles or commercial vehicles other than those owned by the same person or entity that owns
30 the alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-
31 fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression
32 equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is
33 delivered: *Provided*, That the property is not located on a private residence or private home.
34 "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure,
35 equipment, apparatus, terminal or connections for servicing, charging or providing electricity to
36 plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling
37 infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as
38 described in this subdivision which is owned by a lessor or landlord and leased to or rented to a
39 lessee or tenant as part of a residence for such lessee or tenant.

40 (7) "Alternative-fuel home refueling infrastructure" means property owned by a private
41 individual for personal use that is located at the individual's private residence or private home and
42 used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor
43 vehicles. This includes, but is not limited to, compression equipment, storage tanks and
44 dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this
45 article, "alternative-fuel home refueling infrastructure" does not include any building,
46 infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing

47 electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling
48 infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by
49 a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for
50 such lessee or tenant.

51 (8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

52 (9) "Assessment" means a written determination by the commissioner of the amount of
53 taxes owed by a taxpayer.

54 (10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

55 (11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft
56 other than jet aircraft and sold or used for that purpose.

57 (12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-
58 prop aircraft and sold or used for that purpose.

59 (13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or
60 in part, from agricultural products or animal fats, or the wastes of such products or fats, and is
61 advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion
62 engine.

63 (14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid
64 including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol,
65 diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as
66 carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

67 (15) "Blender" means a person who produces blended motor fuel outside the bulk
68 transfer/terminal system.

69 (16) "Blending" means the mixing of one or more petroleum products, with or without
70 another product, regardless of the original character of the product blended, if the product
71 obtained by the blending is capable of use in the generation of power for the propulsion of a motor
72 vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the

73 process of refining by the original refiner of crude petroleum or the blending of products known
74 as lubricating oil in the production of lubricating oils and greases.

75 (17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal
76 and from which motor fuel may be removed at a rack.

77 (18) "Bulk transfer" means any transfer of motor fuel from one location to another by
78 pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited
79 to, all of the following:

80 (A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

81 (B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

82 (C) Book transfer of motor fuel within a terminal between licensed suppliers prior to
83 completion of removal across the rack; and

84 (D) Two-party exchange between licensed suppliers or between licensed suppliers and
85 permissive suppliers.

86 (19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses
87 part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

88 (20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting
89 of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal
90 or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal
91 system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is
92 not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a
93 marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk
94 transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for
95 ground transportation is not in the bulk transfer/terminal system.

96 (21) "Carrier" means an operator of a pipeline or marine vessel engaged in the business
97 of transporting motor fuel above the terminal rack.

98 (22) "Code" means the Code of West Virginia, 1931, as amended.

99 (23) "Commercial watercraft" means a watercraft employed in the business of commercial
100 fishing, transporting persons or property for compensation or hire or other trade or business.

101 (24) "Commissioner" or "Tax Commissioner" means the West Virginia State Tax
102 Commissioner or his or her delegate.

103 (25) "Compressed natural gas" means natural gas that has been compressed and
104 dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for
105 use as or used as an engine motor fuel.

106 (26) "Corporate or partnership officer" means an officer or director of a corporation, partner
107 of a partnership or member of a limited liability company who as an officer, director, partner or
108 member is under a duty to perform on behalf of the corporation, partnership or limited liability
109 company, the tax collection, accounting or remitting obligations.

110 (27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel
111 storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor
112 fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400
113 gallons for a tank with a capacity of 10,000 gallons or more.

114 (28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components
115 or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage
116 use but not unsuitable for automotive use.

117 (29) "Designated inspection site" means a state highway inspection station, weigh station,
118 agricultural inspection station, mobile station or other location designated by the commissioner to
119 be used as a motor fuel inspection site.

120 (30) "Destination state" means the state, territory or foreign country to which motor fuel is
121 directed for delivery into a storage facility, a receptacle, a container or a type of transportation
122 equipment for the purpose of resale or use. The term does not include a tribal reservation of a
123 recognized Native American tribe.

124 (31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as,
125 suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The
126 term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline
127 or aviation fuel.

128 (32) "Distributor" means a person who acquires motor fuel from a licensed supplier,
129 permissive supplier or from another licensed distributor for subsequent sale or use.

130 (33) "Diversion" means transporting motor fuel outside a reasonably direct route from the
131 source to the destination state.

132 (34) "Division" or "State Tax Division" means the Tax Division of the West Virginia
133 Department of Revenue.

134 (35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements
135 of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

136 (36) "End seller" means the person who sells motor fuel to the ultimate user of the motor
137 fuel.

138 (37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in
139 another state, territory or foreign country.

