



## 2022 South Dakota Legislature

# Senate Bill 176

Introduced by: **Senator Duvall**

1 **An Act to revise provisions regarding self-propelled agriculture units.**

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

3 **Section 1. That § 10-47B-3 be AMENDED:**

4 **10-47B-3.** Terms used in this chapter mean:

5 (1) "ASTM," the American Society for Testing and Materials, a private organization that  
6 utilizes committees of industry representatives and regulators to develop product  
7 quality standards and test methods to be used by industries, regulator agencies,  
8 and purchasing agents;

9 (1A) "Aviation gasoline," a motor fuel that is formulated and produced specifically for  
10 use in aircraft;

11 (1B) "Biobutanol," butyl alcohol produced from cereal grains;

12 (1C) "Biodiesel," a fuel that is comprised of:

13 (a) Mono-alkyl esters of long chain fatty acids derived from vegetable oils or  
14 animal fats, designated B100, and meeting the requirements of the  
15 American Society of Testing and Materials D 6751 as of January 1, 2008;

16 (b) A derivative of any organic material, without regard to the process used, that  
17 meets the registration requirements for fuels and chemicals established by  
18 the Environmental Protection Agency under section 211 of the Clean Air Act  
19 (42 U.S.C. 7545) as of January 1, 2008, and the American Society of Testing  
20 and Materials (ASTM) D975 or D396 as of January 1, 2008, but does not  
21 include oil, natural gas, or coal (including lignite), or any products thereof;

22 or

23 (c) Both;

24 (1D) "Biodiesel blend," a blended special fuel containing a minimum of five percent by  
25 volume of biodiesel;

- 1 (1E) "Biodiesel producer," a person who engages in the business of producing biodiesel  
2 for sale, use, or distribution.
- 3 (2) "Blender," a person engaged in the activity of making blends. A person need not be  
4 a blender to mix two or more substances ~~which~~that have previously been subject  
5 to the fuel excise tax imposed by this chapter. A person need not be a blender to  
6 mix two or more substances ~~which~~that have not been subject to the fuel excise  
7 tax imposed by this chapter, if the mixed product does not result in producing a  
8 motor fuel or special fuel;
- 9 (3) "Blends," one or more petroleum ~~product~~ products, mixed with or without another  
10 product, regardless of the original character of the product blended, if the product  
11 obtained by the blending is capable of use in the generation of power for the  
12 propulsion of a motor vehicle, an airplane, or a motorboat. The term does not  
13 include those blends that occur in the process of refining by the original refiner of  
14 crude petroleum or by the blending of products known as lubricating oil and  
15 greases. The term does not apply to fuel additives which have been subject to sales  
16 or use tax imposed by chapters 10-45 and 10-46, or to dye;
- 17 (3A) "Book transfer," a transaction in which a product is transferred from one supplier  
18 or out-of-state supplier or position\_holder to another, if:
- 19 (a) The transaction includes a transfer from the person who holds the inventory  
20 position for motor fuel or special fuel in the terminal as indicated in the  
21 records of the terminal operator; and
- 22 (b) The transfer is completed within the terminal at the time of the removal from  
23 the terminal for delivery to a customer of the transferee. The bill of lading  
24 issued by the terminal operator ~~shall~~must indicate the transferee as the  
25 supplier or shipper;
- 26 (4) "Bulk container" or "bulk cargo area," any tank, vessel, or container used to store  
27 or transport fuel. This term does not include a supply tank ~~which~~that is mounted  
28 on a motor vehicle and connected to the engine of that motor vehicle;
- 29 (5) "Bulk plant," a motor fuel or special fuel storage facility, other than a terminal, that  
30 is primarily used for redistribution of motor fuel or special fuel by a transport truck,  
31 tank wagon, or rail car;
- 32 (5A) "Bulk plant operator," a person who has responsibility and physical control over the  
33 operation of a bulk plant.
- 34 (6) "Compressed natural gas," natural gas which has been compressed, but not to a  
35 liquid state, for use as a motor vehicle fuel and which for purposes of taxation as

