



January 13, 2011

## SENATE BILL No. 79

DIGEST OF SB 79 (Updated January 11, 2011 11:56 am - DI 106)

**Citations Affected:** IC 24-4.6; IC 34-24.

**Synopsis:** Motor fuel theft. Provides that if motor fuel from a retailer is pumped into a vehicle and proper payment is not made to the retailer, the owner of the vehicle is liable to the retailer for the total pump price of the motor fuel pumped plus a service charge of \$50 and the cost of certified mail. Provides that a retailer, to collect from the vehicle owner, must send a notice of nonpayment to the vehicle owner by certified mail, return receipt requested. Allows a retailer to use a designee to send notices and make collections. Provides that, if a vehicle owner does not pay the total pump price of the motor fuel pumped plus the service charge within 30 days after the retailer sends the notice, the vehicle owner is also subject to liability to the retailer for other damages, costs, fees, and expenses. Provides that within 30 days after the sending of the retailer's notice, the vehicle owner may send a written response to the retailer disputing the retailer's claim or stating that, when the motor fuel was pumped into the vehicle, the vehicle owner was not operating the vehicle and was not responsible for paying for the motor fuel. Provides that if a vehicle owner sends such a response to the retailer, the retailer shall stop communicating with the vehicle owner but may still seek to recover from the vehicle owner by initiating a civil action. Requires the bureau of motor vehicles (BMV) to adopt rules under which retailers may obtain the names and mailing addresses of vehicle owners from the BMV for purposes of recovering for motor fuel that is pumped into vehicles without payment being made.

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**Effective:** July 1, 2011.

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**Young R Michael,**  
Arnold, Hume, Young R

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January 5, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
January 12, 2011, amended, reported favorably — Do Pass.

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SB 79—LS 6312/DI 14+



January 13, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 79



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2011]:  
 4 **Chapter 5. Vehicle Owner Liability for Motor Fuel Theft**  
 5 **Sec. 1. As used in this chapter, "motor fuel" includes gasoline**  
 6 **(as defined in IC 6-6-1.1-103(g)), special fuel (as defined in**  
 7 **IC 6-6-2.5-22), and alternative fuel (as defined in IC 6-6-2.5-1).**  
 8 **Sec. 2. As used in this chapter, "retailer" means a person that**  
 9 **engages in the business of selling or distributing motor fuel to an**  
 10 **end user within Indiana.**  
 11 **Sec. 3. As used in this chapter, "vehicle" has the meaning set**  
 12 **forth in IC 6-6-5-1(a).**  
 13 **Sec. 4. (a) Subject to section 6(b) of this chapter, if:**  
 14 **(1) motor fuel from a retailer is pumped into a vehicle; and**  
 15 **(2) proper payment is not made to the retailer for the motor**  
 16 **fuel;**  
 17 **the owner of the vehicle is liable to the retailer for the total pump**

SB 79—LS 6312/DI 14+



1 price of the motor fuel pumped into the vehicle plus a service  
2 charge of fifty dollars (\$50), and the cost of certified mail, return  
3 receipt requested.

4 (b) The service charge may be imposed upon a vehicle owner  
5 when notice is mailed to the vehicle owner under section 5 of this  
6 chapter. Only one (1) service charge may be imposed under this  
7 section for each incident in which motor fuel is pumped into a  
8 vehicle and proper payment is not made.

9 Sec. 5. (a) To collect a liability from a vehicle owner under this  
10 chapter, a retailer (or the retailer's designee) must first send a  
11 notice of nonpayment to the vehicle owner by certified mail, return  
12 receipt requested, to the address indicated by records obtained  
13 under section 8 of this chapter.

- 14 (b) A notice sent under subsection (a) must:
  - 15 (1) state the total pump price of the motor fuel pumped into
  - 16 the vehicle owner's vehicle and the amount of the service
  - 17 charge;
  - 18 (2) state how the vehicle owner is to pay the liability;
  - 19 (3) include a copy of this chapter and IC 34-24-3;
  - 20 (4) state that, subject to section 6(b) of this chapter, the
  - 21 vehicle owner is subject to liability for an amount equal to
  - 22 triple the total pump price of the motor fuel received plus
  - 23 other damages under IC 34-24-3-1 if the liability is not paid
  - 24 within thirty (30) days; and
  - 25 (5) include a signed statement by the retailer or the employee
  - 26 of the retailer who reported the incident in which motor fuel
  - 27 was pumped into the vehicle owner's vehicle and proper
  - 28 payment was not made, setting forth:
    - 29 (A) the date, time, and location of the incident; and
    - 30 (B) the license plate number of the vehicle into which the
    - 31 motor fuel was pumped.

