

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2826

FISCAL  
NOTE

By Delegates Ellington, Toney, Statler, Gearheart,

Storch, Mazzocchi, Smith and Kump

[Introduced January 19, 2023; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating  
2 to the motor fuel excise tax; and removing the variable rate component.

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

**ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

**§11-14C-5. Taxes levied; rate.**

1 (a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to  
2 \$.205 per invoiced gallon and, on alternative fuel, on each gallon equivalen. ~~plus a variable~~  
3 ~~component comprised of:~~

4 ~~(1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen b,~~  
5 ~~article fifteen of this chapter or the tax imposed under section thirteen a, article fifteen a of this~~  
6 ~~chapter, as applicable. The variable component shall be equal to five percent of the average~~  
7 ~~wholesale price of the motor fuel: *Provided*, That on and after January 1, 2010, the average~~  
8 ~~wholesale price shall be no less than \$2.34 per invoiced gallon and is computed as hereinafter~~  
9 ~~prescribed in this section: *Provided, however*, That on and after July 1, 2017, the average~~  
10 ~~wholesale price of motor fuel may not be determined to be less than \$3.04 per invoiced gallon for~~  
11 ~~all gallons of motor fuel sold during the reporting period notwithstanding any provision of this code~~  
12 ~~to the contrary and on and after July 1, 2017, the tax per gallon may not be less than 15.2 cents per~~  
13 ~~gallon of motor fuel; and~~

14 ~~(2) On alternative fuel, either the tax imposed by section eighteen b, article fifteen of this~~  
15 ~~chapter or the tax imposed under section thirteen a, article fifteen a of this chapter, as applicable.~~  
16 ~~The variable component of the tax on alternative fuel shall be equal to five percent of the average~~  
17 ~~wholesale price of the alternative fuel~~

18 (b) *Determination of average wholesale price.* —

19 (1) To simplify determining the average wholesale price of all motor fuel, the Tax  
20 Commissioner shall, effective with the period beginning the first day of the month of the effective  
21 date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel

22 for each annual period on the basis of sales data gathered for the preceding period of July 1  
23 through October 31. Notification of the average wholesale price of motor fuel shall be given by the  
24 Tax Commissioner at least 30 days in advance of each January 1 by filing notice of the average  
25 wholesale price in the State Register and by other means as the Tax Commissioner considers  
26 reasonable.

27 (2) The "average wholesale price" means the single, statewide average per gallon  
28 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal  
29 excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as  
30 determined by the Tax Commissioner from information furnished by suppliers, importers and  
31 distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and  
32 retailers of alternative fuel in this state, or other information regarding wholesale selling prices as  
33 the Tax Commissioner may gather or a combination of information. On and after January 1, 2010,  
34 in no event shall may the average wholesale price be determined to be less than \$2.34 per gallon  
35 of motor fuel: *Provided*, That on and after July 1, 2017, the average wholesale price may not be  
36 determined to be less than \$3.04 per gallon of motor fuel. On and after January 1, 2011, the  
37 average wholesale price shall may not vary by more than 10 percent from the average wholesale  
38 price of motor fuel as determined by the Tax Commissioner for the previous calendar year:  
39 *Provided, however*, That in no case shall may the average wholesale price of motor fuel be  
40 determined to be less than \$3.04 per invoiced gallon. Any limitation on the average wholesale  
41 price of motor fuel contained in this subsection shall may not be applicable to alternative fuel.

42 (3) All actions of the Tax Commissioner in acquiring data necessary to establish and  
43 determine the average wholesale price of motor fuel, in providing notification of his or her  
44 determination prior to the effective date of a change in rate, and in establishing and determining  
45 the average wholesale price of motor fuel may be made by the Tax Commissioner without  
46 compliance with ~~the provisions of~~ §29A-31 *et seq.* of this code.

47 (4) In an administrative or court proceeding brought to challenge the average wholesale

48 price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed  
49 to be correct and ~~shall~~ may not be set aside unless it is clearly erroneous.

50 (c) Every licensee who, on the effective date of any rate change, has in inventory any  
51 motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical  
52 inventory and file a report thereof with the commissioner, in the format as required by the  
53 commissioner, within 30 days after the effective date of the rate change, and shall pay to the  
54 commissioner at the time of filing the report any additional tax due under the increased rate.

55 (d) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon  
56 equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State  
57 Register and by other means that the Tax Commissioner considers reasonable. The Tax  
58 Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a  
59 notice of the gasoline gallon equivalent in the State Register at least 30 days in advance of  
60 January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner  
61 may adopt or incorporate by reference provisions of the National Institute of Standards and  
62 Technology, United States Department of Commerce, the Internal Revenue Code, United States  
63 Treasury Regulations, the Internal Revenue Service publications or guidelines or other  
64 publications or guidelines which may be useful in determining, setting or describing the gasoline  
65 gallon equivalent for each alternative fuel used as motor fuel.

66 (e) Effective date. — The amendments to this section enacted during the first extraordinary  
67 session of 2017 shall take effect on July 1, 2017.

NOTE: The purpose of this bill is to remove the variable gas tax rate.

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