- 1 a motor vehicle fuel, ~~shall~~ must be converted to equivalent liquid gallons of gasoline  
2 at the rate of 126.67 cubic feet of natural gas as its natural service delivery line  
3 pressure to equal one volumetric gross gallon of gasoline;
- 4 (7) "Compressed natural gas vendor," a person engaged in the business of selling  
5 compressed natural gas for use in the engine fuel supply tanks of motor vehicles  
6 and is regulated by the Public Utilities Commission;
- 7 (7A) "Consignee," the first person to hold title to fuel after it is withdrawn at a terminal  
8 rack or bulk plant and delivered into a bulk cargo area of a transport truck or  
9 railcar. The name of the consignee ~~shall~~ must be identified and prominently  
10 displayed on the bill of lading;
- 11 (8) "Department," the Department of Revenue;
- 12 (9) "Destination state," the state for which a motor vehicle, railcar, or barge is destined  
13 for off-loading of motor fuel or special fuel from its bulk cargo area by the consignee  
14 into storage facilities for consumption or resale. If title of the fuel passes from the  
15 consignee to another party prior to off-loading, the destination state is the state in  
16 which title passes. The destination state ~~shall~~ must be identified and prominently  
17 displayed on the bill of lading. If the destination state is not prominently displayed  
18 on the bill of lading, it is presumed that South Dakota is the destination state;
- 19 (10) "Ethanol blend," a blended motor fuel containing ethyl alcohol of at least ninety-  
20 nine percent purity typically derived from agricultural products ~~which is that are~~  
21 blended exclusively with a product commonly or commercially known or sold as  
22 gasoline;
- 23 (10A) "Ethanol broker," any person who engages in the business of marketing ethyl  
24 alcohol produced by ethanol producers located in South Dakota;
- 25 (11) Repealed by SL 2009, ch 55, § 3.
- 26 (12) "Ethanol producer," any person who engages in the business of producing ethyl  
27 alcohol for sale, use, or distribution;
- 28 (12A) "Ethyl alcohol," a motor fuel typically derived from agricultural products that has  
29 been denatured as prescribed in § 10-47B-166. This definition does not apply to  
30 § 10-47B-162;
- 31 (13) "Export," with respect:
- 32 (a) To a seller, when the seller's motor fuel or special fuel is delivered out-of-  
33 state by or for the seller; and
- 34 (b) To a purchaser, when the purchaser's motor fuel or special fuel is delivered  
35 out-of-state by or for the purchaser;

- 1 (14) "Exporter," any person, who purchases or owns motor fuel or special fuel in this  
2 state and transports or delivers or causes the fuel to be transported or delivered  
3 to another state or country by any means other than a pipeline;
- 4 (14A) "Fuel additive," a product purchased or acquired for the purpose of adding it to  
5 motor fuel or special fuel which was formulated and produced exclusively to  
6 enhance the performance or quality of the fuel. The term does not include  
7 kerosene;
- 8 (15) "Gallon," for purposes of fuel taxation, a United States gallon measured on a gross  
9 volume basis. Temperature adjusted or net gallons of measurement are not  
10 acceptable as units of measurement for taxation purposes unless used for the  
11 calculation of liquid petroleum gas, compressed natural gas, or liquid natural gas;
- 12 (16) "Gasoline," a fuel product commonly or commercially known or sold as gasoline or  
13 reformulated gasoline, which has not been blended with alcohol, naphtha, or any  
14 other fuel products such as casinghead, absorption, drip, or natural gasolines;
- 15 (17) "Heating fuel," a special fuel that is burned in a boiler furnace, or stove for heating  
16 or industrial processing purposes;
- 17 (18) "Highway construction work," all work which is performed in any capacity to propel  
18 vehicles, machinery, or equipment within the right-of-way in the construction,  
19 reconstruction, repair, or maintenance of public highways;
- 20 (18A) "Highway contractor," any person engaged in the activity of highway construction  
21 work in this state. The term does not include any person who only owns and  
22 operates motor vehicles within the right-of-way hauling gravel or concrete and  
23 does not own or operate off-road machinery in the highway construction work;
- 24 (19) "Import," with respect:
- 25 (a) To a seller, when the seller's motor fuel or special fuel is delivered into South  
26 Dakota from out-of-state by or for the seller; and
- 27 (b) To a purchaser, when the purchaser's motor fuel or special fuel is delivered  
28 into South Dakota from out-of-state by or for the purchaser;
- 29 (20) "Importer," any person who purchases or owns motor fuel or special fuel in another  
30 state or country and transports or delivers or causes the fuel to be transported or  
31 delivered into this state by any means other than pipeline;
- 32 (21) "Jet fuel," a special fuel that is formulated and produced specifically for use in jet  
33 aircraft;
- 34 (22) "Liquid," any substance that is liquid in excess of sixty degrees Fahrenheit and a  
35 pressure of fourteen and seven-tenths pounds per square inch absolute;

