



2011 ASSEMBLY BILL 416

December 7, 2011 - Introduced by Representatives BALLWEG, BERNIER, BROOKS, JACQUE, KESTELL, MARKLEIN, RIPP, SPANBAUER, VAN ROY and WYNN, cosponsored by Senators OLSEN, GALLOWAY and HOLPERIN. Referred to Committee on Transportation.

1 **AN ACT** *to amend* 895.446 (5); and *to create* 341.17 (9) (c) 5. and 895.449 of the
2 statutes; **relating to:** collection of money owed for failure to pay for gasoline
3 or diesel fuel and obtaining information with personal identifiers from the
4 Department of Transportation.

Analysis by the Legislative Reference Bureau

Current law prohibits a person who has obtained fuel from a service station, garage, or other place where gasoline or diesel fuel is offered for retail sale from intentionally absconding without paying for the fuel. A person who commits this offense may be subject to a forfeiture of not more than \$200. In addition, current law provides for a special civil action by which a victim of an absconding offense (fuel retailer) may recover the value of the fuel taken, the value of other property damage resulting from the absconding offense, and limited exemplary damages and attorney fees.

This bill offers another option for civil redress for a fuel retailer who suffers a loss as the result of a person absconding without paying for fuel. Under the bill, the fuel retailer may submit to an association that represents the interests of retail businesses that sell gasoline or diesel fuel (association) an affidavit stating the time and date the violation occurred, the registration plate number of the vehicle that received the fuel, and the retail value of the fuel that was taken. The bill gives the association, if it or anyone acting on its behalf has obtained a surety bond of at least \$25,000, the right to obtain from the Department of Transportation the name and address of the person to whom the vehicle is registered. The association may provide

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the fuel retailer with the name and address of the person to whom the vehicle is registered.

Under the bill, the fuel retailer may send a letter to the person to whom the vehicle is registered stating the details of the violation and requesting that the person to whom the vehicle is registered pay, within 30 days, the value of the fuel and a \$30 service fee. If the person does not pay the requested amount, the fuel retailer may file a civil suit to collect that amount, plus court costs. Under the bill, the affidavit submitted by the fuel retailer to the association constitutes prima facie evidence that the person to whom the vehicle is registered intended to abscond without paying for fuel.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 341.17 (9) (c) 5. of the statutes is created to read:

2 341.17 **(9)** (c) 5. An association, as defined in s. 895.449 (1), obtaining
3 registration information for use in providing information under s. 895.449, if the
4 association uses the personal identifiers designated for nondisclosure under s.
5 85.103 (2) or (3) for this purpose. Notwithstanding par. (e), no person receiving a
6 personal identifier under this subdivision may disclose the personal identifier to
7 another person for marketing purposes.

8 **SECTION 2.** 895.446 (5) of the statutes is amended to read:

9 895.446 **(5)** No person may bring a cause of action under both this section and
10 s. 95.195, 895.449, 943.212, 943.245 or 943.51 regarding the same incident or
11 occurrence. If the plaintiff has a cause of action under both this section and s.
12 895.449, 943.212, 943.245 or 943.51 regarding the same incident or occurrence, the
13 plaintiff may choose which action to bring. If the plaintiff has a cause of action under
14 both this section and s. 95.195, the plaintiff must bring the action under s. 95.195.

15 **SECTION 3.** 895.449 of the statutes is created to read:

16 **895.449 Action for loss caused by failure to pay for gasoline or diesel**
17 **fuel. (1)** In this section:

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1 (a) "Association" means a membership organization whose membership is
2 composed of retail businesses that sell gasoline or diesel fuel.

3 (b) "Fuel retailer" means a person who suffers a loss as the result of a violation
4 of s. 943.21 (1m) (d).

5 (c) "Vehicle owner" means a person who holds the legal title of the vehicle that
6 received gasoline or diesel fuel involved in a violation of s. 943.21 (1m) (d).

7 **(2)** Any fuel retailer has a cause of action against a vehicle owner whose vehicle
8 was involved in a violation of s. 943.21 (1m) (d). The fuel retailer may provide an
9 association with an affidavit specifying the time and date that the violation occurred,
10 the registration plate number of the vehicle that received the gasoline or diesel fuel,
11 and the retail value of gasoline or diesel fuel involved in the violation.

12 **(3)** Upon receipt by an association of an affidavit under sub. (2), that
13 association may obtain from the department of transportation, based on the
14 registration plate number of the motor vehicle that received the gasoline or diesel
15 fuel in violation of s. 943.21 (1m) (d), identifying information regarding the owner of
16 that motor vehicle and may forward the identifying information to the person who
17 provided the affidavit under sub. (2). Any person acting under this subsection on
18 behalf of the association shall obtain a bond endorsed by a surety company
19 authorized to do business in this state of not less than \$25,000.

20 **(4)** The fuel retailer may send a letter by 1st class mail to the vehicle owner at
21 the address obtained under sub. (3), requesting payment of the amount owed for the
22 unpaid gasoline or diesel fuel, plus a \$30 service fee. The letter shall include the time
23 and date of the violation, the registration plate number of the vehicle that received
24 the gasoline or diesel fuel, and a statement that if the vehicle owner fails to pay the
25 amount demanded within 30 days of receipt of the letter, the association will

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1 commence a court action to collect that amount. If a vehicle owner fails to make the
2 payment owed within 30 days of his or her receipt of the letter, the fuel retailer may
3 commence an action in circuit court to collect the amount demanded.

4 (5) If the fuel retailer brings an action under this section, the affidavit provided
5 to the association under sub. (2) shall be prima facie evidence of the vehicle owner's
6 intent to violate s. 943.21 (1m) (d). If the fuel retailer prevails in an action brought
7 under this section, the fuel retailer shall be entitled to the amount of the loss
8 incurred, the \$30 service fee, and court costs.

9 (END)