
A BILL FOR AN ACT

RELATING TO GASOLINE DEALERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 486H-10.4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§486H-10.4 [Restrictions on manufacturers or jobbers in~~
4 ~~operating service stations; lease rent controls; definitions.~~

5 ~~(a) Beginning August 1, 1997, no manufacturer or jobber shall~~
6 ~~convert an existing dealer retail station to a company retail~~
7 ~~station; provided that nothing in this section shall limit a~~
8 ~~manufacturer or jobber from:~~

9 ~~(1) Continuing to operate any company operated retail~~
10 ~~service stations legally in existence on July 31,~~
11 ~~1997;~~

12 ~~(2) Constructing and operating any new retail service~~
13 ~~stations as company retail stations constructed after~~
14 ~~August 1, 1997, subject to subsection (b); or~~

15 ~~(3) Operating a former dealer retail station for up to~~
16 ~~twenty-four months until a replacement dealer can be~~
17 ~~found if the former dealer vacates the service~~



1 ~~station, cancels the franchise, or is properly~~
2 ~~terminated or not renewed.~~

3 ~~(b) No new company retail station shall be located within~~
4 ~~one-eighth mile of a dealer retail station in an urban area, and~~
5 ~~within one-quarter mile in other areas.~~

6 ~~(c)]~~ **Lease rent controls.** (a) All leases as part of a
7 franchise as defined in section 486H-1, existing on August 1,
8 1997, or entered into thereafter, shall be construed in
9 conformity with the following:

- 10 (1) ~~[Such]~~ The renewal shall not be scheduled more
11 frequently than once every three years; and
- 12 (2) Upon renewal, the lease rent payable shall not exceed
13 fifteen per cent of the gross sales, except for
14 gasoline, which shall not exceed fifteen per cent of
15 the gross profit of product, excluding all related
16 taxes by the dealer~~[operated]~~ retail ~~[service]~~ station
17 as defined in section 486H-1~~[and 486H-10.4 plus]~~, and
18 in the case of a retail ~~[service]~~ station at a
19 location where the manufacturer or jobber is the
20 lessee and not the owner of the ground lease, a
21 percentage increase equal to any increase which the
22 manufacturer or jobber is required to pay the lessor



1 under the ground lease for the service station. For
2 the purposes of this subsection, "gross amount" means
3 all monetary earnings of the dealer from a dealer
4 [~~operated~~] retail [~~service~~] station after all
5 applicable taxes, excluding income taxes, are paid.

6 The provisions of this subsection shall not apply to any
7 existing contracts that may be in conflict with its provisions.

8 [~~(d)~~] (b) Nothing in this section shall prohibit a dealer
9 from selling a retail service station in any manner."

10 SECTION 2. Section 486H-10.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~+~~]**\$486H-10.5**[~~+~~] **Violation; penalties.** Any person who
13 violates section [~~486H-10~~] 486H-10.4 shall be assessed a civil
14 penalty of \$1,000 per day for each violation."

15 SECTION 3. Section 486H-11, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~]**\$486H-11**[~~+~~] **Enforcement of prohibition.** [~~(a)~~] The
18 ~~attorney general shall commence a civil action to enforce~~
19 ~~section 486H-10, by seeking injunctive or any other appropriate~~
20 ~~relief. The civil action shall be brought in the circuit court~~
21 ~~of the circuit where the alleged violation occurred, or where~~
22 ~~the defendant resides or is doing business.~~



1 ~~(b)~~] Any person who is injured in another person's
2 business or property by the violation of section [~~486H-10,~~
3 486H-10.4, may bring a civil action for damages or injunctive
4 relief, or both, against the person violating section [~~486H-10.~~
5 486H-10.4. If the plaintiff prevails, the plaintiff shall be
6 awarded reasonable attorneys and expert witness fees~~[+]~~, if
7 applicable; provided that if a court awards only nominal damages
8 to the plaintiff, those fees, in the court's discretion, need
9 not be awarded to the plaintiff. Any action brought under this
10 subsection shall be brought in the circuit court of the circuit
11 where the alleged violation occurred~~[7]~~ or where the defendant
12 resides or is doing business."

13 SECTION 4. Section 486H-1, Hawaii Revised Statutes, is
14 amended by deleting the definitions of "good faith", "other
15 areas", "secondary board", "self-serve basis", "unbranded", and
16 "urban".

17 ~~["Good faith" means the duty of a gasoline dealer and a
18 petroleum distributor to act in a fair and equitable manner in
19 the performance and in the demanding of performance of the terms
20 and provisions of the franchise. The petroleum distributor
21 shall not impose on a gasoline dealer by contract, rule, or
22 regulation, whether written or oral, any standard of conduct~~



1 ~~that is not reasonable and of material significance to the~~
2 ~~franchise relationship.~~

3 ~~"Other areas" means the second congressional district of~~
4 ~~the State.~~

5 ~~"Secondary brand" means a trade name or trademark, other~~
6 ~~than a major brand, used to identify a manufacturer's retail~~
7 ~~service station.~~

8 ~~"Self-serve basis" means that the retail station allows~~
9 ~~customers to dispense gasoline into vehicles.~~

10 ~~"Unbranded" means an independent retail service station~~
11 ~~dealer, jobber, heating oil distributor, motor fuel wholesaler,~~
12 ~~or peddler marketing gasoline or special fuels under its own~~
13 ~~brand, trade name, or trademark, other than those of a~~
14 ~~manufacturer, or any subsidiary thereof.~~

15 ~~"Urban" means the first congressional district of the~~
16 ~~State."]~~

17 SECTION 5. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 20 2006



HB 2061

Report Title:

Petroleum market oversight; service stations; divorcement

Description:

Repeals the service station anti-encroachment laws
(divorcement).

