



April 15, 2011

**ENGROSSED  
SENATE BILL No. 79**

DIGEST OF SB 79 (Updated April 14, 2011 3:30 pm - DI 96)

**Citations Affected:** IC 9-14; IC 24-4.6; IC 34-24.

**Synopsis:** Motor fuel theft. Provides that if motor fuel (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 fuel pumped plus a service charge of \$50. Provides that: (1) the bureau of motor vehicles (BMV) may disclose the name and address of a vehicle owner (owner) to an association of retailers (association) when the information is requested for purposes of contact information in connection with fuel theft; and (2) the name and address may be used only by the association for purposes of collection efforts to recover the price of the fuel and certain other costs. Provides that, if an owner does not pay the total pump price of the fuel pumped plus the service charge within 30 days after the association sends the notice, the 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 owner may send a written response to the  
(Continued next page)

**Effective:** July 1, 2011.

**Young R Michael, Glick,  
Arnold, Hume, Young R, Walker**  
(HOUSE SPONSORS — DERMODY, DELANEY, YARDE)

January 5, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

January 12, 2011, amended, reported favorably — Do Pass.

January 18, 2011, read second time, ordered engrossed. Engrossed.

January 20, 2011, read third time, passed. Yeas 41, nays 6.

**HOUSE ACTION**

March 28, 2011, read first time and referred to Committee on Roads and Transportation.

April 15, 2011, amended, reported — Do Pass.

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retailer disputing the retailer's claim or stating that, when the fuel was pumped into the vehicle, the owner was not operating the vehicle and was not responsible for paying for the fuel. Provides that if an owner sends such a response to the retailer, the retailer shall cease communications with the owner but may still seek to recover from the owner by initiating a civil action. Provides that if the owner makes complete payment for the price of fuel that has been pumped into the vehicle and certain other costs, no criminal prosecution for theft or conversion may be brought against the owner for the failure to make proper payment to the motor fuel retailer. Requires the BMV to adopt rules under which an association may obtain the names and mailing addresses of owners from the BMV for purposes of recovering for fuel theft.

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April 15, 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.

**ENGROSSED  
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 9-14-3.5-10 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. Except as provided
- 3 in section 10.5 of this chapter, the bureau may disclose personal
- 4 information to a person if the person requesting the information
- 5 provides proof of identity and represents that the use of the personal
- 6 information will be strictly limited to at least one (1) of the following:
- 7 (1) For use by a government agency, including a court or law
- 8 enforcement agency, in carrying out its functions, or a person
- 9 acting on behalf of a government agency in carrying out its
- 10 functions.
- 11 (2) For use in connection with matters concerning:
- 12 (A) motor vehicle or driver safety and theft;
- 13 (B) motor vehicle emissions;
- 14 (C) motor vehicle product alterations, recalls, or advisories;
- 15 (D) performance monitoring of motor vehicles, motor vehicle
- 16 parts, and dealers;
- 17 (E) motor vehicle market research activities, including survey