- 1 (22A) "Liquid natural gas," natural gas which has been cooled to approximately -260  
2 degrees Fahrenheit and is in a liquid state, for use as a motor vehicle fuel and  
3 which for purposes of taxation as a motor vehicle fuel, shall be converted to  
4 equivalent liquid gallons of gasoline at the rate of 1.5536 gallons of liquid natural  
5 gas to equal one volumetric gross gallon of gasoline;
- 6 (22B) "Liquid natural gas vendor," any person engaged in the business of selling liquid  
7 natural gas for use in the engine fuel supply tanks of motor vehicles;
- 8 (23) "Liquid petroleum gas," liquid petroleum gas (LPG) when used as a motor vehicle  
9 fuel shall be converted for purposes of taxation to equivalent liquid gross gallons  
10 using the conversion factor of 4.24 pounds per gallon of liquid at sixty degrees  
11 Fahrenheit;
- 12 (24) "Liquid petroleum gas user" a person who uses liquid petroleum gas in the engine  
13 fuel supply tank of a motor vehicle and wishes to purchase liquid petroleum gas in  
14 bulk into a storage tank which has a delivery hose attached thereto on a tax unpaid  
15 basis in this state;
- 16 (25) "Liquid petroleum gas vendor," a person engaged in the business of selling liquid  
17 petroleum gas, wholesale or retail, for use in the engine fuel supply tank of a motor  
18 vehicle in this state or has the capability of selling liquid petroleum gas for use in  
19 the engine fuel supply tank of a motor vehicle. The term applies to any vendor who  
20 uses LPG in a motor vehicle;
- 21 (26) Repealed by SL 2009, ch 55, § 8.
- 22 (26A) "Marketer," any person who is engaged in business as a wholesale distributor or  
23 retail dealer;
- 24 (26B) "Methanol producer," any person who engages in the business of producing methyl  
25 alcohol for sale, use, or distribution;
- 26 (26C) "Methyl alcohol," a motor fuel typically derived from wood products;
- 27 (27) "Motor fuel," includes:
- 28 (a) All products commonly or commercially known or sold as gasoline, ethyl  
29 alcohol, methyl alcohol, and all gasoline blends. These products may include  
30 in some quantity casinghead, absorption, natural gasoline, benzol, benzene,  
31 naphtha, except that flashing above one hundred degrees Fahrenheit, and  
32 Tagliabue closed cup test, which is sold and used only as cleaner's or  
33 painter's solvent; and
- 34 (b) Any liquid prepared, advertised, offered for sale, or sold for use as commonly  
35 and commercially used as a fuel in internal combustion engines, which when