140 (38) "Exporter" means a person that exports motor fuel from this state. The seller is the
141 exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter
142 of motor fuel delivered out-of-state by or for the purchaser.

143 (39) "Fuel" means motor fuel.

144 (40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this
145 article as the D-4806 specification for denatured motor fuel grade ethanol for blending with
146 gasoline.

147 (41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is
148 supplied for the propulsion of the motor vehicle.

149 (42) "Gallon" means a unit of liquid measure as customarily used in the United States
150 containing 231 cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.

151 (43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

152 (44) "Gasoline" means a product commonly or commercially known as gasoline,
153 regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for
154 use as or used as motor fuel in an internal combustion engine, including gasohol, but does not
155 include special fuel as defined in this section.

156 (45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such
157 as naphtha, reformat, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for
158 use in a motor fuel. The term does not include any substance that will be ultimately used for
159 consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at
160 the time of the removal or sale.

161 (46) "Gallon equivalent" means the amount of an alternative fuel that is considered to be
162 the equivalent of a gallon of gasoline according to the National Institute of Standards and
163 Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

164 (47) "Gross gallons" means the total measured product, exclusive of any temperature or
165 pressure adjustments, considerations or deductions, in U. S. gallons.

166 (48) "Governmental entity" means this state or a political subdivision thereof or the United
167 States or its commissioners, agencies and instrumentalities.

168 (49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil,
169 #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial
170 processing purposes.

171 (50) "Highway" means every way or place of whatever nature open to the use of the public
172 for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

173 (51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is
174 designed or used for transporting persons or property over the public highway and includes all
175 vehicles subject to registration under article three, chapter seventeen-a of this code.

176 (52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel,
177 pipeline or any other means. Import does not include bringing motor fuel into this state in the
178 motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

179 (53) "Importer" means a person that imports motor fuel into this state. The seller is the
180 importer for motor fuel delivered into this state from outside of this state by or for the seller and
181 the purchaser is the importer for motor fuel delivered into this state from outside of this state by
182 or for the purchaser.

183 (54) "Import verification number" means the number assigned by the commissioner to a
184 single transport vehicle delivery into this state from another state upon request for an assigned
185 number by an importer or the transporter carrying taxable motor fuel into this state for the account
186 of an importer.

187 (55) "In this state" means the area within the borders of West Virginia including all territory
188 within the borders of West Virginia that is owned by the United States of America.

189 (56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

190 (57) "Licensee" means a person licensed by the commissioner pursuant to section ten of
191 this article.

192 (58) "Liquid" means a substance that is liquid above its freezing point.

193 (59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees
194 centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

195 (60) "Motor carrier" means a vehicle used, designated or maintained for the transportation
196 of persons or property and having two axles and a gross vehicle weight exceeding 26,000 pounds
197 or having three or more axles regardless of weight or used in combination when the weight of the
198 combination exceeds 26,000 pounds or registered gross vehicle weight, and any aircraft, barge

199 or other watercraft or railroad locomotive transporting passengers or freight in or through this
200 state: *Provided*, That the gross vehicle weight rating of the vehicles being towed is in excess of
201 10,000 pounds. The term "motor carrier" does not include any type of recreational vehicle.

202 (61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and
203 alternative fuel.

204 (62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk
205 transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

206 (63) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all
207 other vehicles or equipment, engines or machines which are operated or propelled by combustion
208 of motor fuel.

209 (64) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to
210 a temperature of 60 degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds
211 pressure per square inch.

212 (65) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of
213 this state but who meets both of the following requirements: (A) Is registered under Section 4101
214 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system;
215 and (B) a position holder in motor fuel only located in another state or a person who receives
216 motor fuel only in another state pursuant to a two-party exchange: *Provided*, That a person is
217 classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a
218 subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or
219 any agent or representative (by whatever name called) operating within this state under the
220 authority of the supplier or its subsidiary.

221 (66) "Person" means an individual, firm, cooperative, association, corporation, limited
222 liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate,
223 partnership, limited partnership, copartnership, organization, limited liability partnership, joint
224 venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group

225 or combination acting as a unit, a public body including, but not limited to, this state and any other
226 state and an agency, commissioner, institution, political subdivision or instrumentality of this state
227 or any other state and, also, an officer, employee or member of any of the foregoing who, as an
228 officer, employee or member, is under a duty to perform or is responsible for the performance of
229 an act prescribed by the provisions of this article.

230 (67) "Position holder" means the person who holds the inventory position in motor fuel in
231 a terminal as reflected on the records of the terminal operator. A person holds the inventory
232 position in motor fuel when that person has a contract with the terminal operator for the use of
233 storage facilities and terminaling services for motor fuel at the terminal. The term includes a
234 terminal operator who owns motor fuel in the terminal.

