

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

## **House Bill 2997**

BY DELEGATES HAYNES, GRAVES, J. PACK, KESSINGER,  
PHILLIPS, STEELE, BATES, HANNA, TONEY AND G. WARD

[Passed April 10, 2021; in effect from passage.]



1 AN ACT to amend and reenact §11-14C-34 of the Code of West Virginia, as amended, relating  
2 to transportation of motor fuel; removing requirement that bulk plants issue shipping  
3 documents; requiring shipping documents for motor fuel loaded at a terminal rack;  
4 requiring notices to and from the commissioner's designated agency related to the  
5 diversion of motor fuel; and adding a defense to the civil penalty imposed for delivery of  
6 motor fuel to a state other than the destination state that is printed on the shipping  
7 document for the motor fuel.

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

**§11-14C-34. Shipping documents; transportation of motor fuel; civil penalty.**

1 (a) A person shall not transport motor fuel loaded at a terminal rack unless the person has  
2 a shipping document, that complies with this section. A terminal operator shall give a shipping  
3 document to the person who operates the means of conveyance into which motor fuel is loaded  
4 at the terminal rack.

5 (b) The shipping document issued by the terminal operator shall contain the following  
6 information and any other information required by the commissioner:

7 (1) Identification, including address, of the terminal or bulk plant from which the motor fuel  
8 was received;

9 (2) Date the motor fuel was loaded;

10 (3) Invoiced gallons loaded;

11 (4) Destination state of the motor fuel as represented by the purchaser of the motor fuel  
12 or the purchaser's agent;

13 (5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase  
14 "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;

15 (6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase  
16 "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase; and

17 (7) If the document is issued by a terminal operator, the invoiced gallons loaded and a  
18 statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

19 (c) A terminal operator or bulk plant operator may rely on the representation made by the  
20 purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor  
21 fuel. In the event that either the terminal operator, purchaser or transporter determines prior to  
22 the shipment of motor fuel leaving the terminal that the destination state indicated on the shipping  
23 document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this  
24 section shall be used to obtain authorization to deliver the motor fuel to a different state. A  
25 purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the  
26 represented destination state.

27 (d) A person to whom a shipping document was issued shall:

28 (1) Carry the shipping document in the means of conveyance for which it was issued when  
29 transporting the motor fuel described;

30 (2) Show the shipping document upon request to any law-enforcement officer,  
31 representative of the commissioner and any other authorized individual when transporting the  
32 motor fuel described;

33 (3) Deliver motor fuel to the destination state printed on the shipping document unless the  
34 person:

35 (A) Notifies the commissioner's designated entity by the next business day that the person  
36 has received instructions after the shipping document was issued to deliver the motor fuel to a  
37 different destination state;

38 (B) Receives from the commissioner's designated entity, a confirmation number  
39 authorizing the diversion;

40 (C) Records with the shipping document the change in destination state and the  
41 confirmation number for the diversion; and

42 (4) Provides the confirmation number for the diversion to the person to whom the motor  
43 fuel is delivered.

44 (e) The person to whom motor fuel is delivered by any means of conveyance shall not  
45 accept delivery of the motor fuel if the destination state shown on the shipping document for the  
46 motor fuel is a state other than West Virginia: *Provided*, That delivery may be accepted if the  
47 destination state is other than West Virginia if the document contains a diversion number  
48 authorized by the commissioner's designated entity. The person to whom the motor fuel is  
49 delivered shall examine the shipping document to determine that West Virginia is the destination  
50 state and shall retain a copy of the shipping document: (1) At the place of business where the  
51 motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or  
52 another place for at least three years following the date of delivery. The person who accepts  
53 delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor  
54 fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor  
55 fuel.

56 (f) Any person who transports motor fuel by any means of conveyance without a shipping  
57 document or with a false or an incomplete shipping document or delivers motor fuel to a  
58 destination state other than the destination state shown on the shipping document, is subject to  
59 the following civil penalty.

60 (1) If the motor fuel is transported in a barge, watercraft, or transport vehicle, the civil  
61 penalty shall be payable by the person in whose name the means of conveyance is registered.

62 (2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable  
63 by the person responsible for shipping the motor fuel in the railroad tank car.

64 (3) The amount of the civil penalty for a first violation is \$5,000.

65 (4) The amount of the civil penalty for each subsequent violation, after notice to correct  
66 the shipping document, is \$10,000.

67           (5) Civil penalties prescribed under this section are assessed, collected, and paid in the  
68 same manner as the motor fuel excise tax imposed by this article.

69           (g) Penalty Defense. - Compliance with the conditions set out in this subsection is a  
70 defense to a civil penalty imposed under subsection (f) of this section, resulting from the delivery  
71 of motor fuel to a state other than the destination state printed on the shipping document for the  
72 motor fuel. The commissioner shall waive a penalty imposed against the person who transported  
73 the motor fuel under that subsection, if that person establishes a defense under this subsection.  
74 The conditions for the defense are:

75           (1) The person who transported the motor fuel notified the commissioner's designated  
76 entity of the diversion and received a confirmation number for the diversion before the imposition  
77 of the penalty; and

78           (2) Unless the person is a motor fuel transporter, the tax was timely paid on the diverted  
79 motor fuel.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*