

*Withdrawn 5/1 (1831)*

SENATE FILE **1307**

FILED MAR 15 1974

By COMMITTEE ON ENERGY

*H.F. 1402 substituted 5/1 (1829)*

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
 Approved \_\_\_\_\_

## A BILL FOR

1 An Act to provide for fair trade practices in the marketing  
 2 and distribution of motor fuel and special fuel and pro-  
 3 viding a penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. When used in this  
2 Act, unless the context otherwise requires:

3 1. "Distributor" means a person who holds a motor fuel  
4 distributor's license or a special fuel distributor's license  
5 issued as provided in chapter three hundred twenty-four (324)  
6 of the Code.

7 2. "Franchiser" means a person who is engaged in the  
8 importation, refining or distribution of motor fuel or special  
9 fuel and who has entered into a distributor franchise or a  
10 dealer franchise.

11 3. "Distributor franchise" means a written agreement or  
12 contract between a franchiser and a distributor when all of  
13 the following conditions are included:

14 a. A commercial relationship of definite duration or con-  
15 tinuing indefinite duration is involved.

16 b. The distributor is granted the right to offer and sell  
17 motor fuel or special fuel that is imported, refined, or dis-  
18 tributed by the franchiser.

19 c. The distributor, as an independent business, consti-  
20 tutes a component of the franchiser's distribution system.

21 d. The distributor's business, or a portion of it which  
22 is related to motor fuel or special fuel purchased from the  
23 franchiser is substantially reliant on the franchiser for  
24 the continued supply of motor fuel or special fuel.

25 e. The distributor's business or a portion of it which  
26 is related to motor fuel or special fuel purchased from the  
27 franchiser is substantially associated with the franchiser's  
28 trademark, service mark, trade name, advertising, or other  
29 commercial symbol designating the franchiser.

30 4. "Dealer" means a person, other than an employee of  
31 a distributor or franchiser, who operates, maintains or  
32 conducts a place of business from which motor fuel or special  
33 fuel is sold or offered for sale at retail to the ultimate  
34 consumer, and who holds a license, issued as provided in  
35 chapter two hundred fourteen (214) of the Code, for each pump

1 and meter operated upon the retail premises.

2 5. "Dealer franchise" means a written contract between  
3 a franchiser and a dealer or between a distributor and a  
4 dealer when all of the following conditions are included:

5 a. A commercial relationship of definite duration or con-  
6 tinuing indefinite duration is involved.

7 b. The dealer is granted the right to offer and sell motor  
8 fuel or special fuel that is imported, refined, or distributed  
9 by the franchiser or by the distributor.

10 c. The dealer's business is substantially reliant on the  
11 franchiser or distributor for the continued supply of motor  
12 fuel or special fuel.

13 6. "Motor fuel" means "motor fuel" as defined in chap-  
14 ter three hundred twenty-four (324) of the Code.

15 7. "Special fuel" means "special fuel" as defined in chap-  
16 ter three hundred twenty-four (324) of the Code.

17 8. "Retaliatory action" means action contrary to the pur-  
18 pose or intent of this Act and may include a refusal to con-  
19 tinue to sell or lease, a reduction in the quality or quantity  
20 of services or products customarily available for sale or  
21 lease, a violation of privacy, or an inducement of others  
22 to retaliate.

23 9. "Retail premises" means real estate either owned or  
24 leased by the dealer and used primarily for the sale at retail  
25 to the ultimate consumer of motor fuel or special fuel.

26 10. "Commission" means the Iowa state commerce commis-  
27 sion.

