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# 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-13, Hawaii Revised Statutes, is  
2 repealed.

3           ~~["§486H-13 Maximum pre-tax wholesale price for the sale of~~  
4 ~~gasoline; civil actions. (a) Notwithstanding any law to the~~  
5 ~~contrary, no manufacturer, wholesaler, or jobber may sell~~  
6 ~~regular unleaded, mid-grade, or premium gasoline to a dealer~~  
7 ~~retail station, an independent retail station, or to another~~  
8 ~~jobber or wholesaler at a price above the maximum pre-tax~~  
9 ~~wholesale prices established pursuant to subsection (b). The~~  
10 ~~commission shall publish the maximum pre-tax wholesale prices by~~  
11 ~~means that shall include the Internet website for the State of~~  
12 ~~Hawaii.~~

13           ~~(b) On a weekly basis, the commission shall determine the~~  
14 ~~maximum pre-tax wholesale price of regular unleaded, mid-grade,~~  
15 ~~and premium gasoline as follows: the maximum pre-tax wholesale~~  
16 ~~price of regular unleaded gasoline shall consist of the baseline~~  
17 ~~price for regular unleaded gasoline, plus the location~~  
18 ~~adjustment factor, the marketing margin factor, and the zone~~



1 ~~price adjustment, and for mid-grade and premium gasoline, the~~  
2 ~~applicable mid-grade and premium adjustment factor, such that~~  
3 ~~the maximum pre-tax wholesale gasoline prices reflect and~~  
4 ~~correlate with competitive market conditions.~~

5 ~~(c) The baseline price for regular unleaded gasoline~~  
6 ~~referred to in subsection (b) shall be determined on a weekly~~  
7 ~~basis and shall be equal to the average of:~~

8 ~~(1) The weekly average of the spot daily price for regular~~  
9 ~~unleaded gasoline for Los Angeles;~~

10 ~~(2) The weekly average of the spot daily price for regular~~  
11 ~~unleaded gasoline for New York Harbor; and~~

12 ~~(3) The weekly average of the spot daily price for regular~~  
13 ~~unleaded gasoline for the United States Gulf Coast;~~

14 ~~as reported and published by the Oil Price Information Service~~  
15 ~~for the five business days of the preceding week; provided that~~  
16 ~~the commission, in its discretion, may determine a more~~  
17 ~~appropriate baseline or a more appropriate price information~~  
18 ~~reporting service.~~

19 ~~(d) The location adjustment factor referred to in~~  
20 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~  
21 ~~determined by the commission and shall thereafter be subject to~~  
22 ~~adjustment pursuant to section 486H-16(a).~~



1       ~~(e) The marketing margin factor referred to in subsection~~  
2 ~~(b) shall be \$.18 per gallon or as otherwise determined by the~~  
3 ~~commission and shall thereafter be subject to adjustment~~  
4 ~~pursuant to section 486H-16(a).~~

5       ~~(f) The mid-grade adjustment factor shall be \$.05 per~~  
6 ~~gallon or as otherwise determined by the commission and shall~~  
7 ~~thereafter be subject to adjustment pursuant to section 486H-~~  
8 ~~16(a).~~

9       ~~(g) The premium adjustment factor shall be \$.09 per gallon~~  
10 ~~or as otherwise determined by the commission and shall~~  
11 ~~thereafter be subject to adjustment pursuant to section 486H-~~  
12 ~~16(a).~~

13       ~~(h) For purposes of this chapter, the State shall be~~  
14 ~~divided into the following zones:~~

15       ~~(1) Zone 1 shall include the island of Oahu;~~

16       ~~(2) Zone 2 shall include the island of Kauai;~~

17       ~~(3) Zone 3 shall include the island of Maui, except the~~  
18 ~~district of Hana;~~

19       ~~(4) Zone 4 shall include the district of Hana on the~~  
20 ~~island of Maui;~~

21       ~~(5) Zone 5 shall include the island of Molokai;~~

22       ~~(6) Zone 6 shall include the island of Lanai;~~



1       ~~(7) Zone 7 shall include the districts of Puna, south~~  
2           ~~Hilo, north Hilo, and Hamakua on the island of Hawaii;~~  
3           ~~and~~