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- 1 research; ~~and~~
- 2 (F) the removal of nonowner records from the original owner
- 3 records of motor vehicle manufacturers; **and**
- 4 **(G) motor fuel theft under IC 24-4.6-5.**
- 5 (3) For use in the normal course of business by a business or its
- 6 agents, employees, or contractors, but only:
- 7 (A) to verify the accuracy of personal information submitted
- 8 by an individual to the business or its agents, employees, or
- 9 contractors; and
- 10 (B) if information submitted to a business is not correct or is
- 11 no longer correct, to obtain the correct information only for
- 12 purposes of preventing fraud by, pursuing legal remedies
- 13 against, or recovering on a debt or security interest against, the
- 14 individual.
- 15 (4) For use in connection with a civil, a criminal, an
- 16 administrative, or an arbitration proceeding in a court or
- 17 government agency or before a self-regulatory body, including the
- 18 service of process, investigation in anticipation of litigation, and
- 19 the execution or enforcement of judgments and orders, or under
- 20 an order of a court.
- 21 (5) For use in research activities, and for use in producing
- 22 statistical reports, as long as the personal information is not
- 23 published, re-disclosed, or used to contact the individuals who are
- 24 the subject of the personal information.
- 25 (6) For use by an insurer, an insurance support organization, or a
- 26 self-insured entity, or the agents, employees, or contractors of an
- 27 insurer, an insurance support organization, or a self-insured entity
- 28 in connection with claims investigation activities, anti-fraud
- 29 activities, rating, or underwriting.
- 30 (7) For use in providing notice to the owners of towed or
- 31 impounded vehicles.
- 32 (8) For use by a licensed private investigative agency or licensed
- 33 security service for a purpose allowed under this section.
- 34 (9) For use by an employer or its agent or insurer to obtain or
- 35 verify information relating to a holder of a commercial driver's
- 36 license that is required under the Commercial Motor Vehicle
- 37 Safety Act of 1986 (49 U.S.C. 2710 et seq.).
- 38 (10) For use in connection with the operation of private toll
- 39 transportation facilities.
- 40 (11) For any use in response to requests for individual motor
- 41 vehicle records when the bureau has obtained the written consent
- 42 of the person to whom the personal information pertains.

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- 1 (12) For bulk distribution for surveys, marketing, or solicitations
- 2 when the bureau has obtained the written consent of the person to
- 3 whom the personal information pertains.
- 4 (13) For use by any person, when the person demonstrates, in a
- 5 form and manner prescribed by the bureau, that written consent
- 6 has been obtained from the individual who is the subject of the
- 7 information.
- 8 (14) For any other use specifically authorized by law that is
- 9 related to the operation of a motor vehicle or public safety.

10 However, this section does not affect the use of anatomical gift  
 11 information on a person's driver's license or identification document  
 12 issued by the bureau, nor does it affect the administration of anatomical  
 13 gift initiatives in the state.

14 SECTION 2. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2011]:

17 **Chapter 5. Vehicle Owner Liability for Motor Fuel Theft**

18 **Sec. 1. As used in this chapter, "motor fuel" includes gasoline**  
 19 **(as defined in IC 6-6-1.1-103(g)), special fuel (as defined in**  
 20 **IC 6-6-2.5-22), and alternative fuel (as defined in IC 6-6-2.5-1).**

21 **Sec. 2. As used in this chapter, "retailer" means a person that**  
 22 **engages in the business of selling or distributing motor fuel to an**  
 23 **end user within Indiana.**

24 **Sec. 3. As used in this chapter, "vehicle" has the meaning set**  
 25 **forth in IC 6-6-5-1(a).**

26 **Sec. 4. (a) Subject to section 6(b) of this chapter, if:**  
 27 **(1) motor fuel from a retailer is pumped into a vehicle; and**  
 28 **(2) proper payment is not made to the retailer for the motor**  
 29 **fuel;**

30 **the owner of the vehicle is liable to the retailer for the total pump**  
 31 **price of the motor fuel pumped into the vehicle plus a service**  
 32 **charge of fifty dollars (\$50), and the cost of certified mail, return**  
 33 **receipt requested, or as provided in IC 1-1-7-1(a).**

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

39 **Sec. 5. (a) To collect a liability from a vehicle owner under this**  
 40 **chapter, an association of retailers must first send a notice of**  
 41 **nonpayment to the vehicle owner by certified mail, return receipt**  
 42 **requested, to the address indicated by records obtained under**

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section 8 of this chapter.

(b) A notice sent under subsection (a) must:

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

Sec. 6. (a) Subject to subsection (b), if a vehicle owner does not pay the total pump price of the motor fuel pumped and the service charge within thirty (30) days after the association of retailers sends the notice to the vehicle owner under section 5 of this chapter, the vehicle owner:

- (1) is liable to the retailer for:
  - (A) the total pump price of the motor fuel pumped, as set forth in the notice sent under section 5 of this chapter; and
  - (B) the service charge under section 4 of this chapter; and
- (2) is subject to liability to the retailer for other damages, costs, fees, and expenses in an action brought by the retailer under IC 34-24-3-1.

