

2001 DRAFTING REQUEST

Bill

Received: 04/03/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Phil Montgomery (608) 266-5840

By/Representing: John

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Theft of gasoline or diesel fuel

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 05/17/2001	gilfokm 05/17/2001		_____			State
/1	mdsida 05/31/2001	gilfokm 05/31/2001 jdyer 09/12/2001	pgreensl 05/25/2001	_____	lrb_docadmin 05/31/2001		S&L
/2			pgreensl 09/12/2001	_____	lrb_docadmin 09/12/2001	lrb_docadmin 09/21/2001	

FE Sent For:

↳ At
Intro

<END>

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/1	mdsida 05/31/2001	gilfokm 05/31/2001	pgreensl 05/25/2001		lrb_docadmin 05/31/2001		

Handwritten notes: 1/2 9/12 jld, 9/10 p8, and other initials.

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Extra Copies: RLR

PJA

TNF

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1?	mdsida	1-5/Kmg 1-22-01	5/25 P8	5/25 pg 1			

FE Sent For:

<END>

Kennedy, Debora

From: Flynn, John
Sent: Tuesday, April 03, 2001 4:29 PM
To: Kennedy, Debora
Subject: Drafting Request

Importance: High
Sensitivity: Confidential

Please re-draft 1999 AB 946 for introduction as an assembly bill in the 2001 session. This request is not more important than other request pending at the LRB. Contacts for this request are: John Flynn, Office of Rep. Montgomery; Rose Smyrski, Office of Rep. Montgomery; Rep. Montgomery. Do not discuss this request with any others.

Jefren Olsen was the lead drafter last session.

Please contact John Flynn at this e-mail address or phone 266-5840 should you have questions or comments.

Thank you in advance for your assistance.

99-4708/1



State of Wisconsin
1999 - 2000 LEGISLATURE

3018/1

LRB-4708/1

JEO:jif

mejd Kg

1999 BILL

LPS: Proof all amended
stats w/ FOLIO

Ken. Cat

1 AN ACT to renumber and amend 943.21 (3); to amend 343.10 (1) (a), 343.10 (2)
2 (a) 1., 343.30 (5), 943.21 (title), 943.212 (title), 943.212 (1) (a) and 943.212 (4);
3 and to create 943.21 (1) (d), 943.21 (2r), 943.21 (3) (bm) and 943.21 (3m) of the
4 statutes; relating to: failure to pay for gasoline or dicsel fuel, ^{and} suspension of
5 operating privileges after conviction for theft of gasoline or diesel fuel and
6 providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from intentionally absconding without paying for taxicab service or without paying for beverage, food, lodging or other service or accommodation at a hotel, motel, campground, boarding or lodging house, or restaurant. If a person is convicted of violating this prohibition, he or she may be fined not more than \$10,000 or imprisoned for not more than nine months or both, except that the maximum term of imprisonment increases to five years if the value of the service or accommodation exceeds \$1,000. In addition, current law provides for a special civil action for victims of this crime. Using this special civil action, a victim may recover the value of the service or accommodation involved in the crime, any other property damage resulting from the crime and limited exemplary damages and attorney fees.

This bill prohibits a person from intentionally absconding from a service station, garage or other place where gasoline or diesel fuel is sold at retail or offered

BILL

for sale at retail without paying for the gasoline or diesel fuel. A person who violates this prohibition may be subject to a forfeiture (a civil monetary penalty) of not more than \$200. The bill also provides that in addition to the forfeiture, a court must suspend the person's motor vehicle operating privileges for not more than six months, except that the court must suspend the person's operating privileges for one year if the person has previously been convicted of absconding without paying for gasoline or diesel fuel. Finally, the bill extends the special civil action that covers crimes for absconding for services or accommodations to cover offenses involving absconding without paying for gasoline or diesel fuel.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 343.10 (1) (a) of the statutes is amended to read:

2 343.10 (1) (a) If a person's license or operating privilege is revoked or
3 suspended under this chapter or s. 767.303, 943.21 (3m) or 961.50 and if the person
4 is engaged in an occupation, including homemaking or full-time or part-time study,
5 or a trade making it essential that he or she operate a motor vehicle, the person, after
6 payment of the fee provided in sub. (6), may file an application with the department
7 setting forth in detail the need for operating a motor vehicle. No person may file more
8 than one application with respect to each revocation or suspension of the person's
9 license or operating privilege under this chapter or s. 767.303, 943.21 (3m) or 961.50,
10 except that this limitation does not apply to an application to amend an occupational
11 license restriction.

