

APR 5 1979

HOUSE FILE 736

Place On Calendar

By COMMITTEE ON ENERGY

(Formerly Study Bill 30)

Passed House, Date 4-18-79 (p. 1609) Passed Senate, Date _____

Vote: Ayes 91 Nays 2 Vote: Ayes _____ Nays _____

Approved May 21, 1979

A BILL FOR

1 An Act to permit distributors and dealers to purchase fuel
 2 from other than the franchisor when motor fuel or special
 3 fuel is not available from the franchisor, and providing
 4 penalties for violations.

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

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HOUSE FILE 736

H-3849

- 1 Amend House File 736 as follows:
- 2 1. Page 1, line 35, by striking the word "the"
- 3 and inserting in lieu thereof the word "a".
- 4 2. Page 2, by striking lines 1 through 3 and
- 5 inserting in lieu thereof the words "fuel from a
- 6 franchisor may purchase".
- 7 3. Page 2, line 5, by striking the words "only
- 8 if" and inserting in lieu thereof the word "provided".
- 9 4. Page 2, line 13, by inserting after the word
- 10 "delivered." the following: "The request to the fran-
- 11 chisor for delivery shall be for a type of fuel normally
- 12 provided by the franchisor to the franchisee and
- 13 for a quantity of fuel not exceeding the average
- 14 amount sold by the franchisee in one week, based upon
- 15 average weekly sales in the three months preceding
- 16 the request."
- 17 5. Page 2, line 32, by inserting after the word
- 18 "dispensing" the word "the".

3932-

H-3849 FILED Adopted as amended BY EVANS of Grundy
 APRIL 10, 1979 by 3932 4/18
(p. 1608)

736

1 Section 1. NEW SECTION. DEFINITIONS. For purposes of
2 this Act, unless the context otherwise requires:

3 1. "Franchise" means a contract between a refiner and
4 a distributor, a refiner and a retailer, a distributor and
5 another distributor, or a distributor and a retailer under
6 which a refiner or distributor authorizes a retailer or
7 distributor to use, in connection with the sale, consignment,
8 or distribution of motor fuel, a trademark which is owned
9 or controlled by the refiner or by a refiner which supplies
10 motor fuel to the distributor which authorizes the use.

11 "Franchise" includes any contract under which a retailer or
12 distributor is permitted to occupy leased premises, which
13 premises are to be used in connection with the sale,
14 consignment, or distribution of motor fuel under a trademark
15 which is owned or controlled by a refiner or a refiner which
16 supplies motor fuel to the distributor and permits the
17 occupancy of the leased premises.

18 2. "Franchisor" means a refiner or distributor who au-
19 thorizes or permits, under a franchise, a retailer or
20 distributor to use a trademark in connection with the sale,
21 consignment, or distribution of motor fuel.

22 3. "Franchisee" means a retailer or distributor who is
23 authorized or permitted, under a franchise, to use a trademark
24 in connection with the sale, consignment, or distribution
25 of motor fuel.

26 4. "Motor fuel" means gasoline or diesel fuel of a type
27 distributed for use as a fuel in self-propelled vehicles
28 designed primarily for use on public streets, roads, and
29 highways.

30 Sec. 2. NEW SECTION. PURCHASE FROM OTHER SOURCE.

31 1. The orderly flow of an adequate supply of motor fuel
32 is declared to be essential to the economy and to the welfare
33 of the people of this state. Therefore, in the public in-
34 terest and notwithstanding the terms, provisions, or condi-
35 tions of any franchise, the franchisee unable to obtain motor

1 fuel from the franchisor in a quantity and of a type sold
2 in one week by a franchisee based upon the average weekly
3 sales in the three months preceding the agreement may purchase
4 the fuel from another available source, subject to subsections
384g-5 two (2) through four (4) of this section and only if the
6 franchisee has done all of the following:

7 a. At least forty-eight hours prior to entering into an
8 agreement to purchase motor fuel from another source, the
9 franchisee has requested delivery of motor fuel from the
10 franchisor and the requested motor fuel has not been delivered,
11 or prior to entering into an agreement the franchisor has
12 stated to the franchisee that the requested motor fuel will
384g-13 not be delivered.

14 b. The franchisee has requested and has been denied
15 delivery of motor fuel sold or distributed under the trademark
16 named in the franchise from a person other than franchisor.

