

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 683

BY SENATORS TARR AND PHILLIPS

[Passed March 9, 2024; in effect 90 days from
passage (June 7, 2024)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2024 MAR 21 P 5: 32

FILED

SB683 (veto)

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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 the motor fuel excise tax; modifying the definition of alternative fuel by removing
3 hydrogen as an alternative fuel; and providing a sunset date.

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
10 of timber for commercial purposes, or other activity that normally would not be included in
11 subdivision (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, and P-

21 series fuels. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation fuel, or
22 any special fuel. For purposes of this article electricity and hydrogen are not alternative fuels:
23 *Provided*, That on and after July 1, 2034, hydrogen may be considered an alternative fuel.

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

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

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

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

52 (8) "Article" or "this article" means §11-14C-1 *et.seq.* of this code.

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

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

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

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

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

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

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

71 (16) "Blending" means the mixing of one or more petroleum products, with or without
72 another product, regardless of the original character of the product blended, if the product

73 obtained by the blending is capable of use in the generation of power for the propulsion of a motor
74 vehicle, an airplane, or a marine vessel. Blending does not include mixing that occurs in the
75 process of refining by the original refiner of crude petroleum or the blending of products known
76 as lubricating oil in the production of lubricating oils and greases.

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

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

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

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

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

86 (D) Two-party exchange between licensed suppliers or between licensed suppliers and
87 permissive suppliers.

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

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

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

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

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

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

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

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

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

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

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

122 (30) "Destination state" means the state, territory, or foreign country to which motor fuel is
123 directed for delivery into a storage facility, a receptacle, a container, or a type of transportation

124 equipment for the purpose of resale or use. The term does not include a tribal reservation of a
125 recognized Native American tribe.

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

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

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

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

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

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

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

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

145 (39) "Fuel" means motor fuel.

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

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

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

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

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

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

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

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

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

170 (49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil,
171 #2 dyed fuel oil and kerosene that is burned in a boiler, furnace, or stove for heating or industrial
172 processing purposes.

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

175 (51) "Highway vehicle" means any self-propelled vehicle, trailer, or semitrailer that is
176 designed or used for transporting persons or property over the public highway and includes all
177 vehicles subject to registration under §17A-3-1 *et seq.* of this code.

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

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

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

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

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

192 (57) "Licensee" means a person licensed by the commissioner pursuant to §11-14C-10 of
193 this code.

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

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

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

201 or other watercraft or railroad locomotive transporting passengers or freight in or through this
202 state: *Provided*, That the gross vehicle weight rating of the vehicles being towed is in excess of
203 10,000 pounds. The term "motor carrier" does not include any type of recreational vehicle.

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

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

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

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

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

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

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

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

237 (68) "Principal" means:

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

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

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

241 (D) An individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

289 (C) One of the following:

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

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

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

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

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

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

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

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

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

311 (88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and
312 receives tax payments from and on behalf of another pursuant to §11-14C-24 of this code.

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

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

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

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

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

325 (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 Lamm
.....
Clerk of the Senate

Steve Arnold
.....
Clerk of the House of Delegates

FILED
2024 MAR 27 P 5:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect 90 days from passage.

CPBL
.....
President of the Senate

Don Hensley
.....
Speaker of the House of Delegates

The within is *disapproved* this the *27th*
Day of *March*, 2024.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2024

Time 3:20 pm