(b) If a vehicle owner, not more than thirty (30) days after the association of retailers sends the notice to the vehicle owner under section 5 of this chapter, sends written notice to the association of retailers:

- (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

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

7           **Sec. 7. If a vehicle owner does not:**  
 8                 (1) pay the total pump price of the motor fuel pumped and the  
 9                 service charge in response to a notice sent by a retailer under  
 10                this chapter; or  
 11                (2) reply to the retailer's notice with a written notice under  
 12                section 6(b)(1) or 6(b)(2) of this chapter;  
 13           the vehicle owner's civil liability under this chapter does not  
 14           preclude criminal liability under IC 35-43-4-2, IC 35-43-4-3,  
 15           IC 35-43-4-8, or any other law.

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

24           (b) The bureau of motor vehicles may enter into an agreement  
 25           with an association of retailers to establish:  
 26                 (1) a fee different from the fees provided for in IC 9-29-2-2(a);  
 27                 or  
 28                 (2) other negotiated terms for the release of vehicle owner  
 29                 records;

30           for purposes of the system established under this section.

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

- 33                 (1) consistent with the authority of the bureau of motor
- 34                 vehicles under IC 9-14-3.5; and
- 35                 (2) in compliance with 18 U.S.C. 2721 et seq.

36           (d) The name and mailing address of the owner of a vehicle  
 37           released by the bureau of motor vehicles under subsection (a) may  
 38           be used by an association of retailers only for purposes of collection  
 39           efforts under this chapter.

40           (e) If the owner of a vehicle makes complete payment:  
 41                 (1) as set forth in section 4(a) of this chapter for the:  
 42                         (A) price of motor fuel that has been pumped into the

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1           **vehicle;**  
2           **(B) service charge of fifty dollars (\$50); and**  
3           **(C) cost of certified mail; or**  
4           **(2) for an amount equal to triple the pump price of the motor**  
5           **fuel received plus other damages under IC 34-24-3-1, as set**  
6           **forth in section 5(b)(4) of this chapter;**  
7           **no criminal prosecution for a violation of IC 35-43-4 may be**  
8           **brought against the owner of the vehicle for the failure to make**  
9           **proper payment to a retailer under this chapter.**  
10          SECTION 3. IC 34-24-3-1 IS AMENDED TO READ AS  
11          FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. If a person **has an**  
12          **unpaid claim on a liability that is covered by IC 24-4.6-5** or suffers  
13          a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3,  
14          IC 35-42-3-4, or IC 35-45-9, the person may bring a civil action against  
15          the person who caused the loss for the following:  
16                (1) An amount not to exceed three (3) times:  
17                    **(A) the actual damages of the person suffering the loss, in the**  
18                    **case of a liability that is not covered by IC 24-4.6-5; or**  
19                    **(B) the total pump price of the motor fuel received, in the**  
20                    **case of a liability that is covered by IC 24-4.6-5.**  
21                (2) The costs of the action.  
22                (3) A reasonable attorney's fee.  
23                (4) Actual travel expenses that are not otherwise reimbursed  
24                under subdivisions (1) through (3) and are incurred by the person  
25                suffering loss to:  
26                    (A) have the person suffering loss or an employee or agent of  
27                    that person file papers and attend court proceedings related to  
28                    the recovery of a judgment under this chapter; or  
29                    (B) provide witnesses to testify in court proceedings related to  
30                    the recovery of a judgment under this chapter.  
31                (5) A reasonable amount to compensate the person suffering loss  
32                for time used to:  
33                    (A) file papers and attend court proceedings related to the  
34                    recovery of a judgment under this chapter; or  
35                    (B) travel to and from activities described in clause (A).  
36                (6) Actual direct and indirect expenses incurred by the person  
37                suffering loss to compensate employees and agents for time used  
38                to:  
39                    (A) file papers and attend court proceedings related to the  
40                    recovery of a judgment under this chapter; or  
41                    (B) travel to and from activities described in clause (A).  
42                (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.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 79, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-14-3.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. Except as provided in section 10.5 of this chapter, the bureau may disclose personal information to a person if the person requesting the information provides proof of identity and represents that the use of the personal information will be strictly limited to at least one (1) of the following:

