

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 104

FISCAL  
NOTE

BY SENATORS CLEMENTS, JEFFRIES, AND LINDSAY

[Introduced January 12, 2022; 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, relating  
2 to the motor fuel excise tax; creating an annual adjustment to the motor fuel excise tax;  
3 and providing a mechanism for calculating the adjustment.

*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 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 and  
9 after July 1, 2017, the average wholesale price of motor fuel may not be determined to be less  
10 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 fuel.

16 (b) Effective July 1, 2022, the motor fuel excise tax as set forth in subsection (a) of this  
17 section shall be annually adjusted, if appropriate. The adjustment shall be based on increases in  
18 the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The annual  
19 adjustment shall become effective on December 1 of each year and shall be equal to the  
20 percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical

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

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

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

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

36 (2) The “average wholesale price” means the single, statewide average per gallon  
37 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal  
38 excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as  
39 determined by the Tax Commissioner from information furnished by suppliers, importers and  
40 distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and  
41 retailers of alternative fuel in this state, or other information regarding wholesale selling prices as  
42 the Tax Commissioner may gather or a combination of information. On and after January 1, 2010,  
43 in no event shall the average wholesale price be determined to be less than \$2.34 per gallon of  
44 motor fuel: *Provided*, That on and after July 1, 2017, the average wholesale price may not be  
45 determined to be less than \$3.04 per gallon of motor fuel. On and after January 1, 2011, the  
46 average wholesale price shall not vary by more than 10 percent from the average wholesale price

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

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

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

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

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

73 publications or guidelines which may be useful in determining, setting or describing the gasoline  
74 gallon equivalent for each alternative fuel used as motor fuel.

75 ~~(e)~~ (g) *Effective date.* — ~~The amendments to this section enacted during the first~~  
76 ~~extraordinary session of 2017 shall take effect on July 1, 2017.~~ The amendments to this section  
77 enacted during the 2022 Regular Session of the Legislature shall take effect on July 1, 2022.

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.