

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 619**

BY SENATORS CLEMENTS, SMITH, AND SWOPE

[Introduced January 24, 2020; referred  
to the Committee on Transportation and  
Infrastructure; and then to the Committee on Finance]

1 A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended,  
 2 relating to the motor fuel excise tax; creating an annual adjustment to the motor fuel  
 3 excise tax; and providing for a mechanism for calculating the adjustment.

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

<b>ARTICLE</b>	<b>14C.</b>	<b>MOTOR</b>	<b>FUEL</b>	<b>EXCISE</b>	<b>TAX.</b>
<b>§11-14C-5.</b>		<b>Taxes</b>		<b>levied;</b>	<b>rate.</b>

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 equivalent, plus a variable  
 3 component comprised of:

4 (1) On motor fuel other than alternative fuel, either the tax imposed by §11-15-18b of this  
 5 code or the tax imposed under §11-15-13a of this code, as applicable. The variable component  
 6 shall be equal to five percent of the average wholesale price of the motor fuel: *Provided*, That on  
 7 and after January 1, 2010, the average wholesale price shall be no less than \$2.34 per invoiced  
 8 gallon and is computed as hereinafter prescribed in this section: *Provided, however*, That on  
 9 and after July 1, 2017, the average wholesale price of motor fuel may not be determined to be  
 10 less than \$3.04 per invoiced gallon for all gallons of motor fuel sold during the reporting period  
 11 notwithstanding any provision of this code to the contrary and on and after July 1, 2017, the tax  
 12 per gallon may not be less than 15.2 cents per gallon of motor fuel; and

13 (2) On alternative fuel, either the tax imposed by §11-15-18b of this code or the tax  
 14 imposed under §11-15-13a of this code, as applicable. The variable component of the tax on  
 15 alternative fuel shall be equal to five percent of the average wholesale price of the alternative  
 16 fuel.

17 (b) Effective July 1, 2020, the motor fuel excise tax as set forth in subsection (a) of this  
 18 section shall be annually adjusted, if appropriate. The adjustment shall be based on increases  
 19 in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The  
 20 annual adjustment shall become effective on December 1, of each year and shall be equal to

21 the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and  
22 Clerical Workers (CPI-W) from the average of the third quarter of the current calendar year to  
23 the average of the third quarter of the preceding year. Any increase shall be rounded to the  
24 nearest tenth of one percent. If there is not an increase, or if the rounded increase is zero, there  
25 will be no increase to the motor fuel excise tax for that year.

26 (c) The Tax Commissioner shall propose procedural rules to effectuate the provisions of  
27 subsection (b) of this section.

28 ~~(b)~~ (d) Determination of average wholesale price. —

29 (1) To simplify determining the average wholesale price of all motor fuel, the Tax  
30 Commissioner shall, effective with the period beginning the first day of the month of the effective  
31 date of the tax and each January 1 thereafter, determine the average wholesale price of motor  
32 fuel for each annual period on the basis of sales data gathered for the preceding period of July 1  
33 through October 31. Notification of the average wholesale price of motor fuel shall be given by  
34 the Tax Commissioner at least 30 days in advance of each January 1 by filing notice of the  
35 average wholesale price in the State Register and by other means as the Tax Commissioner  
36 considers reasonable.

37 (2) The “average wholesale price” means the single, statewide average per gallon  
38 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and  
39 federal excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel  
40 as determined by the Tax Commissioner from information furnished by suppliers, importers and  
41 distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and  
42 retailers of alternative fuel in this state, or other information regarding wholesale selling prices  
43 as the Tax Commissioner may gather or a combination of information. On and after January 1,  
44 2010, in no event shall the average wholesale price be determined to be less than \$2.34 per  
45 gallon of motor fuel: *Provided*, That on and after July 1, 2017, the average wholesale price may  
46 not be determined to be less than \$3.04 per gallon of motor fuel. On and after January 1, 2011,

47 the average wholesale price shall not vary by more than ten percent from the average  
48 wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar  
49 year: *Provided, however,* That in no case shall the average wholesale price of motor fuel be  
50 determined to be less than \$3.04 per invoiced gallon. Any limitation on the average wholesale  
51 price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

52 (3) All actions of the Tax Commissioner in acquiring data necessary to establish and  
53 determine the average wholesale price of motor fuel, in providing notification of his or her  
54 determination prior to the effective date of a change in rate, and in establishing and determining  
55 the average wholesale price of motor fuel may be made by the Tax Commissioner without  
56 compliance with the provisions of §29A-3-1 *et seq.* of this code.

57 (4) In an administrative or court proceeding brought to challenge the average wholesale  
58 price of motor fuel as determined by the Tax Commissioner, his or her determination is  
59 presumed to be correct and shall not be set aside unless it is clearly erroneous.

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

65 ~~(d)~~ (f) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon  
66 equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the  
67 State Register and by other means that the Tax Commissioner considers reasonable. The Tax  
68 Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing  
69 a notice of the gasoline gallon equivalent in the State Register at least 30 days in advance of  
70 January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner  
71 may adopt or incorporate by reference provisions of the National Institute of Standards and  
72 Technology, United States Department of Commerce, the Internal Revenue Code, United

73 States Treasury Regulations, the Internal Revenue Service publications or guidelines or other  
74 publications or guidelines which may be useful in determining, setting or describing the gasoline  
75 gallon equivalent for each alternative fuel used as motor fuel.

76 ~~(e)~~ (g) *Effective date.* — ~~The amendments to this section enacted during the first~~  
77 ~~extraordinary session of 2017 shall take effect on July 1, 2017~~ The amendments to this section  
78 enacted during the 2020 Regular Session of the Legislature shall take effect on July 1, 2020.

NOTE: The purpose of this bill is to create an annual adjustment to the motor fuel excise tax and provide for a mechanism for calculating the adjustment.

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