28 Sec. 2. NEW SECTION. DISCONTINUING DISTRIBUTOR FRAN-  
29 CHISE. Notwithstanding the terms, provisions, or conditions  
30 of any distributor franchise, a franchiser shall not terminate  
31 or refuse to renew a distributor franchise except as provided  
32 in this Act. A franchiser shall not terminate or refuse to  
33 renew a distributor franchise unless the franchiser gives  
34 to the distributor thirty days' written notice of franchiser's  
35 intent to terminate or not renew. Notice shall be given by

1 restricted certified mail, as defined in section six hundred  
2 eighteen point fifteen (618.15) of the Code. If a distributor,  
3 within thirty days after the date of delivery of the notice  
4 from the franchiser, applies to the commission for a hearing  
5 under this Act, the distributor franchise shall remain in  
6 effect pending a final order by the commission. The  
7 application filed by the distributor shall state, under oath,  
8 that the distributor's license as a motor fuel or special  
9 fuel distributor, as the case may be, has not been canceled  
10 pursuant to the provisions of chapter three hundred twenty-  
11 four (324) of the Code, that the distributor has not filed  
12 a petition in bankruptcy or been declared bankrupt within  
13 six months preceding the filing of the application, that the  
14 franchiser has not withdrawn entirely from the sale for resale  
15 of motor fuel and special fuel in this state, that there are  
16 no past due sums owing by the distributor to the franchiser,  
17 that there is no criminal misconduct, abandonment or fraud,  
18 and that the distributor has not consented in writing to the  
19 termination or nonrenewal of the distributor franchise.

20 . Sec. 3. NEW SECTION. DISCONTINUING DEALER FRANCHISE.  
21 Notwithstanding the terms, provisions, or conditions of any  
22 dealer franchise, a distributor or franchiser shall not  
23 terminate or refuse to renew a dealer franchise except as  
24 provided in this Act. A distributor or franchiser shall not  
25 terminate or refuse to renew a dealer franchise unless the  
26 distributor or franchiser gives to the dealer thirty days'  
27 written notice of distributor's or franchiser's intent to  
28 terminate or not renew. Notice shall be given by restricted  
29 certified mail, as defined in section six hundred eighteen  
30 point fifteen (618.15) of the Code. If a dealer, within  
31 thirty days after the date of delivery of the notice from  
32 the distributor or franchiser, applies to the commission for  
33 a hearing under this Act, the dealer franchise shall remain  
34 in effect pending a final order by the commission. The  
35 application filed by the dealer shall state, under oath, that

1 the dealer's license, issued pursuant to chapter two hundred  
2 fourteen (214). of the Code, for pumps and meters located on  
3 the retail premises occupied by the dealer has not been  
4 canceled, that the dealer has not filed a petition in  
5 bankruptcy or been declared bankrupt within six months  
6 preceding the filing of the application, that the franchiser  
7 or distributor has not withdrawn entirely from the sale for  
8 resale of motor fuel and special fuel in this state, that  
9 there are no past due sums owing by the dealer to the  
10 franchiser or distributor, that there is no criminal misconduct,  
11 abandonment, or fraud, and that the dealer has not consented  
12 in writing to the termination or nonrenewal of the dealer  
13 franchise.

14 Sec. 4. NEW SECTION. COMMISSION TO HOLD HEARINGS. Upon  
15 receiving an application, the commission shall enter an order  
16 fixing a time and place of hearing, which shall be within  
17 thirty days from the date the commission receives the applica-  
18 tion, and shall send by restricted certified mail a copy of  
19 the order to the franchiser or distributor. The commission  
20 may also give notice of the application to any other party  
21 the commission deems an interested person. The notice shall  
22 be in the form and substance and given in the manner determined  
23 by the commission.

24 Any person who can show an interest in the application  
25 may become a party to the hearing, whether or not he receives  
26 notice; but a party not receiving notice shall be limited  
27 to participation at the hearing on the question of the public  
28 interest in the termination or continuation of the franchise.

29 Sec. 5. NEW SECTION. CONTINUANCE. The commission may  
30 continue the date of hearing for a period of thirty days,  
31 and may upon application, but not ex parte, continue the date  
32 of hearing for an additional period of thirty days.

33 Sec. 6. NEW SECTION. BURDEN OF PROOF. Upon hearing,  
34 if the commission finds the statements contained in the appli-  
35 cation are true, then the franchiser or distributor that

1 intends to terminate or not renew the distributor franchise  
2 or dealer franchise shall have the burden of proof to establish  
3 that the franchiser or distributor, as the case may be, has  
4 good cause for terminating or not renewing the franchise.