12 **SECTION 2.** 343.10 (2) (a) 1. of the statutes is amended to read:

13 343.10 (2) (a) 1. Except for a revocation or suspension that arose out of the same
14 incident or occurrence for which the person's license or operating privilege is
15 currently revoked or suspended, the person's license or operating privilege was not
16 revoked or suspended previously under this chapter or ch. 344 or s. 943.21 (3m) or

BILL

1 961.50 within the one-year period immediately preceding the present revocation or
2 suspension, except as provided in s. 344.40.

3 **SECTION 3.** 343.30 (5) of the statutes is amended to read:

4 343.30 (5) No court may suspend or revoke an operating privilege except as
5 authorized by this chapter or ch. 345, 351 or 938 or s. 767.303, 800.09 (1) (c), 800.095
6 (4) (b) 4., 943.21 (3m) or 961.50. When a court revokes, suspends or restricts a
7 juvenile's operating privilege under ch. 938, the department of transportation shall
8 not disclose information concerning or relating to the revocation, suspension or
9 restriction to any person other than a court, district attorney, county corporation
10 counsel, city, village or town attorney, law enforcement agency, or the minor whose
11 operating privilege is revoked, suspended or restricted, or his or her parent or
12 guardian. Persons entitled to receive this information shall not disclose the
13 information to other persons or agencies.

14 **SECTION 4.** 943.21 (title) of the statutes is amended to read:

15 **943.21 (title) Fraud on hotel or restaurant keeper or taxicab operator,**
16 **or gas station.**

17 **SECTION 5.** 943.21 (1) (d) of the statutes is created to read:

18 943.21 (1) (d) Having obtained gasoline or diesel fuel from a service station,
19 garage or other place where gasoline or diesel fuel is sold at retail or offered for sale
20 at retail, intentionally absconds without paying for the gasoline or diesel fuel.

21 **SECTION 6.** 943.21 (2r) of the statutes is created to read:

22 943.21 (2r) The refusal to pay a service station, garage or other place where
23 gasoline or diesel fuel is sold at retail or offered for sale at retail the established
24 charge for gasoline or diesel fuel provided by the service station, garage or other place
25 constitutes prima facie evidence of an intent to abscond without payment.

BILL

1 **SECTION 7.** 943.21 (3) of the statutes is renumbered 943.21 (3) (am), and 943.21
2 (3) (am) (intro.), as renumbered, is amended to read:

3 943.21 (3) (am) (intro.) Whoever violates this section sub. (1) (a), (b), or (c):

4 **SECTION 8.** 943.21 (3) (bm) of the statutes is created to read:

5 943.21 (3) (bm) Whoever violates sub. (1) (d) is guilty of a Class D forfeiture.

6 **SECTION 9.** 943.21 (3m) of the statutes is created to read:

subject to

7 943.21 (3m) If a person is found to have violated sub. (1) (d), the court shall, in
8 addition to the penalty provided in sub. (3) (bm), suspend the person's operating
9 privilege, as defined in s. 340.01 (40), for not more than 6 months, except that if the
10 person has previously had his or her operating privilege suspended under this
11 subsection the court shall suspend the person's operating privilege for one year. The
12 court shall immediately take possession of any suspended license and forward it to
13 the department of transportation together with the judgment of violation and notice
14 of the suspension.

15 **SECTION 10.** 943.212 (title) of the statutes is amended to read:

16 **943.212 (title) Fraud on hotel or restaurant keeper or taxicab operator**
17 **or gas station; civil liability.**

18 **SECTION 11.** 943.212 (1) (a) of the statutes is amended to read:

19 943.212 (1) (a) The retail value of the beverage, food, lodging, accommodation,
20 gasoline or diesel fuel, transportation or service involved in the violation. A person
21 may recover under this paragraph only if he or she exercises due diligence in
22 demanding payment for the beverage, food, lodging, accommodation, gasoline or
23 diesel fuel, transportation or service.