- 1                   subjected to distillation in accordance with the standard method of test for  
2                   distillation of gasoline, naphtha, kerosene, and similar petroleum products  
3                   (American Society of Testing Material Designation D-86) shows not less  
4                   than ten percent distilled (recovered) below three hundred forty-seven  
5                   degrees Fahrenheit and not less than ninety-five percent distilled  
6                   (recovered) below four hundred sixty-four degrees Fahrenheit;
- 7                   (c) The term does not include liquefied gases which would not exist as liquids at  
8                   a temperature of sixty degrees Fahrenheit and a pressure of fourteen and  
9                   seven-tenths pounds per square inch absolute;
- 10                  (28) "Motor vehicle," includes all vehicles that are required to be registered and licensed  
11                   by a jurisdiction and are designed for use upon ~~the~~ public roads and highways.  
12                   ~~Ferrigators and spray coupes~~ Self-propelled agricultural application units, as  
13                   defined in section 2 of this Act, that are not designed for use upon the public roads  
14                   and highways, are not included in this definition;
- 15                  (29) "Nonhighway agricultural use," fuel used off the public highways and roads of this  
16                   state for producing, raising or growing, and harvesting of food or fiber upon  
17                   agricultural land, including dairy products, livestock, and crops. The services of  
18                   custom harvesters, pesticide and fertilizer applicators ~~chemical applicators,~~  
19                   ~~fertilizer spreaders,~~ hay grinders, and cultivators are considered agricultural  
20                   purposes;
- 21                  (30) "Nonhighway commercial use," fuel used off the public highways and roads of this  
22                   state for business purposes other than a nonhighway agricultural use. Recreational  
23                   vehicles including snowmobiles, go-carts, golf carts, bumper boats, and similar  
24                   vehicles are not included in this definition;
- 25                  (31) "Out-of-state supplier," any person who does not meet the geographic jurisdictional  
26                   connections to this state required of a supplier, and is registered under Section  
27                   4101 of the Internal Revenue Code;
- 28                  (32) "Person," a natural person, a partnership, a limited partnership, a joint venture, a  
29                   firm, an association, a corporation, a cooperative, a representative appointed by a  
30                   court, the state, a political subdivision, or any other entity, group, or syndicate;
- 31                  (33) "Petroex number," a string of alpha or numeric characters that are used to  
32                   communicate transactional information between a transporter or consignee and a  
33                   supplier;
- 34                  (33A) "Public highways or roads," any way or place of whatever nature, including  
35                   waterways and snowmobile trails, which are open to the use of the public as a

1 matter of right for the purpose of vehicular, snowmobile, or watercraft travel, even  
2 if the way or place is temporarily closed for the purpose of construction,  
3 reconstruction, maintenance, or repair;

4 (33B) "Qualified biobutanol producer," any person who engages in the business of  
5 producing biobutanol for sale, use, or distribution and who produced qualified ethyl  
6 alcohol on or before December 31, 2006, and is therefore eligible for receiving  
7 incentive payments for the production of ethyl alcohol under § 10-47B-162;

8 (34) "Qualified motor vehicle," a motor vehicle used, designed, or maintained for the  
9 transportation of persons or property and:

10 (a) Having two axles and a gross vehicle weight or registered gross vehicle  
11 weight exceeding twenty-six thousand pounds;

12 (b) Having three or more axles regardless of weight; or

13 (c) Is used in combination when the weight of such combination exceeds twenty-  
14 six thousand pounds gross vehicle weight. The term does not include  
15 recreational vehicles used for pleasure;

16 (34A) "Racing fuel," a motor or special fuel that is specifically produced for use in race  
17 cars;

18 (35) "Rack," a dock, a platform, or an open bay with metered pipes, hoses or both that  
19 is used for delivering motor fuel or special fuel from a refinery or terminal into the  
20 cargo area of a motor vehicle, rail car, marine vessel, or aircraft for subsequent  
21 transfer or use into the engine fuel supply tank of a locomotive or any self-propelled  
22 vehicle. The term includes a pipe, series of pipes, or pipeline used to withdraw  
23 motor fuel or special fuel from one pipeline system to another pipeline system or  
24 storage facility, if the fuel withdrawn is committed for sale or use in this state;

25 (36) "Retail dealer," a person who sells or distributes motor fuel or special fuel to the  
26 end user within this state;

27 (37) "Sale," the title of fuel passed from the seller to the buyer for ~~a~~-consideration;

28 (38) "Secretary," the secretary of the Department of Revenue;

29 (39) "Special fuel," all combustible gases and liquids that are:

30 (a) Suitable for the generation of power in an internal combustion engine or  
31 motor; or

32 (b) Used exclusively for heating, industrial, or farm purposes other than for the  
33 operation of a motor vehicle.