4       ~~(8) Zone 8 shall include the districts of north Kohala,~~  
5           ~~south Kohala, north Kona, south Kona, and Kau on the~~  
6           ~~island of Hawaii.~~

7       ~~(i) The commission shall establish zone price adjustments~~  
8       ~~to the maximum pre-tax wholesale regular unleaded, mid-grade,~~  
9       ~~and premium gasoline prices on a zone by zone basis.~~

10       ~~(j) Every manufacturer, wholesaler, or jobber, upon the~~  
11       ~~request of the commission, shall furnish to the commission, in~~  
12       ~~the form requested, all documents, data, and information the~~  
13       ~~commission may require to make its determination on zone price~~  
14       ~~adjustments. Any person who refuses or fails to comply with a~~  
15       ~~request for information by the commission shall be subject to a~~  
16       ~~fine of up to \$50,000 per day. Each day a violation continues~~  
17       ~~shall constitute a separate offense.~~

18       ~~(k) The maximum pre-tax wholesale gasoline price imposed~~  
19       ~~by this section shall take effect on September 1, 2005,~~  
20       ~~notwithstanding the lack of the adoption of rules pursuant to~~  
21       ~~this section.~~

1       ~~(l) Any manufacturer, wholesaler, or jobber who knowingly~~  
2 ~~violates any requirement imposed or rule adopted under this~~  
3 ~~section, except for subsection (j), shall be subject to a civil~~  
4 ~~penalty, for each violation, equal to three times the amount of~~  
5 ~~the overcharge or \$250,000, whichever is greater, and shall be~~  
6 ~~liable for the costs of the action and reasonable attorney's~~  
7 ~~fees as determined by the court. Within two years from the date~~  
8 ~~the commission obtains actual knowledge of the violation, the~~  
9 ~~commission may institute a civil action in a court of competent~~  
10 ~~jurisdiction to collect the civil penalty, the costs, and~~  
11 ~~attorney's fees. In the case of ongoing violation, the two-year~~  
12 ~~period shall start from the date of the last violation. The~~  
13 ~~commission may refer any such action to the attorney general as~~  
14 ~~it deems appropriate. As used in this subsection, "overcharge"~~  
15 ~~means the number of gallons of gasoline sold, times the~~  
16 ~~wholesale price at which the manufacturer or jobber sold regular~~  
17 ~~unleaded, mid-grade, or premium gasoline to a dealer retail~~  
18 ~~station, an independent retail station, or another jobber or~~  
19 ~~wholesaler, less taxes assessed, less the maximum pre-tax~~  
20 ~~wholesale price established pursuant to subsection (b).~~

21       ~~(m) The commission shall have the power to determine the~~  
22 ~~extent to which a manufacturer, wholesaler, or jobber is~~



1 ~~complying with any requirement imposed or rule adopted under~~  
2 ~~this section, including the power to compel a manufacturer,~~  
3 ~~wholesaler, or jobber to submit documents, data, and information~~  
4 ~~necessary and appropriate for the commission to determine such~~  
5 ~~compliance. The commission may use data collected by the~~  
6 ~~department of business, economic development, and tourism~~  
7 ~~pursuant to chapter 486J, as well as obtain the assistance of~~  
8 ~~that department in determining such compliance.~~

9 ~~(n) The commission shall report to the governor and the~~  
10 ~~legislature, in a timely manner, on any significant aberrations,~~  
11 ~~trends, or conditions that may adversely impact the gasoline~~  
12 ~~consumers in the State.~~

13 ~~(o) The commission shall adopt rules pursuant to chapter~~  
14 ~~91 as may be necessary to implement this section and section~~  
15 ~~486H-16." ]~~

16 SECTION 2. Section 486H-15 and section 486H-16, Hawaii  
17 Revised Statutes, are repealed.

18 [~~§486H-15 Governor's emergency powers. (a)~~  
19 ~~Notwithstanding any law to the contrary, the governor may~~  
20 ~~suspend, in whole or in part, section 486H-13 or any rule~~  
21 ~~adopted pursuant to that section whenever the governor issues a~~  
22 ~~written determination that strict compliance with the section or~~



