

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

219S0385

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1216** - 2/8/2011

Introduced by: Representatives Fargen, Abdallah, Blake, Bolin, Boomgarden, Brunner, Cronin, Deelstra, Dennert, Elliott, Feinstein, Gibson, Gosch, Hansen (Jon), Hawley, Hickey, Hoffman, Hunhoff (Bernie), Iron Cloud III, Jones, Juhnke, Killer, Kirkeby, Kirschman, Kloucek, Lucas, Lust, Moser, Munsterman, Nelson (Stace), Novstrup (David), Olson (Betty), Rausch, Russell, Schrempp, Sigdestad, Sly, Solum, Street, Stricherz, Tulson, Vanneman, Verchio, White, Wick, and Wismer and Senators Olson (Russell), Begalka, Bradford, Buhl, Cutler, Frerichs, Garnos, Gray, Hansen (Tom), Heineman, Hundstad, Johnston, Lederman, Maher, Novstrup (Al), Nygaard, Peters, Rempelberg, Rave, Rhoden, Schlekeway, Sutton, Tidemann, and Vehle

1 FOR AN ACT ENTITLED, An Act to prohibit certain contract restrictions on the use of ethanol
2 blender pumps by retailers.

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

4 Section 1. That § 37-2-34 be amended to read as follows:

5 37-2-34. Terms used in §§ 37-2-35 to 37-2-38, inclusive, mean:

6 (1) "Franchise-related document," a franchise agreement, branded jobber contract,
7 branded marketer agreement, and any other contract or directive of a franchisor
8 relating to terms or conditions of the sale of fuel by a franchisee or customer;

9 (2) "Renewable fuel," biodiesel, biodiesel blend, ethyl alcohol, and ethanol blend, and
10 E-85, all as defined in § 10-47B-3, and any motor fuel made from a blend, in any



1 ratio, of gasoline and the product commonly or commercially known as E-85 or an
2 ethanol blend and the product commonly or commercially known as E-85.

3 Section 2. That § 37-2-35 be amended to read as follows:

4 37-2-35. No franchise-related document entered into or renewed on or after July 1, 2008
5 may contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the
6 franchisee from:

- 7 (1) Installing on the marketing premises of the franchisee a renewable fuel pump or tank,
8 except that the franchisee's franchisor may restrict the installation of a tank on leased
9 marketing premises of the franchisor;
- 10 (2) Converting an existing tank or pump on the marketing premises of the franchisee for
11 renewable fuel use;
- 12 (3) Advertising the sale of any renewable fuel, including through the use of signage;
- 13 (4) Selling renewable fuel in any specified area on the marketing premises of the
14 franchisee, including any area in which a name or logo of a franchisor or any other
15 entity appears;
- 16 (5) Purchasing renewable fuel from sources other than the franchisor if the franchisor
17 does not offer its own renewable fuel for sale by the franchisee;
- 18 (6) Listing renewable fuel availability or prices, including on service station signs, fuel
19 dispensers, or light poles; ~~or~~
- 20 (7) Allowing for payment of renewable fuel with any form of payment available for any
21 other type of fuel;
- 22 (8) Installing on the marketing premises of the franchisee an ethanol blender pump as
23 defined in section 2, chapter 15 of the 2010 Session Laws; or
- 24 (9) Using any pump to dispense a specified ethanol blend or range of blends, if the pump

1 is approved by the authority having jurisdiction, as defined in § 34-38-23, for
2 dispensing the specified ethanol blend or range of blends.

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

5 Section 3. That § 37-2-37 be amended to read as follows:

6 37-2-37. No franchise-related document that requires that three grades of gasoline be sold
7 by the applicable franchisee may prevent the franchisee from selling a ~~renewable fuel~~ one or
8 more renewable fuels in lieu of one, and only one, grade of gasoline.