32 Sec. 6. (a) Subject to subsection (b), if a vehicle owner does not  
33 pay the total pump price of the motor fuel pumped and the service  
34 charge within thirty (30) days after the retailer or the retailer's  
35 designee sends the notice to the vehicle owner under section 5 of  
36 this chapter, the vehicle owner:

- 37 (1) is liable to the retailer for:
  - 38 (A) the total pump price of the motor fuel pumped, as set
  - 39 forth in the notice sent under section 5 of this chapter; and
  - 40 (B) the service charge under section 4 of this chapter; and
  - 41 (2) is subject to liability to the retailer for other damages,
  - 42 costs, fees, and expenses in an action brought by the retailer

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under IC 34-24-3-1.  
(b) If a vehicle owner, not more than thirty (30) days after the retailer or the retailer's designee sends the notice to the vehicle owner under section 5 of this chapter, sends written notice to the retailer or its designee:

- (1) disputing the retailer's claim that motor fuel was pumped into the vehicle owner's vehicle and proper payment was not made; or
- (2) stating that, when motor fuel was pumped into the vehicle owner's vehicle and proper payment was not made, the vehicle owner was not operating the vehicle and was not responsible for paying for the motor fuel pumped into the vehicle;

the vehicle owner does not become liable to the retailer under subsection (a)(1), and the retailer (and any designee of the retailer) shall cease communications and all collection efforts under this chapter. However, the retailer may pursue a civil action against the vehicle owner under IC 34-24-3-1.

**Sec. 7. If a vehicle owner does not:**

- (1) pay the total pump price of the motor fuel pumped and the service charge in response to a notice sent by a retailer under this chapter; or
- (2) reply to the retailer's notice with a written notice under section 6(b)(1) or 6(b)(2) of this chapter;

the vehicle owner's civil liability under this chapter does not preclude criminal liability under IC 35-43-4-2, IC 35-43-4-3, IC 35-43-4-8, or any other law.

**Sec. 8. (a)** The bureau of motor vehicles shall adopt rules under IC 4-22-2 to implement a system by which a retailer or an association of retailers may obtain the name and mailing address of the owner of a vehicle involved in an incident in which motor fuel is pumped into the vehicle and proper payment is not made. The bureau of motor vehicles may integrate any system established under this section with its existing programs for the release of information under IC 9-14-3.

**(b)** The bureau of motor vehicles may enter into an agreement with an association of retailers to establish:

- (1) a fee different from the fees provided for in IC 9-29-2-2(a); or
- (2) other negotiated terms for the release of vehicle owner records;

for purposes of the system established under this section.

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1 (c) Any release of information by the bureau of motor vehicles  
2 under this section must be:

3 (1) consistent with the authority of the bureau of motor  
4 vehicles under IC 9-14-3.5; and

5 (2) in compliance with 18 U.S.C. 2721 et seq.

6 SECTION 2. IC 34-24-3-1 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. If a person has an  
8 unpaid claim on a liability that is covered by IC 24-4.6-5 or suffers  
9 a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3,  
10 IC 35-42-3-4, or IC 35-45-9, the person may bring a civil action against  
11 the person who caused the loss for the following:

12 (1) An amount not to exceed three (3) times:

13 (A) the actual damages of the person suffering the loss, in the  
14 case of a liability that is not covered by IC 24-4.6-5; or

15 (B) the total pump price of the motor fuel received, in the  
16 case of a liability that is covered by IC 24-4.6-5.

17 (2) The costs of the action.

18 (3) A reasonable attorney's fee.

19 (4) Actual travel expenses that are not otherwise reimbursed  
20 under subdivisions (1) through (3) and are incurred by the person  
21 suffering loss to:

22 (A) have the person suffering loss or an employee or agent of  
23 that person file papers and attend court proceedings related to  
24 the recovery of a judgment under this chapter; or

25 (B) provide witnesses to testify in court proceedings related to  
26 the recovery of a judgment under this chapter.

27 (5) A reasonable amount to compensate the person suffering loss  
28 for time used to:

29 (A) file papers and attend court proceedings related to the  
30 recovery of a judgment under this chapter; or

31 (B) travel to and from activities described in clause (A).

32 (6) Actual direct and indirect expenses incurred by the person  
33 suffering loss to compensate employees and agents for time used  
34 to:

35 (A) file papers and attend court proceedings related to the  
36 recovery of a judgment under this chapter; or

37 (B) travel to and from activities described in clause (A).

38 (7) All other reasonable costs of collection.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 79, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 2, after "\$50" insert "**, and the cost of certified mail, return receipt requested**".

Page 2, line 10, after "mail," insert "**return receipt requested,**".  
and when so amended that said bill do pass.

(Reference is to SB 79 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

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**Y**

