



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 416	Assembly Amendment 1
<i>Memo published: February 10, 2012</i>	<i>Contact: Mike Queensland, Staff Attorney (266-3810)</i>

Under *current law*, obtaining gasoline or diesel fuel from a fuel retailer and intentionally absconding without paying for the gasoline or diesel fuel is prohibited. A person who commits this offense may be required to forfeit an amount not to exceed \$200, in addition to any restitution ordered by a judge. In the alternative, a fuel retailer may bring a civil action against the person who committed the offense and may recover the value of the fuel taken, the value of any other property damaged, limited exemplary damages, and reasonable attorney fees. The total amount of exemplary damages and attorney fees may not be greater than \$300.

2011 Assembly Bill 416 would give fuel retailers another option for civil redress. In the event that a person intentionally takes gasoline or diesel fuel from a fuel retailer without paying, the fuel retailer would be able to recover damages by taking the following steps:

1. The fuel retailer would submit an affidavit to an association that represents the interests of retail businesses that sell gasoline stating:
 - a. The time and date that the violation occurred.
 - b. The registration plate number of the vehicle involved in the violation.
 - c. The retail value of the fuel taken.
2. The association may then obtain from the Department of Transportation the name and address of the person to whom the vehicle is registered. Anyone acting on the association's behalf must have obtained a \$25,000 surety bond.
3. The association may provide the fuel retailer with the name and address of the person that has registered the vehicle.

4. The fuel retailer may then send a letter to the person that has registered the vehicle. The letter must state the details of the violation and request payment within 30 days for the value of the fuel and a \$30 service fee.
5. The fuel retailer must bring a civil action if the person that the letter was sent to does not pay for the value of the fuel and the \$30 service fee. In the event of a civil action, the affidavit mentioned above would be prima facie evidence of the vehicle owner's intent to violate the law.

Assembly Amendment 1 eliminates the bonding requirement for a person acting on behalf of a fuel retailers association. Additionally, the amendment removes the requirement that a fuel retailer demand a \$30 service fee and instead allows a fuel retailer to request a service fee of up \$30. The amendment also allows a fuel retailer to forgo commencing a civil action in the event that a vehicle owner does not pay the requested amount. Furthermore, the amendment removes the provision that requires a court to find an affidavit as prima facie evidence of a vehicle owner's intent to violate the law.

Legislative History

Assembly Amendment 1 was offered by Representative Ballweg. On February 7, 2012, the Assembly Committee on Transportation recommended adoption of Assembly Amendment 1 on a vote of Ayes, 13; Noes, 1. The committee then recommended passage of Assembly Bill 416, as amended, on a vote of Ayes, 13; Noes, 1.

MQ:ksm