24 **SECTION 12.** 943.212 (4) of the statutes is amended to read:

BILL

1 943.212 (4) At least 20 days prior to commencing an action, as specified in s.
2 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
3 her intent to bring the action and of the acts constituting the basis for the violation
4 of s. 943.21. The plaintiff shall send the notice by regular mail supported by an
5 affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post
6 office from which the mailing was made. The plaintiff shall mail the notice to the
7 defendant's last-known address or to the address provided on the check or order. If
8 the defendant pays the amount due for the beverage, food, lodging, accommodation,
9 gasoline or diesel fuel, transportation or service prior to the commencement of the
10 action, he or she is not liable under this section.

11

(END)

Dsida, Michael

From: Smyrski, Rose
Sent: Thursday, September 06, 2001 4:02 PM
To: Dsida, Michael
Subject: Draft--Gas Theft.

gas theft draft

Page 3, Line 22, insert "or failure" after "refusal".

Page 5, Line 7, insert "Other than for gasoline or diesel fuel" before "If".

Any questions, give me a call.

Thanks Mike!



*Rose -
Make grace pd in civil cases
in applicable*

P/c from Rose

§ 3018

Change draft so

1st + 2d off - ct may suspend

3d offense - ct must suspend license

Don't know what

~~MAKING~~
Cynthia

MAKING
BLS
RHS



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3018(1)

MGD:lp:pg

Handwritten initials and circled 'a' in the top right corner.

2001 BILL

Handwritten word "Soon" with a flourish underneath.

Handwritten note "retrieve from hold" circled in black with a large 'X' over it.

Handwritten word "Regen" above the title.

1 AN ACT *to renumber and amend* 943.21 (3); *to amend* 343.10 (1) (a), 343.10
2 (2) (a) 1., 343.30 (5), 943.21 (title), 943.212 (title), 943.212 (1) (a) and 943.212
3 (4); and *to create* 943.21 (1) (d), 943.21 (2r), 943.21 (3) (bm) and 943.21 (3m)
4 of the statutes; **relating to:** failure to pay for gasoline or diesel fuel and
5 suspension of operating privileges after conviction for theft of gasoline or diesel
6 fuel and providing penalties. ✓

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Current law prohibits a person from intentionally absconding without paying for taxicab service or without paying for beverage, food, lodging, or other service or accommodation at a hotel, motel, campground, boarding or lodging house, or restaurant. If a person is convicted of violating this prohibition, he or she may be fined not more than \$10,000 or imprisoned for not more than nine months or both, except that the maximum term of imprisonment increases to five years if the value of the service or accommodation exceeds \$1,000. In addition, current law provides for a special civil action for victims of this crime. Using this special civil action, a victim may recover the value of the service or accommodation involved in the crime, any other property damage resulting from the crime, and limited exemplary damages and attorney fees.

This bill prohibits a person from intentionally absconding from a service station, garage, or other place where gasoline or diesel fuel is offered for sale at retail

BILL

for a first or second offense

may ✓

2) for a third offense ✓

without paying for the gasoline or diesel fuel. A person who violates this prohibition may be subject to a forfeiture (a civil monetary penalty) of not more than \$200. The bill also provides that in addition to the forfeiture, a court must suspend the person's motor vehicle operating privileges for not more than six months, except that the court must suspend the person's operating privileges for ~~one year if the person has previously been convicted of absconding without paying for gasoline or diesel fuel.~~ Finally, the bill extends the special civil action that covers crimes for absconding for services or accommodations to cover offenses involving absconding without paying for gasoline or diesel fuel.

analysis insert (S)

and local ✓

with certain modifications

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5 or a trade making it essential that he or she operate a motor vehicle, the person, after
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9 restriction to any person other than a court, district attorney, county corporation
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21 **SECTION 6.** 943.21 (2r) of the statutes is created to read:

22 **943.21 (2r)** The ^{failure or} refusal to pay a service station, garage, or other place where
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25 place constitutes prima facie evidence of an intent to abscond without payment.

