

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

525P0161

HOUSE STATE AFFAIRS ENGROSSED NO. **HB 1247** - 1/31/2008

Introduced by: Representatives Dykstra, Brunner, Cutler, Deadrick, Faehn, Halverson, Hargens, Krebs, Noem, Nygaard, Pitts, Putnam, Rausch, Rave, Rhoden, Street, Tidemann, and Vanneman and Senators Knudson, Albers, Dempster, Gray, Hansen (Tom), Hanson (Gary), Hauge, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to prohibit certain contract restrictions on the sale of
2 renewable motor fuels by retailers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 37-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Franchise-related document," a franchise agreement, branded jobber contract,
8 branded marketer agreement, and any other contract or directive of a franchisor
9 relating to terms or conditions of the sale of fuel by a franchisee or customer;
- 10 (2) "Renewable fuel," biodiesel, biodiesel blend, ethyl alcohol, ethanol blend, and E-85,
11 all as defined in § 10-47B-3.

12 Section 2. That chapter 37-2 be amended by adding thereto a NEW SECTION to read as
13 follows:



No franchise-related document entered into or renewed on or after the effective date of this Act may contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the franchisee from:

- (1) Installing on the marketing premises of the franchisee a renewable fuel pump or tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing premises of the franchisor;
- (2) Converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use;
- (3) Advertising the sale of any renewable fuel, including through the use of signage;
- (4) Selling renewable fuel in any specified area on the marketing premises of the franchisee, including any area in which a name or logo of a franchisor or any other entity appears;
- (5) Purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;
- (6) Listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; or
- (7) Allowing for payment of renewable fuel with any form of payment available for any other type of fuel.

Nothing in this section authorizes any activity that constitutes mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

Section 3. That chapter 37-2 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act precludes a franchisor from requiring the franchisee to obtain reasonable indemnification and insurance policies.

1 Section 4. That chapter 37-2 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No franchise-related document that requires that three grades of gasoline be sold by the
4 applicable franchisee may prevent the franchisee from selling a renewable fuel in lieu of one,
5 and only one, grade of gasoline.

6 Section 5. That chapter 37-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any franchisor found guilty of violating the provisions of sections 2 or 4 of this Act is guilty
9 of a Class 1 misdemeanor.