



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2011 Senate Bill 314**

**Senate  
Amendment 1**

*Memo published:* February 27, 2012

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### **Current Law**

Under current law, an individual who obtains gasoline or diesel fuel from a fuel retailer and intentionally absconds without paying for it may be required to forfeit an amount not to exceed \$200. A judge may also order that individual to pay restitution. Current law also permits a fuel retailer to bring a civil action against a person who intentionally absconds without paying for gasoline or diesel fuel. A retailer who brings such an action 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 Senate Bill 314**

2011 Senate Bill 314 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. Under the process the bill provides, a fuel retailer could submit an affidavit to an association representing the interests of fuel retailers stating: (a) the time and date the violation occurred; (b) the registration plate number of the vehicle involved in the violation; and (c) the retail value of the fuel taken.

The association would then obtain the name and address of the person to whom the vehicle is registered from the Department of Transportation and provide this information to the fuel retailer. Anyone acting on the association's behalf would be required to have obtained a surety bond of not less than \$25,000. The fuel retailer would then send a letter to the person to whom the vehicle is registered, stating the details of the violation and requesting payment within 30 days for the value of the fuel and a \$30 service fee. If the vehicle owner did not pay the amount demanded, the association would commence a court action to recover that amount. In such an action, the affidavit described above would

be prima facie evidence of the vehicle owner's intent to violate the statutory prohibition against absconding without paying for fuel.

**Senate Amendment 1**

Senate 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 to \$30. The amendment also specifies that *a fuel retailer may* commence a court action if the vehicle owner does not pay the requested amount (the bill provided that *the association will* commence an action). Finally, the amendment removes the provision that a fuel retailer's affidavit is prima facie evidence a vehicle owner intended to violate the law.

**Legislative History**

Senate Amendment 1 was offered by Senator Olsen on February 6, 2012. On February 16, 2012 the Senate Committee on Transportation and Elections unanimously recommended adoption of Senate Amendment 1 and passage of Senate Bill 314, as amended.

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