5 If the commission finds the statements contained in the  
6 application are not true, the application shall be denied.  
7 Nothing contained in this Act shall be construed to require  
8 or authorize any investigation by the commission of any matter  
9 before the commission under this Act. Upon hearing the commis-  
10 sion shall hear the evidence introduced by the parties and  
11 shall make its decision solely upon the record made. If the  
12 commission denies the termination or nonrenewal of the fran-  
13 chise, it may make such further order as may be necessary  
14 to require compliance with the terms of the franchise and  
15 to prevent retaliatory action.

16 Sec. 7. NEW SECTION. RULES OF EVIDENCE. The Iowa rules  
17 of civil procedure relating to discovery and inspection shall  
18 apply to hearings held under the provisions of this Act, and  
19 the commission may issue orders to give effect to such rules.  
20 In the event issues are raised which would involve violations  
21 of a mandatory federal petroleum allocation law, all dis-  
22 covery and inspection proceedings which would be available  
23 under the federal law shall be available to the parties to  
24 the hearing, and the commission may issue orders to give  
25 effect to the proceedings. Costs may be apportioned between  
26 the parties as the commission determines.

27 Sec. 8. NEW SECTION. CONDITIONS BARRING CHANGE IN DIS-  
28 TRIBUTOR FRANCHISE. Notwithstanding the terms, provisions  
29 or conditions of a distributor franchise, the following shall  
30 not constitute good cause for the termination or refusal to  
31 renew a distributor franchise:

32 1. The sole fact that the franchiser desires further  
33 penetration of the market.

34 2. The change of executive management of the distribu-  
35 tor, unless the franchiser, having the burden of proof, proves

1 that the change of executive management will be substantially  
2 detrimental to the distribution of the franchiser's motor  
3 fuels or special fuels in the area served by the distributor.

4 3. The sale or change of ownership of the distributor's  
5 business, unless the transfer of the distributor's license  
6 pursuant to chapter three hundred twenty-four (324) of the  
7 Code is denied or the new owner is unable to obtain a license  
8 under chapter three hundred twenty-four (324) of the Code.

9 Sec. 9. NEW SECTION. COMMISSION'S GUIDELINES. In  
10 determining whether good cause has been established for term-  
11 inating or not renewing a distributor franchise or dealer  
12 franchise, the commission shall take into consideration the  
13 existing circumstances, including, but not limited to:

14 1. Amount of business transacted by the distributor or  
15 dealer.

16 2. Investments made and obligations incurred by the dis-  
17 tributor or dealer in performance of the franchise.

18 3. Permanency of the investment.

19 4. Whether it is injurious to the public welfare for the  
20 business of the distributor or dealer to be disrupted.

21 5. Ability of the distributor or dealer to timely pay  
22 his financial obligations.

23 6. Whether the distributor or dealer has adequate equip-  
24 ment and qualified personnel to reasonably provide for the  
25 distribution and marketing of the motor fuel or special fuel  
26 sold to him.

27 7. Except as provided in section eight (8) of this Act,  
28 failure of the distributor to substantially comply with those  
29 requirements of the distributor franchise that are determined  
30 by the commission to be reasonable and material.

31 8. Failure of the dealer to substantially comply with  
32 those requirements of the dealer franchise that are determined  
33 by the commission to be reasonable and material.

34 Sec. 10. NEW SECTION. COMPULSORY ATTENDANCE AT HEARINGS.

35 The commission may issue subpoenas, administer oaths, compel

1 the attendance of witnesses and production of books, papers,  
2 documents and other evidence. The commission may apply to  
3 the district court of the county in which the hearing is to  
4 be held for a court order to enforce actions taken under this  
5 section.

6 | Sec. 11. NEW SECTION. APPEAL. Appeal may be taken from  
7 the final order of the commission by either the distributor,  
8 franchiser, dealer or any person served with notice pursuant  
9 to section four (4) of this Act, to the district court of  
10 the county where the distributor or dealer either resides  
11 or maintains his principal place of business, within thirty  
12 days from the time the decision is filed with the commission,  
13 by giving at least ten-days' notice to the commission to be  
14 served on its chairman or secretary in the same manner as  
15 original notices are now served, and by filing with the clerk  
16 of court a bond for costs in the sum of not less than five  
17 hundred dollars.