1 ~~a rule will cause a major adverse impact on the economy, public~~  
2 ~~order, or the health, welfare, or safety of the people of~~  
3 ~~Hawaii. In the written determination, the governor shall state~~  
4 ~~the specific provision of the section or rule that strict~~  
5 ~~compliance with will cause a major adverse impact on the~~  
6 ~~economy, public order, or the health, welfare, or safety of the~~  
7 ~~people of the State, along with specific reasons for that~~  
8 ~~determination. The governor shall publish this determination in~~  
9 ~~accordance with section 1-28.5. The suspension shall take~~  
10 ~~effect upon issuance of the written determination by the~~  
11 ~~governor.~~

12 ~~(b) Except as provided in subsection (c), the suspension~~  
13 ~~under subsection (a) shall remain in effect until the earlier~~  
14 ~~of:~~

15 ~~(1) The adjournment of the next regular or special session~~  
16 ~~of the legislature; or~~

17 ~~(2) The effective date of any legislative enactment~~  
18 ~~intended to address the major adverse impact;~~  
19 ~~provided that if the legislature has passed legislation to~~  
20 ~~address the major adverse impact, and the governor vetoes the~~  
21 ~~presented legislation, the suspension shall terminate on the~~  
22 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~



1 ~~prices in effect immediately prior to the issuance of the~~  
2 ~~written determination by the governor shall take effect on the~~  
3 ~~day after the date of the veto; and provided further that if no~~  
4 ~~action is taken by the legislature during the regular or special~~  
5 ~~session to address the major adverse impact, then the maximum~~  
6 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~  
7 ~~the issuance of the written determination by the governor shall~~  
8 ~~take effect on the day after adjournment sine die of the regular~~  
9 ~~or special session.~~

10 ~~(c) If the written determination is issued while the~~  
11 ~~legislature is in session, the suspension under subsection (a)~~  
12 ~~shall remain in effect until the earlier of:~~

13 ~~(1) The adjournment of that session of the legislature; or~~

14 ~~(2) The effective date of any legislative enactment~~  
15 ~~intended to address the major adverse impact;~~

16 ~~provided that if the legislature has passed legislation to~~  
17 ~~address the major adverse impact, and the governor vetoes the~~  
18 ~~presented legislation, the suspension shall terminate on the~~  
19 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~  
20 ~~prices in effect immediately prior to the issuance of the~~  
21 ~~written determination by the governor shall take effect on the~~  
22 ~~day after the date of the veto; and provided further that if no~~





1 ~~action is taken by the legislature during the regular or special~~  
 2 ~~session to address the major adverse impact, then the maximum~~  
 3 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~  
 4 ~~the issuance of the written determination by the governor shall~~  
 5 ~~take effect on the day after adjournment sine die of the regular~~  
 6 ~~or special session.~~

7 ~~**§486H-16 Adjustments.** (a) A manufacturer, wholesaler, or~~  
 8 ~~jobber may petition the commission to adjust the maximum pre-tax~~  
 9 ~~wholesale price of regular unleaded, mid-grade, or premium~~  
 10 ~~gasoline in the event of a change in the value of the baseline~~  
 11 ~~price for regular unleaded gasoline, the location adjustment~~  
 12 ~~factor, the marketing margin factor, the mid-grade adjustment~~  
 13 ~~factor, the premium adjustment factor, or a zone price~~  
 14 ~~adjustment. The petitioner shall bear the burden of proof to~~  
 15 ~~establish by clear and convincing evidence the need for and the~~  
 16 ~~amount of any adjustment. The adjustments shall be determined~~  
 17 ~~as follows:~~

18 ~~(1) The value of the baseline price shall be equal to the~~  
 19 ~~average of:~~

20 ~~(A) The weekly average of the spot daily price for~~  
 21 ~~regular unleaded gasoline for Los Angeles;~~



