

Senate Bill No. 461

(By Senators Walters, D. Hall and Plymale)

[Introduced February 12, 2015; referred to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-14-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-14C-2 of said code, all relating to definitions of motor carrier and various types of fuel; and exempting fuel used to propel railroad locomotives from Gasoline and Special Fuel Excise Tax and Motor Fuel Excise Tax.

Be it enacted by the Legislature of West Virginia:

That §11-14-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-14C-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-2. Definitions.

For purposes of this article:

(1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products, including, but not limited to, tank or barge strappings and other graduated lineal devices.

1 (2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

2 (3) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of
3 West Virginia or his or her duly authorized agent.

4 (4) "Distributor" or "producer" means and includes every person:

5 (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this
6 state for use or for sale;

7 (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale
8 or for distribution; or

9 (c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for
10 use or sale by ~~such~~ the person.

11 (5) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume:
12 *Provided*, That the commissioner may by rule prescribe other measurement or definition of gallon.

13 (6) "Gasoline" means any product commonly or commercially known as gasoline, regardless
14 of classification, suitable for use as fuel in an internal combustion engine, except special fuel as
15 defined in this section.

16 (7) "Highway" means every way or place of whatever nature open to the use of the public as
17 a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing
18 subdivision or unit of this state or the federal government or any of its agencies.

19 (8) "Importer" means every person, resident or nonresident, other than a distributor, who
20 receives gasoline or special fuel outside this state for use, sale or consumption within this state, but
21 ~~shall~~ does not include the fuel in the supply tank of a motor vehicle, or a person paying the motor
22 carrier road tax as provided ~~for~~ in article fourteen-a of this chapter.

1 (9) "Motor carrier" means any passenger vehicle which has seats for more than nine
2 passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more
3 than two axles which is operated or caused to be operated by any person on any highway in this state.

4 (10) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all
5 other vehicles or equipment, engines or machines which are operated or propelled by combustion
6 of gasoline or special fuel, but excludes railroad locomotives.

7 (11) "Person" means and includes any individual, firm, partnership, limited partnership, joint
8 venture, association, company, corporation, organization, syndicate, receiver, trust or any other group
9 or combination acting as a unit, in the plural as well as the singular number, and means and includes
10 the officers, directors, trustees or members of any firm, partnership, limited partnership, joint
11 venture, association, company, corporation, organization, syndicate, receiver, trust or any other group
12 or combination acting as a unit, in the plural as well as the singular number, unless the intention to
13 give a more limited meaning is disclosed by the context.

14 (12) "Petroleum carrier" means any person who hauls or transports gasoline or special fuel
15 within this state or on any navigable rivers which are within the jurisdiction of this state.

16 (13) "Purchase" means and includes any acquisition of ownership of property or of a security
17 interest for a consideration.

18 (14) "Receive" means any acquisition of ownership or possession of gasoline or special fuel.

19 (15) "Retail dealer" means any person not a distributor or producer who sells gasoline or
20 special fuel from a fixed location in this state to users.

21 (16) "Sale" means any transfer, exchange, gift, barter or other disposition of any property or
22 security interest for a consideration.

1 (17) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as
2 fuel in an internal combustion engine. The term "special fuel" includes products commonly known
3 as natural or casinghead gasoline, but ~~shall~~ does not include dyed diesel fuel or any fuel used to
4 propel a railroad locomotive, any petroleum product or chemical compound such as alcohol,
5 industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for
6 use as fuel in an internal combustion engine.

7 (18) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under United
8 States Environmental Protection Agency rules for high sulphur diesel fuel or is dyed under Internal
9 Revenue Service rules for low sulphur fuel or pursuant to any other requirements subsequently set
10 by the United States Environmental Protection Agency or Internal Revenue Service including any
11 invisible marker requirements that is sold for the exclusive use or consumption in off-highway
12 equipment and is exempt from excise taxation under federal law.

13 (19) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special
14 fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo
15 tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any
16 auxiliary tank or receptacle of any kind from which gasoline or special fuel is supplied for the
17 propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel
18 supply line of the vehicle.

19 (20) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or
20 cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

21 (21) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the
22 intention to give it a more limited meaning is disclosed by the context.

1 (22) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty
2 under the provisions of this article.

3 (23) "User" means any person who purchases gasoline or special fuel for use as fuel and uses
4 the fuel in an internal combustion engine owned or operated by that person.

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

6 **PART I. GENERAL PROVISIONS.**

7 **§11-14C-2. Definitions.**

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

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

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

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

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

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

20 (3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and
21 methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or
22 methanol by volume.

1 (4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as a
2 motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,
3 machine or mechanical contrivance and includes, but is not limited to, products commonly known
4 as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural
5 gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and
6 hydrogen. "Alternative fuel" does not include diesel fuel, dyed diesel fuel, gasoline, blended fuel,
7 aviation fuel, ~~or any special fuel~~ or any fuel used in a railroad locomotive. For purposes of this
8 article electricity is not an alternative fuel.