17 c. The franchisee has requested and has been denied motor
18 fuel under an allocation program administered by the energy
19 policy council under section ninety-three point seven (93.7),
20 subsection nine (9) of the Code.

21 2. The quantity of motor fuel requested or purchased from
22 another source including those sources listed in paragraphs
23 b and c of subsection one (1) of this section shall not exceed
24 the quantity requested from the franchisor.

25 3. At the time a franchisee enters into an agreement to
26 purchase motor fuel from a source other than the franchisor,
27 the franchisee shall inform the franchisor by the quickest
28 available means.

29 4. If the franchisee sells motor fuel supplied from a
30 source other than the franchisor, the franchisee shall promi-
31 nently post a sign disclosing this fact to the public on each
384g-32 motor fuel pump used for dispensing motor fuel. The size
33 of the sign shall not be less than eight inches by ten inches
34 and the letters on the sign shall be at least three inches
35 in height.

1 Purchases of motor fuel in accordance with this section
2 are not good cause for termination of a franchise. Retaliatory
3 action arising from purchases made in accordance with this
4 section are a violation of chapter five hundred fifty-three
5 (553) of the Code.

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EXPLANATION

This bill permits a franchisee to purchase motor fuel from another available source when the fuel is not available from the franchisor. However, the franchisee must have first requested and failed to receive the motor fuel from another supplier of the same brand of fuel and from the energy policy council under the set aside program before purchasing from any other source. The bill also makes it a violation of chapter 553 of the Code for the franchisor to retaliate against a distributor or dealer who has made such a purchase. The bill is effective July first following enactment.

HOUSE FILE 736

H-3882

- 1 Amend House File 736 as follows:
2 1. Page 3, by inserting after line 5, the
3 following:
4 "Sec. _____. Section two hundred fourteen A
5 point eleven (214A.11), Code 1979, is amended to
6 read as follows:
7 "214A.11 VIOLATIONS. Any person violating
8 the provisions of this chapter shall be guilty of
9 a simple serious misdemeanor."

H-3882 FILED *Lost 4/18 (p. 1608)* BY O'KANE of Woodbury
APRIL 11, 1979

HOUSE FILE 736

H-3900

- 1 Amend House File 736 as follows:
2 1. Page 3, by inserting after line 5 the
3 following section:
4 "Sec. _____. This Act, being deemed of immediate
5 importance, shall take effect from and after its
6 publication in the Traer Star-Clipper, a newspaper
7 published in Traer, Iowa and in The Winterset
8 Madisonian, a newspaper published in Winterset,
9 Iowa."

H-3900 FILED *Adopted 4/18 (p. 1609)* BY DAVITT of Warren
APRIL 12, 1979 EVANS of Grundy

HOUSE FILE 736

H-3932

- 1 Amend amendment H-3849 to House File 736 as
2 follows:
3 1. Page 1, line 16, by inserting following the
4 word "request" the words ", except that this provision
5 shall not restrict a franchisee from purchasing gas-
6 ohol from a source other than the franchisor or limit
7 the quantity to be purchased when the franchisor does
8 not normally supply the franchisee with gasohol".

H-3932 FILED *Adopted 4/18 (p. 1608)* BY EVANS of Grundy
APRIL 17, 1979

HOUSE FILE 736

H-6197

- 1 Amend the Senate amendment, H-6116, to House
- 2 File 736 as amended, passed and reprinted by the
- 3 House, as follows:
- 4 1. Page 1, by striking line 30.

H-6197 FILED APRIL 17, 1980

BY O'KANE of Woodbury

28/25 4/23 (p. 2013)