235 (68) "Principal" means:

236 (A) If a partnership, all its partners;

237 (B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

238 (C) If a limited liability company, all its members; or

239 (D) An individual.

240 (69) "Producer/manufacturer" means a person who produces, refines, blends, distills,
241 manufactures or compounds motor fuel.

242 (70) "Provider of alternative fuel" means a person who does one or more of the following:

243 (A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an
244 alternative-fuel retailer;

245 (B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling
246 infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the
247 person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel
248 retailer to operate a highway vehicle;

249 (C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway
250 vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the
251 vehicle;

252 (D) Imports alternative fuel into this state by a means other than the usual tank or
253 receptacle connected with the engine of a highway vehicle for use by that person to operate a
254 highway vehicle.

255 (71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine
256 vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is
257 outside the bulk transfer/terminal system.

258 (72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on
259 railroad rails and includes a switching engine.

260 (73) "Receive" means acquisition of ownership or possession of motor fuel.

261 (74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

262 (75) "Refinery" means a facility for the manufacture or reprocessing of finished or
263 unfinished petroleum products usable as motor fuel and from which motor fuel may be removed
264 by pipeline or marine vessel or at a rack.

265 (76) "Removal" means a physical transfer other than by evaporation, loss or destruction.
266 A physical transfer to a transport vehicle or other means of conveyance outside the bulk
267 transfer/terminal system is complete upon delivery into the means of conveyance.

268 (77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a
269 retail location.

270 (78) "Retailer of alternative fuel" means a person who maintains storage facilities,
271 including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who
272 sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

273 (79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as
274 motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,

275 machine, or mechanical contrivance and includes products commonly known as natural or casing-
276 head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, ethanol, M100, ethanol fuel,
277 E100, ethanol fuel blend, E85 and any fuel mixture that contains 85 percent or more alcohol by
278 volume when combined with gasoline or other fuels and liquid fuel derived from coal through the
279 Fischer-Tropsch process. "Special fuel" does not include alternative fuel or any petroleum product
280 or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless
281 blended in or sold for use as motor fuel in an internal combustion engine.

282 (80) "State" or "this state" means the State of West Virginia.

283 (81) "Supplier" means a person that is:

284 (A) Subject to the general taxing jurisdiction of this state;

285 (B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor
286 fuel in the bulk transfer/terminal distribution system; and

287 (C) One of the following:

288 (i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently
289 be a position holder in motor fuel in another state; or

290 (ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

291 A terminal operator is not a supplier based solely on the fact that the terminal operator
292 handles motor fuel consigned to it within a terminal.

293 (82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes
294 within its meaning interest and additions to tax and penalties unless the context requires a more
295 limited meaning.

296 (83) "Taxpayer" means a person required to file a return for the tax imposed by this article
297 or a person liable for payment of the tax imposed by this article.

298 (84) "Terminal" means a motor fuel storage and distribution facility to which a terminal
299 control number has been assigned by the Internal Revenue Service, to which motor fuel is
300 supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

301 (85) "Terminal operator" means a person who owns, operates or otherwise controls a
302 terminal.

303 (86) "Transmix" means: (A) The buffer or interface between two different products in a
304 pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results
305 in an off-grade mixture.

306 (87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the
307 highway and includes a straight truck, a straight truck/trailer combination and a semitrailer
308 combination rig.

309 (88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and
310 receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

311 (89) "Two-party exchange" means a transaction in which motor fuel is transferred from
312 one licensed supplier or permissive supplier to another licensed supplier or permissive supplier
313 pursuant to an exchange agreement; and

314 (A) Includes a transfer from the person who holds the inventory position in taxable motor
315 fuel in the terminal as reflected on the records of the terminal operator;

316 (B) Is completed prior to removal of the product from the terminal by the receiving
317 exchange partner; and

318 (C) Is recorded on the terminal operator's books and records with the receiving exchange
319 partner as the supplier that removes the motor fuel across the terminal rack for purposes of
320 reporting the transaction to this state.

321 (90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor
322 vehicle, aircraft or watercraft.

323 (91) "Watercraft" means any vehicle used on waterways.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Lavin
.....
Clerk of the Senate

Steve Harner
.....
Clerk of the House of Delegates

Originated in the Senate.

To take effect July 1, 2023.

FILED
2023 MAR 29 P 1:24
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Cy P. Blawie
.....
President of the Senate

Don Hancock
.....
Speaker of the House of Delegates

The within is *approved* this the *29th*
Day of *March* 2023.

James O. Eastman
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2023

Time 2:54 pm