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4 **SECTION 8.** 943.21 (3) (bm) of the statutes is created to read:

5 943.21 (3) (bm) Whoever violates sub. (1) (d) [✓] is subject to a Class D forfeiture.

6 **SECTION 9.** 943.21 (3m) [✓] of the statutes is created to read:

7 ~~943.21 (3m) If a person is found to have violated sub. (1) (d), the court shall,~~
8 ~~in addition to the penalty provided in sub. (3) (bm), suspend the person's operating~~
9 ~~privilege, as defined in s. 340.01 (40), for not more than 6 months, except that if the~~
10 ~~person has previously had his or her operating privilege suspended under this~~
11 ~~subsection the court shall suspend the person's operating privilege for one year. The~~
12 ~~court shall immediately take possession of any suspended license and forward it to~~
13 ~~the department of transportation together with the judgment of violation and notice~~
14 ~~of the suspension.~~

✓
Insert
4/7

15 **SECTION 10.** 943.212 (title) of the statutes is amended to read:

16 **943.212 (title) Fraud on hotel or restaurant keeper or taxicab operator**
17 **or gas station; civil liability.**

18 **SECTION 11.** 943.212 (1) (a) [✓] of the statutes is amended to read:

19 943.212 (1) (a) The retail value of the beverage, food, lodging, accommodation,
20 gasoline or diesel fuel, transportation or service involved in the violation. A person
21 may recover under this paragraph only if he or she exercises due diligence in
22 demanding payment for the beverage, food, lodging, accommodation, gasoline or
23 diesel fuel, transportation or service.

24 **SECTION 12.** 943.212 (4) [✓] of the statutes is amended to read:

renumbered 943.212 (4)(a).

BILL

1 943.212 (4) At least 20 days prior to commencing an action, as specified in s.
 2 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
 3 her intent to bring the action and of the acts constituting the basis for the violation
 4 of s. 943.21. The plaintiff shall send the notice by regular mail supported by an
 5 affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post
 6 office from which the mailing was made. The plaintiff shall mail the notice to the
 7 defendant's last-known address or to the address provided on the check or order. If
 8 the defendant pays the amount due for the beverage, food, lodging, accommodation,
 9 gasoline or diesel fuel, transportation or service prior to the commencement of the
 10 action, he or she is not liable under this section.

11

(END)

Sec. # (CR); 943.212 (4)(b) ✓

943.212 ^(B)(4)(b) This subsection ✓ does not apply
 to an action based on acts that constitute
 a violation of s. 943.21(1)(d) ✓

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3018/2ins
MCD:kg:pg

1 analysis insert

2 ~~28~~ six months; and 3) for a fourth or subsequent offense, the court must suspend
3 the person's operating privileges for one year. ✓

4 insert 4/7

In this paragraph:

subsubsection

5 943.21 (3m) (a) 1. "Operating privilege" has the meaning given in s. 340.01
6 (40). (4)

7 2. "Repeat offense" means a violation of sub. (1) (d) that occurs after a person
8 has been found by a court to have violated sub. (1) (d). ✓

9 (b) Subject to pars. (c) and (d), if a person violates sub. (1) (d), the court, in
10 addition to imposing any penalty under sub. (3) (bm), may suspend the person's
11 operating privilege for not more than 6 months. ✓

12 (c) Subject to par. (d), if a person violates sub. (1) (d) after having been found
13 by a court to have committed an offense that constitutes a repeat offense, the court,
14 in addition to imposing any penalty under sub. (3) (bm), shall suspend the person's
15 operating privilege for not more than 6 months.

16 (d) If a person violates sub. (1) (d) after having his or her operating privilege
17 suspended under par. (c), the court, in addition to imposing any penalty under sub.
18 (3) (bm), shall suspend the person's operating privilege for one year. ✓



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

September 12, 2001

MEMORANDUM

To: Representative Montgomery

From: Michael Dsida, Legislative Attorney

Re: LRB-3018/2 Theft of gasoline or diesel fuel

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

~~X~~ JACKET FOR ASSEMBLY _____ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9867 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.