1           ~~(B) The weekly average of the spot daily price for~~  
2           ~~regular unleaded gasoline for New York Harbor,~~  
3           ~~and~~  
4           ~~(C) The weekly average of the spot daily price for~~  
5           ~~regular unleaded gasoline for the United States~~  
6           ~~Gulf Coast,~~  
7           ~~as reported and published by the Oil Price Information~~  
8           ~~Service for the five business days of the preceding~~  
9           ~~week; provided that the commission, in its discretion,~~  
10          ~~may determine a more appropriate baseline or a more~~  
11          ~~appropriate price information reporting service;~~  
12          ~~(2) The value of the location adjustment factor in effect~~  
13          ~~at the time the petition is filed shall be adjusted to~~  
14          ~~reflect the average of the actual acquisition cost to~~  
15          ~~non-refiner marketers to obtain gasoline from refiners~~  
16          ~~or importers for sale on the island of Oahu over the~~  
17          ~~prior twelve-month period, which cost shall be taken~~  
18          ~~from arm's length transactions between non-refiner~~  
19          ~~marketers, and refiners or importers, such as exchange~~  
20          ~~agreements, sales agreements, or other similar~~  
21          ~~agreements; provided that the location adjustment~~  
22          ~~factor shall not exceed the reasonable cost of~~



1 ~~importing gasoline to the island of Oahu. As used in~~  
2 ~~this paragraph, "actual acquisition cost" means the~~  
3 ~~amount over the base price of regular unleaded~~  
4 ~~gasoline that a non-refiner marketer pays to a third~~  
5 ~~party for delivery of such gasoline into a terminal~~  
6 ~~located on the island of Oahu;~~

7 ~~(3) The value of the marketing margin factor in effect at~~  
8 ~~the time the petition is filed shall be adjusted by~~  
9 ~~adding to such value the difference between:~~

10 ~~(A) The average of the difference over the prior~~  
11 ~~twelve-month period between:~~

12 ~~(i) The dealer tank wagon price for sales for~~  
13 ~~resale for "regular" gasoline; and~~

14 ~~(ii) The bulk price for sales for resale for~~  
15 ~~"regular" gasoline,~~

16 ~~for Petroleum Administration for Defense (PAD)~~

17 ~~District V, as reported and published by the~~

18 ~~Energy Information Administration or its~~

19 ~~successor in Table 31 - "Motor Gasoline Prices by~~

20 ~~Grade, Sales Type, PAD District, and State" or~~

21 ~~other source containing the same information;~~

22 ~~less~~



- 1           ~~(B) The average of the difference over the period~~  
2           ~~from 1994 until the most current year between:~~
- 3           ~~(i) The dealer tank wagon price for sales for~~  
4           ~~resale for "regular" gasoline; and~~
- 5           ~~(ii) The bulk price for sales for resale for~~  
6           ~~"regular" gasoline,~~  
7           ~~for Petroleum Administration for Defense (PAD)~~  
8           ~~District V, as reported and published by the~~  
9           ~~Energy Information Administration or its~~  
10           ~~successor in Table 31 - "Motor Gasoline Prices by~~  
11           ~~Grade, Sales Type, PAD District, and State" or~~  
12           ~~other source containing the same information;~~
- 13       ~~(4) The value of the mid-grade and premium adjustment~~  
14       ~~factors in effect at the time the petition is filed~~  
15       ~~shall be adjusted by any material change in the mid-~~  
16       ~~grade and premium adjustment factor as published by an~~  
17       ~~appropriate price information reporting service; and~~
- 18       ~~(5) The value of any zone price adjustment in effect at~~  
19       ~~the time the petition is filed shall be adjusted based~~  
20       ~~upon material changes in the operating costs for a~~  
21       ~~zone, such as terminaling, storage, or distribution.~~



1 ~~costs, and other empirical data the commission deems~~  
2 ~~appropriate.~~

3 ~~(b) If the commission adjusts the maximum pre-tax~~  
4 ~~wholesale gasoline prices, the commission shall publish its~~  
5 ~~findings and the adjusted prices by means that shall include the~~  
6 ~~Internet website for the State of Hawaii.~~

7 ~~(c) Regardless of whether a petition has been filed and~~  
8 ~~notwithstanding a determination of the adjustments made pursuant~~  
9 ~~to subsection (a), the commission, in its discretion, may make~~  
10 ~~such other and further adjustments deemed necessary and~~  
11 ~~appropriate to establish maximum pre-tax wholesale gasoline~~  
12 ~~prices that reflect and correlate with competitive market~~  
13 ~~conditions." ]~~

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and stricken.

16 SECTION 4. This Act shall take effect upon its approval.  
17

INTRODUCED BY:

*Ryan P. Jarama BR*  
JAN 25 2006



HB 2807

**Report Title:**

Gasoline Dealers

**Description:**

Repeals sections 486H-13, 15, and 16 (gas cap law).