SENATE AMENDMENT TO
HOUSE FILE 736

H-6116

- 1 Amend House File 736, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, lines 2 and 3, by striking the word
- 4 and figure "four (4)" and inserting in lieu thereof
- 5 the word and figure "five (5)".
- 6 2. Page 2, line 8, by inserting after the word
- 7 "delivered" the words "and the franchisor has given
- 8 the franchisee notice that the franchisor is unable
- 9 to provide the requested motor fuel".
- 10 3. Page 2, by striking lines 24 through 27 and
- 11 inserting in lieu thereof the following:
- 12 "c. The franchisee has requested motor fuel from
- 13 the set-aside program administered by the energy
- 14 policy council under section ninety-three point seven
- 15 (93.7), subsection nine (9), of the Code and allocation
- 16 from the set-aside program has been denied and the
- 17 director of the energy policy council determines that
- 18 the franchisee has demonstrated that a special hardship
- 19 exists in the community served by the franchisee
- 20 relating to the public health, safety and welfare,
- 21 as specified under the rules of the energy policy
- 22 council."
- 23 4. Page 3, by inserting after line 7 the following
- 24 new subsection:
- 25 "5. A franchisee who sells motor fuel supplied
- 26 from a source other than the franchisor shall also
- 27 fully indemnify the franchisor against any claims
- 28 asserted by a user arising out of the sale of motor
- 29 fuel not acquired from the franchisor."
- 30 5. Page 3, by striking lines 8 through 12.
- 31 6. Page 3, by striking lines 13 through 17 and
- 32 inserting in lieu thereof the following:
- 33 "Sec. ____ . The provisions of this Act shall be
- 34 applicable only to franchise agreements entered into
- 35 after the effective date of this Act."

House amended & Concurred 4/23 (p. 2013)

H-6116 FILED APRIL 16, 1980

RECEIVED FROM THE SENATE

H-6246

1 Amend the Senate amendment H-6116, to House
2 File 736, as amended, passed, and reprinted by
3 the House as follows:

4 1. Page 1, by striking lines 28 and 29, and
5 inserting in lieu thereof the following: "asserted
6 by a user on which the claimant prevails and in
7 which the court determines that motor fuel not
8 acquired from the franchisor was the proximate
9 cause of the injury."

10 2. Page 1, line 30, by inserting after the
11 figure "12" the words ", and inserting in lieu
12 thereof the following: "Purchases of motor fuel
13 in accordance with this section are not good
14 cause for termination of a franchise" ".
15

16 3. Page 1, line 34, by inserting after the word
"into" the words "or renewed".

H-6246 FILED APRIL 21, 1980 By RITSEMA of Sioux
Adopted 4/23 (p. 2012)

HOUSE AMENDMENT TO SENATE AMENDMENT
TO HOUSE FILE 736

S-5849

1 Amend the Senate amendment H-6116, to House File
2 736, as amended, passed, and reprinted by the House
3 as follows:

4 1. Page 1, by striking lines 28 and 29, and
5 inserting in lieu thereof the following: "asserted
6 by a user on which the claimant prevails and in which
7 the court determines that motor fuel not acquired
8 from the franchisor was the proximate cause of the
9 injury."

10 2. Page 1, line 30, by inserting after the figure
11 "12" the words ", and inserting in lieu thereof the
12 following: "Purchases of motor fuel in accordance
13 with this section are not good cause for termination
14 of a franchise" ".
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16 3. Page 1, line 34, by inserting after the word
"into" the words "or renewed".

S-5849 FILED
APRIL 24, 1980

RECEIVED FROM THE HOUSE

Senate concurred 4/25 (p. 1764)

Low Energy 4/23

HOUSE FILE 736

By COMMITTEE ON ENERGY

(As Amended and Passed by the House)

Amend per 56356 D. Pass 4/2 (p. 1264)

Re Passed House, Date 4/23/80 (p. 2013) Passed Senate, Date 4/11/80 (p. 1390)

Vote: Ayes 9 Nays 0 Vote: Ayes 46 Nays 0

Approved May 21, 1980

*Motor is in error. Sent. Lost 4/16
Repassed Senate 4/25/80 (p. 1765)
46-1*

A BILL FOR

1 An Act to permit distributors and dealers to purchase fuel
2 from other than the franchisor when motor fuel or special
3 fuel is not available from the franchisor, and providing
4 penalties for violations.

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

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_____ House Amendments

1 Section 1. NEW SECTION. DEFINITIONS. For purposes of
2 this Act, unless the context otherwise requires:

3 1. "Franchise" means a contract between a refiner and
4 a distributor, a refiner and a retailer, a distributor and
5 another distributor, or a distributor and a retailer under
6 which a refiner or distributor authorizes a retailer or
7 distributor to use, in connection with the sale, consignment,
8 or distribution of motor fuel, a trademark which is owned
9 or controlled by the refiner or by a refiner which supplies
10 motor fuel to the distributor which authorizes the use.

11 "Franchise" includes any contract under which a retailer or
12 distributor is permitted to occupy leased premises, which
13 premises are to be used in connection with the sale,
14 consignment, or distribution of motor fuel under a trademark
15 which is owned or controlled by a refiner or a refiner which
16 supplies motor fuel to the distributor and permits the
17 occupancy of the leased premises.