18 Sec. 12. NEW SECTION. TRANSCRIPT ON APPEAL. Upon appeal  
19 being taken, the secretary of the commission shall make and  
20 certify a transcript of all papers, records, and proceedings  
21 in connection with such application and hearing and file the  
22 same with the clerk of the court within twenty days following  
23 the taking of such appeal.

24 Sec. 13. NEW SECTION. TRIAL ON APPEAL. The appeal shall  
25 be submitted upon the transcript of the evidence and the  
26 record made before the commission and the district court shall  
27 either affirm or reverse the order of the commission.

28 Sec. 14. NEW SECTION. VIOLATIONS. Any person violating  
29 the provisions of this Act is guilty of a misdemeanor and  
30 shall be punished by a fine not to exceed one hundred dollars  
31 or imprisonment in the county jail for a period of not to  
32 exceed thirty days.

33 Sec. 15. INTENT. The provisions of this Act are enacted  
34 in the exercise of the police powers of this state for the  
35 purpose of protecting the health, safety and general welfare

1 of the people of this state and because methods and practices  
2 in the marketing and distribution of motor fuel and special  
3 fuel have impaired the availability to the public of the fuel  
4 and the services supplied by distributors and dealers who  
5 have entered into a franchise agreement with their respective  
6 suppliers.

7 EXPLANATION

8 This bill requires a franchiser who has entered into an  
9 agreement with a distributor or dealer for the sale of motor  
10 fuel or special fuel to give the distributor or dealer thirty  
11 days' notice of intent to terminate the franchise. The dis-  
12 tributor or dealer may apply to the Iowa state commerce com-  
13 mission for a hearing to determine whether the franchiser,  
14 under conditions set forth in the bill, can show good cause  
15 for terminating the franchise.

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S—2558

- 1 Amend Senate File 1307 as follows:
- 2 1. Page 2, line 6 by inserting after the word "Code"
- 3 the words ", and includes a successor in interest of
- 4 a distributor".
- 5 2. Page 2, line 10 by adding the following sentence
- 6 after the period: "A franchiser may be a distributor
- 7 and includes a successor in interest of a franchiser.
- 8 3. Page 2, line 12 by inserting after the word
- 9 "contract" the words ", either written or oral,".
- 10 4. Page 3, line 2 by striking the words "a written"
- 11 and inserting in lieu thereof the words "an agreement
- 12 or".
- 13 5. Page 3, line 2 by inserting after the word
- 14 "contract" the words ", either written or oral,".
- 15 6. Page 4, by striking line 17.
- 16 7. Page 5, lines 10 and 11, by striking the words
- 17 "that there is no criminal misconduct, abandonment,
- 18 or fraud,".
- 19 8. Page 6, line 29 by inserting after the word "dis-
- 20 tributor" the words "or dealer".
- 21 9. Page 6, line 31 by inserting after the word "dis-
- 22 tributor" the words "or dealer".
- 23 10. Page 6, line 35 by inserting after the word
- 24 "distributor" the words "or dealer".
- 25 11. Page 7, line 3 by inserting after the word

Page 2

- 1 "distributor" the words "or dealer".
- 2 12. Page 7, line 4 by inserting after the word "dis-
- 3 tributor's" the words "or dealer's".
- 4 13. Page 8, line 16 by striking the word "five" and
- 5 inserting in lieu thereof the word "two".
- 6 14. Page 9, by adding the following section after
- 7 line 6:
- 8 Sec. \_\_\_\_\_. NEW SECTION. WAIVER. Any provi-
- 9 sion of a dealer franchise or distributor franchise
- 10 which is an attempted waiver of the benefits of this
- 11 Act shall be void and unenforceable.

S—2558 Filed  
March 21, 1974

By RILEY and NYSTROM