- (1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions.
- (2) For use in connection with matters concerning:
  - (A) motor vehicle or driver safety and theft;
  - (B) motor vehicle emissions;
  - (C) motor vehicle product alterations, recalls, or advisories;
  - (D) performance monitoring of motor vehicles, motor vehicle parts, and dealers;

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(E) motor vehicle market research activities, including survey research; ~~and~~

(F) the removal of nonowner records from the original owner records of motor vehicle manufacturers; **and**

**(G) motor fuel theft under IC 24-4.6-5.**

(3) For use in the normal course of business by a business or its agents, employees, or contractors, but only:

(A) to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors; and

(B) if information submitted to a business is not correct or is no longer correct, to obtain the correct information only for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with a civil, a criminal, an administrative, or an arbitration proceeding in a court or government agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or under an order of a court.

(5) For use in research activities, and for use in producing statistical reports, as long as the personal information is not published, re-disclosed, or used to contact the individuals who are the subject of the personal information.

(6) For use by an insurer, an insurance support organization, or a self-insured entity, or the agents, employees, or contractors of an insurer, an insurance support organization, or a self-insured entity in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by a licensed private investigative agency or licensed security service for a purpose allowed under this section.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 2710 et seq.).

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any use in response to requests for individual motor vehicle records when the bureau has obtained the written consent

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of the person to whom the personal information pertains.

(12) For bulk distribution for surveys, marketing, or solicitations when the bureau has obtained the written consent of the person to whom the personal information pertains.

(13) For use by any person, when the person demonstrates, in a form and manner prescribed by the bureau, that written consent has been obtained from the individual who is the subject of the information.

(14) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

However, this section does not affect the use of anatomical gift information on a person's driver's license or identification document issued by the bureau, nor does it affect the administration of anatomical gift initiatives in the state."

Page 2, line 3, delete "requested." and insert "**requested, or as provided in IC 1-1-7-1(a).**".

Page 2, line 10, delete "a retailer (or the retailer's designee)" and insert "**an association of retailers**".

Page 2, line 34, delete "retailer or the retailer's" and insert "**association of retailers**".

Page 2, line 35, delete "designee".

Page 3, line 3, delete "retailer or the retailer's designee" and insert "**association of retailers**".

Page 3, line 5, delete "retailer or its designee:" and insert "**association of retailers:**".

Page 3, line 15, delete "retailer (and any designee of the retailer)" and insert "**association of retailers**".

Page 3, line 29, delete "a retailer or".

Page 4, between lines 5 and 6, begin a new paragraph and insert:

**"(d) The name and mailing address of the owner of a vehicle released by the bureau of motor vehicles under subsection (a) may be used by an association of retailers only for purposes of collection efforts under this chapter.**

**(e) If the owner of a vehicle makes complete payment:**

**(1) as set forth in section 4(a) of this chapter for the:**

**(A) price of motor fuel that has been pumped into the vehicle;**

**(B) service charge of fifty dollars (\$50); and**

**(C) cost of certified mail; or**

**(2) for an amount equal to triple the pump price of the motor fuel received plus other damages under IC 34-24-3-1, as set forth in section 5(b)(4) of this chapter;**

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**no criminal prosecution for a violation of IC 35-43-4 may be brought against the owner of the vehicle for the failure to make proper payment to a retailer under this chapter."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 79 as printed January 13, 2011.)

SOLIDAY, Chair

Committee Vote: yeas 11, nays 0.

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