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

11 (6) "Alternative-fuel commercial refueling infrastructure" means property owned by a
12 commercial establishment and used for storing alternative fuels and for dispensing ~~such~~ the
13 alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the
14 alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles
15 or commercial vehicles other than those owned by the same person or entity that owns the
16 alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-fuel
17 vehicle commercial refueling infrastructure" includes, but is not limited to, compression equipment,
18 storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered:
19 *Provided*, That the property is not located on a private residence or private home. "Alternative-fuel
20 commercial refueling infrastructure" does not include any building, infrastructure, equipment,
21 apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid
22 electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure"

1 includes alternative-fuel vehicle commercial refueling infrastructure property as described in this
2 subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as
3 part of a residence for ~~such~~ the lessee or tenant.

4 (7) "Alternative-fuel home refueling infrastructure" means property owned by a private
5 individual for personal use that is located at the individual's private residence or private home and
6 used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor
7 vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing
8 units for alternative fuel at the point where the fuel is delivered. For purposes of this article,
9 "alternative-fuel home refueling infrastructure" does not include any building, infrastructure,
10 equipment, apparatus, terminal or connections for servicing, charging or providing electricity to
11 plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure"
12 does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or
13 landlord which is leased to or rented to a lessee or tenant as part of a residence for ~~such~~ the lessee
14 or tenant.

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

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

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

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

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

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

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

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

11 (16) "Blending" means the mixing of one or more petroleum products, with or without
12 another product, regardless of the original character of the product blended, if the product obtained
13 by the blending is capable of use in the generation of power for the propulsion of a motor vehicle,
14 an airplane or a marine vessel. Blending does not include mixing that occurs in the process of
15 refining by the original refiner of crude petroleum or the blending of products known as lubricating
16 oil in the production of lubricating oils and greases.

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

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

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

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

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

4 (D) Two-party exchange between licensed suppliers or between licensed suppliers and
5 permissive suppliers.

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

8 (20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of
9 refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal
10 or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal
11 system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is
12 not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a
13 marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk
14 transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for
15 ground transportation is not in the bulk transfer/terminal system.

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

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

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

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

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

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

8 (27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel
9 storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel
10 in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand gallons
11 and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

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

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

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

22 (31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as,

1 suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The
2 term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include dyed
3 diesel fuel, gasoline, or aviation fuel or any fuel used to propel a railroad locomotive.

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

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

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

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

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

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

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

19 (39) "Fuel" means motor fuel.

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

22 (41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is

1 supplied for the propulsion of the motor vehicle.

2 (42) "Gallon" means a unit of liquid measure as customarily used in the United States
3 containing two hundred thirty-one cubic inches by volume and expresses the volume at 60 degrees
4 Fahrenheit.

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

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

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

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

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

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

22 (49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil,

1 #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial
2 processing purposes.

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

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

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

11 (53) "Importer" means a person that imports motor fuel into this state. The seller is the
12 importer for motor fuel delivered into this state from outside of this state by or for the seller and the
13 purchaser is the importer for motor fuel delivered into this state from outside of this state by or for
14 the purchaser.

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

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

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

22 (57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this

1 article.

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

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

5 (60) "Motor carrier" means a vehicle used, designated or maintained for the transportation
6 of persons or property and having two axles and a gross vehicle weight exceeding twenty-six
7 thousand pounds or having three or more axles regardless of weight or used in combination when
8 the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle
9 weight, and any aircraft, barge or other watercraft ~~or railroad locomotive~~ transporting passengers or
10 freight in or through this state: *Provided*, That the gross vehicle weight rating of the vehicles being
11 towed is in excess of ten thousand pounds. The term "motor carrier" does not include any type of
12 recreational vehicle or any type of railroad locomotive.

13 (61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and alternative
14 fuel, but does not include any type of fuel used to propel a railroad locomotive.

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

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

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

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

10 (66) "Person" means an individual, firm, cooperative, association, corporation, limited
11 liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate,
12 partnership, limited partnership, copartnership, organization, limited liability partnership, joint
13 venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group or
14 combination acting as a unit, a public body including, but not limited to, this state and any other state
15 and an agency, commissioner, institution, political subdivision or instrumentality of this state or any
16 other state and, also, an officer, employee or member of any of the foregoing who, as an officer,
17 employee or member, is under a duty to perform or is responsible for the performance of an act
18 prescribed by the provisions of this article.

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

1 operator who owns motor fuel in the terminal.

2 (68) "Principal" means:

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

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

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

6 (D) An individual.

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

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

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

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

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

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

21 (71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine
22 vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is

1 outside the bulk transfer/terminal system.

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

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

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

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

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

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

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

17 (79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as
18 motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,
19 machine, or mechanical contrivance and includes products commonly known as natural or
20 casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol,
21 methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains
22 eighty-five percent or more alcohol by volume when combined with gasoline or other fuels and

1 liquid fuel derived from coal through the Fischer-Tropsch process. "Special fuel" does not include
2 alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent,
3 heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal
4 combustion engine. "Special fuel" does not include dyed diesel fuel, transmix, or any type of fuel
5 used to propel a railroad locomotive.

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

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

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

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

11 (C) One of the following:

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

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

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

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

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

22 (84) "Terminal" means a motor fuel storage and distribution facility to which a terminal

1 control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied
2 by pipeline or marine vessel and from which motor fuel may be removed at a rack.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to properly exempt fuel used to propel railroad locomotives from the Gasoline and Special Fuel Excise Tax and the Motor Fuel Excise Tax.

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