

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

525P0161

HOUSE BILL NO. 1247

Introduced by: Representatives Dykstra, Brunner, Cutler, Dadrick, 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 and any other contract or
8 directive of a franchisor relating to terms or conditions of the sale of fuel by a
9 franchisee;
- 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:

14 No franchise-related document entered into or renewed on or after the effective date of this



1 Act may contain any provision allowing a franchisor to restrict the franchisee or any affiliate of
2 the franchisee from:

3 (1) Installing on the marketing premises of the franchisee a renewable fuel pump or tank,
4 except that the franchisee's franchisor may restrict the installation of a tank on leased
5 marketing premises of the franchisor;

6 (2) Converting an existing tank or pump on the marketing premises of the franchisee for
7 renewable fuel use, if the tank or pump and the piping connecting them are either
8 warranted by the manufacturer or certified by a recognized standards-setting
9 organization to be suitable for use with such renewable fuel;

10 (3) Advertising the sale of any renewable fuel, including through the use of signage;

11 (4) Selling renewable fuel in any specified area on the marketing premises of the
12 franchisee, including any area in which a name or logo of a franchisor or any other
13 entity appears;

14 (5) Purchasing renewable fuel from sources other than the franchisor if the franchisor
15 does not offer its own renewable fuel for sale by the franchisee;

16 (6) Listing renewable fuel availability or prices, including on service station signs, fuel
17 dispensers, or light poles; or

18 (7) Allowing for payment of renewable fuel with a credit card.

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

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

23 Nothing in this Act precludes a franchisor from requiring the franchisee to obtain reasonable
24 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.