

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2997

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

[Introduced March 09, 2021; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §11-14C-34 of the Code of West Virginia, as amended, relating to
2 adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other
3 than the destination state printed on the shipping document for fuel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

**§11-14C-34. Shipping documents; transportation of motor fuel ~~by barge, watercraft,~~
~~railroad tank car or transport truck; civil penalty.~~**

1 A person shall not transport motor fuel loaded at a terminal rack ~~or bulk plant rack in this~~
2 ~~state any motor fuel by barge, watercraft, railroad tank car or transport vehicle~~ unless the person
3 has a ~~machine-generated~~ shipping document for its transportation including ~~applicable multiple~~
4 ~~copies thereof, for the motor fuel that complies with this section. Provided, That in the event a~~
5 ~~terminal operator or operator of a bulk plant does not have installed on January 1, 2004, an~~
6 ~~automated machine that will print machine-generated shipping documents, the commissioner~~
7 ~~may authorize the terminal operator or operator of a bulk plant to issue manually prepared~~
8 ~~shipping documents: *Provided, however,* That in the event of an extraordinary unforeseen~~
9 ~~circumstance, including an act of God, that temporarily interferes with the ability to issue an~~
10 ~~automated machine-generated shipping document, a manually prepared shipping document that~~
11 ~~contains all of the information required by subsection (b) of this section shall be substituted for~~
12 ~~the machine-generated shipping document~~ A terminal operator ~~or operator of a bulk plant~~ shall
13 give a shipping document to the person who operates the means of conveyance ~~barge, watercraft,~~
14 ~~railroad tank car or transport vehicle~~ into which motor fuel is loaded at the terminal rack ~~or bulk~~
15 ~~plant rack.~~

16 (b) The shipping document issued by the terminal operator shall be machine-printed ~~or~~
17 ~~operator of a bulk plant~~ and shall contain the following information and any other information
18 required by the commissioner:

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

21 (2) Date the motor fuel was loaded;

22 (3) Invoiced gallons loaded;

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

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

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

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

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

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

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

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

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

47 (A) Notifies the commissioner designated entity by the next business day before
48 transporting the motor fuel into a state other than the printed destination state that the person has
49 received instructions after the shipping document was issued to deliver the motor fuel to a different
50 destination state;

51 (B) Receives from the commissioner designated entity a confirmation number authorizing
52 the diversion; and

53 (C) Records with ~~Writes on~~ the shipping document the change in destination state and the
54 confirmation number for the diversion; and

55 ~~(4)~~ (D) Provides the confirmation number for the diversion ~~Gives a copy of the shipping~~
56 ~~document~~ to the person to whom the motor fuel is delivered.

57 (e) The person to whom motor fuel is delivered by any means of conveyance ~~barge,~~
58 ~~watercraft, railroad tank car or transport vehicle~~ shall not accept delivery of the motor fuel if the
59 destination state shown on the shipping document for the motor fuel is a state other than West
60 Virginia: *Provided*, That delivery may be accepted if the destination state is other than West
61 Virginia if the document contains a diversion number authorized by the commissioner designated
62 entity. The person to whom the motor fuel is delivered shall examine the shipping document to
63 determine that West Virginia is the destination state and shall retain a copy of the shipping
64 document: (1) At the place of business where the motor fuel was delivered for 90 days following
65 the date of delivery; and (2) at the place or another place for at least three years following the
66 date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and
67 any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and
68 severally liable for any tax due on the motor fuel.

69 (f) Any person who transports motor fuel by any means of conveyance ~~in a barge,~~
70 ~~watercraft, railroad tank car or transport vehicle~~ without a shipping document or with a false or an

71 incomplete shipping document, or delivers motor fuel to a destination state other than the
72 destination state shown on the shipping document, is subject to the following civil penalty.

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

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

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

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

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

82 (g) Penalty Defense. - Compliance with the conditions set out in this subsection is a
83 defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery
84 of fuel to a state other than the destination state printed on the shipping document for the fuel.
85 The commissioner must waive a penalty imposed against a person under that subsection if the
86 person establishes a defense under this subsection. The conditions for the defense are:

87 (1) The person notified the commissioner designated entity of the diversion and received
88 a confirmation number for the diversion before the imposition of the penalty; and

89 (2) Tax was timely paid on the diverted fuel, unless the person is a motor fuel transporter.

NOTE: The purpose of this bill is to add a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

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