18 2. "Franchisor" means a refiner or distributor who au-
19 thorizes or permits, under a franchise, a retailer or
20 distributor to use a trademark in connection with the sale,
21 consignment, or distribution of motor fuel.

22 3. "Franchisee" means a retailer or distributor who is
23 authorized or permitted, under a franchise, to use a trademark
24 in connection with the sale, consignment, or distribution
25 of motor fuel.

26 4. "Motor fuel" means gasoline or diesel fuel of a type
27 distributed for use as a fuel in self-propelled vehicles
28 designed primarily for use on public streets, roads, and
29 highways.

30 Sec. 2. NEW SECTION. PURCHASE FROM OTHER SOURCE.

31 1. The orderly flow of an adequate supply of motor fuel
32 is declared to be essential to the economy and to the welfare
33 of the people of this state. Therefore, in the public in-
34 terest and notwithstanding the terms, provisions, or condi-
35 tions of any franchise, a franchisee unable to obtain motor

1 fuel from a franchisor may purchase the fuel from another
56352 available source, subject to subsections two (2) through four
3 (4) of this section and provided the franchisee has done all
4 of the following:

5 a. At least forty-eight hours prior to entering into an
6 agreement to purchase motor fuel from another source, the
7 franchisee has requested delivery of motor fuel from the
56358 franchisor and the requested motor fuel has not been delivered,
9 or prior to entering into an agreement the franchisor has
10 stated to the franchisee that the requested motor fuel will
11 not be delivered. The request to the franchisor for delivery
12 shall be for a type of fuel normally provided by the franchisor
13 to the franchisee and for a quantity of fuel not exceeding
14 the average amount sold by the franchisee in one week, based
15 upon average weekly sales in the three months preceding the
16 request, except that this provision shall not restrict a
17 franchisee from purchasing gasohol from a source other than
18 the franchisor or limit the quantity to be purchased when
19 the franchisor does not normally supply the franchisee with
20 gasohol.

21 b. The franchisee has requested and has been denied
22 delivery of motor fuel sold or distributed under the trademark
23 named in the franchise from a person other than franchisor.

5635 24 c. The franchisee has requested and has been denied motor
25 fuel under an allocation program administered by the energy
26 policy council under section ninety-three point seven (93.7),
27 subsection nine (9) of the Code.

28 2. The quantity of motor fuel requested or purchased from
29 another source including those sources listed in paragraphs
30 b and c of subsection one (1) of this section shall not exceed
31 the quantity requested from the franchisor.

32 3. At the time a franchisee enters into an agreement to
33 purchase motor fuel from a source other than the franchisor,
34 the franchisee shall inform the franchisor by the quickest
35 available means.

1 4. If the franchisee sells motor fuel supplied from a
2 source other than the franchisor, the franchisee shall promi-
3 nently post a sign disclosing this fact to the public on each
4 motor fuel pump used for dispensing the motor fuel. The size
5 of the sign shall not be less than eight inches by ten inches
6 and the letters on the sign shall be at least three inches
7 in height.

5635 8 Purchases of motor fuel in accordance with this section
9 are not good cause for termination of a franchise. Retaliatory
10 action arising from purchases made in accordance with this
11 section are a violation of chapter five hundred fifty-three
12 (553) of the Code.

5635 13 Sec. 3. This Act, being deemed of immediate importance,
14 shall take effect from and after its publication in the Traer
15 Star-Clipper, a newspaper published in Traer, Iowa and in
16 The Winterset Madisonian, a newspaper published in Winterset,
17 Iowa.