34 The term includes diesel fuel, fuel oil, heating fuel, biodiesel, all special fuel blends, and  
35 all kerosene products except K-1. The term does not include motor fuel, liquid

- 1 petroleum gas, liquid natural gas, compressed natural gas, or natural gas which is  
2 not compressed natural gas. The term, special use fuel, is synonymous with the  
3 term, special fuel;
- 4 (40) "Supplier or shipper," a person that imports or acquires upon import into this state  
5 motor fuel or special fuel by pipeline or marine vessel from another state, territory,  
6 or possession of the United States into a terminal within this state, or that imports  
7 motor fuel or special fuel into this state from a foreign country or that produces,  
8 manufactures, or refines motor fuel or special fuel within this state, or that owns  
9 motor fuel or special fuel in the pipeline and terminal distribution system in this  
10 state and makes sales or authorizes removal of motor fuel or special fuel from a  
11 terminal in this state at the rack or is the receiving exchange partner in a two party  
12 exchange or the final transferee in a book transfer, and is subject to the general  
13 taxing or police jurisdiction of this state, or is required to be registered under  
14 Section 4101 of the Internal Revenue Code for transactions in taxable fuels in the  
15 bulk distribution system. The person need not be required to be registered under  
16 Section 4101 of the Internal Revenue Code if operating as a railroad company or  
17 utility company. A terminal operator may not be considered a supplier merely  
18 because the terminal operator handles motor fuel or special fuel consigned to it  
19 within a terminal. The name of the supplier or shipper ~~shall~~ must be identified and  
20 prominently displayed on the bill of lading;
- 21 (41) "Tank wagon," a vehicle designed to transport motor fuel or special fuel in bulk, in  
22 lots of four thousand two hundred gallons or less;
- 23 (42) "Terminal," a fuel refinery or storage and distribution facility that is supplied by  
24 pipeline or marine vessel, from which motor fuel or special fuel may be removed  
25 at a rack and that has been registered as a qualified terminal by the Internal  
26 Revenue Service for receipt of taxable fuels free of federal fuel taxes;
- 27 (43) "Terminal operator," the person who by ownership or contractual agreement is  
28 charged with the responsibility and physical control over the operation of the  
29 terminal;
- 30 (44) "Transfer in bulk into or within a terminal" includes the following:  
31 (a) A marine barge movement of fuel from a refinery or terminal to a terminal;  
32 (b) Pipeline movements of fuel from a refinery or terminal to terminal;  
33 (c) Book transfers of product within a terminal between suppliers, out-of-state  
34 suppliers, or position\_holders before completion of the removal of the fuel  
35 across the terminal rack;



- 1 (d) Two-party exchanges between licensed suppliers and out-of-state suppliers  
2 or position holders;
- 3 (45) "Transmix," the buffer between two different products in a pipeline shipment, or a  
4 mix of two different products within a refinery or terminal that results in an off-  
5 grade mixture;
- 6 (46) "Transporter or carrier," any person who engages in the activity of interstate or  
7 intrastate movement of fuel within this state by transport truck, rail car, or by any  
8 other means in quantities of over four thousand two hundred gallons. The term  
9 does not include persons who transport fuel by pipeline or barge. The name of the  
10 transporter or carrier ~~shall~~ must be identified and prominently displayed on the bill  
11 of lading;
- 12 (47) "Transport truck," a vehicle, a combination of vehicles, or railcar designed to  
13 transport motor fuel or special fuel in bulk, in lots greater than four thousand two  
14 hundred gallons;
- 15 (48) "Two-party exchange," a transaction in which a product is transferred from one  
16 supplier or out-of-state supplier or position holder to another in exchange for ~~other~~  
17 another product, sometimes located at a different location, if:
- 18 (a) The transaction includes a transfer from the person who holds the original  
19 inventory position for motor fuel or special fuel in the terminal as indicated  
20 in the records of the terminal operator; and
- 21 (b) The exchange transaction is completed before removal from the terminal by  
22 the receiving exchange partner. The bill of lading issued by the terminal  
23 operator ~~shall~~ must indicate the receiving exchange partner as the supplier  
24 or shipper;
- 25 (49) "Wholesale distributor," any person who purchases motor fuel or special fuel from  
26 a supplier or another wholesale distributor, or removes the fuel from a terminal at  
27 the rack, for subsequent sale to another wholesale distributor or retail dealer.

28 **Section 2. That chapter 32-5B be amended with a NEW SECTION:**

29 Any self-propelled agricultural application unit that is purchased by an agricultural  
30 business or agribusiness is exempt from the provisions of this chapter and chapters 32-3  
31 and 32-5. For purposes of this section, the term, self-propelled agricultural application  
32 unit, is defined as equipment designed and used exclusively to carry and apply fertilizer,  
33 pesticides, or related products to agricultural purposes.