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HOUSE FILE 736

S-5635

- 1 Amend House File 736, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, lines 2 and 3, by striking the word
4 and figure "four (4)" and inserting in lieu thereof
5 the word and figure "five (5)".
6 2. Page 2, line 8, by inserting after the word
7 "delivered" the words "and the franchisor has given
8 the franchisee notice that the franchisor is unable
9 to provide the requested motor fuel".
10 3. Page 2, by striking lines 24 through 27 and
11 inserting in lieu thereof the following:
12 "c. The franchisee has requested motor fuel from
13 the set-aside program administered by the energy
14 policy council under section ninety-three point seven
15 (93.7), subsection nine (9), of the Code and allocation
16 from the set-aside program has been denied and the
17 director of the energy policy council determines that
18 the franchisee has demonstrated that a special hardship
19 exists in the community served by the franchisee
20 relating to the public health, safety and welfare,
21 as specified under the rules of the energy policy
22 council."
23 4. Page 3, by inserting after line 7 the following
24 new subsection:
25 "5. A franchisee who sells motor fuel supplied
26 from a source other than the franchisor shall also
27 fully indemnify the franchisor against any claims
28 asserted by a user arising out of the sale of motor
29 fuel not acquired from the franchisor."
30 5. Page 3, by striking lines 8 through 12.
31 6. Page 3, by striking lines 13 through 17 and
32 inserting in lieu thereof the following:
33 "Sec. _____. The provisions of this Act shall be
34 applicable only to franchise agreements entered into
35 after the effective date of this Act."

S-5635 FILED
APRIL 2, 1980

BY COMMITTEE ON ENERGY
RICHARD R. RAMSEY, CHAIRPERSON

*Adopted 4/1 (p. 1290)
Motion to reconsider. Out of order 4/16*

HOUSE FILE 736

S-5755

- 1 Amend the amendment S-5635, to House File 736, as
- 2 amended, passed, and reprinted by the House as follows:
- 3 1. Page 1, by striking lines 3 through 5 and
- 4 inserting in lieu thereof the following: -
- 5 "1. Page 2, by striking lines 2 and 3 and inserting
- 6 in lieu thereof the following: "available source under
- 7 the state set-aside assignments, or subject to sub-
- 8 sections two (2) through five (5) of this section and
- 9 provided the franchisee has done all".
- 10 2. Page 1, by striking line 20.
- 11 3. Page 1, by striking lines 23 through 29.
- 12 4. Page 1, by striking line 30 and inserting in
- 13 lieu thereof the following:
- 14 "5. Page 3, by striking lines 8 through 12 and
- 15 inserting in lieu thereof the following:
- 16 "Purchases of motor fuel in accordance with this
- 17 section are not good cause for termination of a
- 18 franchise.""
- 19 5. Page 1, line 34, by inserting after the word
- 20 "into" the words "or renewed".

S-5755 FILED

BY EDGAR H. HOLDEN

APRIL 16, 1980

RULED OUT OF ORDER (p. 1503)

HOUSE FILE 736

AN ACT

TO PERMIT DISTRIBUTORS AND DEALERS TO PURCHASE FUEL FROM OTHER THAN THE FRANCHISOR WHEN MOTOR FUEL OR SPECIAL FUEL IS NOT AVAILABLE FROM THE FRANCHISOR, AND PROVIDING PENALTIES FOR VIOLATIONS.

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

Section 1. NEW SECTION. DEFINITIONS. For purposes of this Act, unless the context otherwise requires:

1. "Franchise" means a contract between a refiner and a distributor, a refiner and a retailer, a distributor and another distributor, or a distributor and a retailer under which a refiner or distributor authorizes a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes the use.

"Franchise" includes any contract under which a retailer or distributor is permitted to occupy leased premises, which premises are to be used in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner or a refiner which supplies motor fuel to the distributor and permits the occupancy of the leased premises.

2. "Franchisor" means a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

3. "Franchisee" means a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark

in connection with the sale, consignment, or distribution of motor fuel.

4. "Motor fuel" means gasoline or diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

Sec. 2. NEW SECTION. PURCHASE FROM OTHER SOURCE.

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections two (2) through five (5) of this section and provided the franchisee has done all of the following:

a. At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing gasohol from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with gasohol.

b. The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than franchisor.

c. The franchisee has requested motor fuel from the set-aside program administered by the energy policy council under section ninety-three point seven (93.7), subsection nine (9), of the Code and allocation from the set-aside program has been denied and the director of the energy policy council determines that the franchisee has demonstrated that a special hardship exists in the community served by the franchisee relating to the public health, safety and welfare, as specified under the rules of the energy policy council.

2. The quantity of motor fuel requested or purchased from another source including those sources listed in paragraphs b and c of subsection one (1) of this section shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

Sec. 3. The provisions of this Act shall be applicable only to franchise agreements entered into or renewed after the effective date of this Act.

WILLIAM H. HARBOR
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 736, Sixty-eighth General Assembly.

BRUCE GRAHAM
Assistant Chief Clerk of the House

Approved May 21, 1980

ROBERT D. RAY
Governor