

Report Title:

Energy; Maximum Pre-tax Wholesale Gasoline; Petroleum Industry Monitoring

Description:

(1) Adds Singapore spot daily price in determination of baseline price, with lowest three of the four average weekly geographic prices averaged for State baseline; (2) in event of a holiday or holidays, requires PUC to use average of remaining business days of the week; (3) removes the location adjustment factor; (4) reduces the marketing margin factor to 14 cents; (5) allocates different percentages of zone price adjustments to different distributors performing different functions; (6) provides for adjustment of zone price adjustments and allocation of zone price adjustments on a zone by zone basis; (7) establishes (a) petroleum industry monitoring, analysis, and reporting program; (b) petroleum industry monitoring, analysis, and reporting special fund; and (c) unfair practices by petroleum industry; (8) suspends enforcement of gasoline pricing program by PUC; and (9) repeals gasoline pricing program 1/1/11. (HD1)



A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 PART I.

2 SECTION 1. Various federal courts have found and the
3 petroleum industry itself acknowledges that the wholesale
4 gasoline industry in this State is an uncompetitive oligopoly
5 with industry parties enjoying supra-competitive margins in
6 their wholesale transactions, all to the detriment of Hawaii's
7 consumers. It was for this reason that the legislature enacted
8 Act 77, Session Laws of Hawaii 2002, establishing a maximum pre-
9 tax wholesale gasoline price program, codified as chapter 486H,
10 Hawaii Revised Statutes. Prior to the implementation of the
11 program, the legislature enacted Act 242, Sessions Laws of
12 Hawaii 2004, amending chapter 486H and the process by which the
13 maximum pre-tax wholesale gasoline price was to be determined.

14 However, in establishing the maximum pre-tax wholesale
15 gasoline price program, the legislature recognized that the
16 daily dynamics of the gasoline market did not allow for the
17 legislature to take timely action to make the necessary course
18 corrections in the implementation of chapter 486H. It was with



1 this in mind that the legislature granted the public utilities
2 commission substantial latitude in the implementation of chapter
3 486H. In determining the baseline gasoline price, the public
4 utilities commission had discretion in using the geographic
5 markets set forth in the statute or any other geographic market
6 or markets it felt were more relevant. It was also granted
7 latitude to use the price information service named in the
8 statute or another price information service of its choice. In
9 addition, the public utilities commission in implementing
10 chapter 486H had the discretion to change the location
11 adjustment factor, the marketing margin factor, and the mid-
12 grade and premium adjustment factors. Furthermore, the public
13 utilities commission was granted the sole authority to establish
14 the various zone price adjustments for the various zones
15 established throughout the State.

16 Unfortunately and in some case contrary to the advice and
17 recommendations of its own consultant, the public utilities
18 commission failed to use its discretion in the best interest of
19 Hawaii's consumers and simply relied on the numerical factors
20 and adjustments contained in the statute. This lack of a
21 proactive implementation of chapter 486H may have resulted in
22 unnecessarily higher margins in the maximum pre-tax wholesale



1 gasoline prices and higher gasoline costs to Hawaii's consumers.
2 Accordingly, the legislature finds that certain amendments may
3 be required for the proper implementation of chapter 486H.

4 The legislature further finds that the establishment of a
5 petroleum industry monitoring, analysis, and reporting program
6 to oversee the petroleum industry in the State would be an
7 important additional approach to ensuring that Hawaii's
8 consumers enjoy fair and competitive gasoline prices. The
9 collection, aggregation, analysis, and reporting on real time
10 data and information relating all facets of the petroleum
11 industry in the State may make the gasoline pricing program
12 imposed by chapter 486H unnecessary. However, the legislature
13 does not feel that the gasoline pricing program should be
14 repealed until the petroleum industry monitoring, analysis, and
15 reporting program is established and proves that it can ensure
16 the delivery of fair and competitive gasoline prices for
17 Hawaii's consumer.

18 Another approach that may be used along with the
19 monitoring, analysis, and reporting program to ensure that
20 Hawaii's consumer enjoy fair and competitive gasoline prices is
21 to clearly delineate what constitutes unfair trade practices in
22 the petroleum industry.



1 Accordingly, the purposes of this Act are to:

2 (1) Amend sections 486H-13 and 486H-16, Hawaii Revised
3 Statutes, by:

4 (A) Adding the Singapore spot daily price in
5 determining the baseline gasoline price, with the
6 lowest three of the four geographic market
7 average weekly prices averaged for the State's
8 baseline gasoline price;

9 (B) In the event of a holiday or holidays in a week,
10 requiring that the public utilities commission
11 use the average of the remaining business days in
12 that week;

13 (C) Deleting the location adjustment factor;

14 (D) Reducing the marketing margin factor;

15 (E) Allocating different percentages of the zone
16 price adjustment to different distributors
17 performing different functions in the
18 distribution system; and

19 (F) Allowing the zone price adjustments and the
20 allocation of the zone price adjustments to be
21 adjusted on a zone by zone basis;



- 1 (2) Establish the petroleum industry monitoring, analysis,
2 and reporting program;
- 3 (3) Establish the petroleum industry monitoring, analysis,
4 and reporting special fund;
- 5 (4) Delineate unfair trade practices in the petroleum
6 industry;
- 7 (5) Suspend the maximum pre-tax wholesale gasoline pricing
8 program; and
- 9 (6) Repeal the maximum pre-tax wholesale gasoline pricing
10 program, effective January 1, 2011.

11 PART II.

12 SECTION 2. Section 486H-13, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§486H-13 Maximum pre-tax wholesale price for the sale of**
15 **gasoline; civil actions.** (a) Notwithstanding any law to the
16 contrary, no manufacturer, wholesaler, or jobber may sell
17 regular unleaded, mid-grade, or premium gasoline to a dealer
18 retail station, an independent retail station, or to another
19 jobber or wholesaler at a price above the maximum pre-tax
20 wholesale prices established pursuant to subsection (b). The
21 commission shall publish the maximum pre-tax wholesale prices by



1 means that shall include the Internet website for the State of
2 Hawaii.

3 (b) On a weekly basis, the commission shall determine the
4 maximum pre-tax wholesale price of regular unleaded, mid-grade,
5 and premium gasoline as follows: the maximum pre-tax wholesale
6 price of regular unleaded gasoline shall consist of the baseline
7 price for regular unleaded gasoline, plus [~~the location~~
8 ~~adjustment factor,~~] the marketing margin factor[~~7~~] and the zone
9 price adjustment, and for mid-grade and premium gasoline, the
10 applicable mid-grade and premium adjustment factor, such that
11 the maximum pre-tax wholesale gasoline prices reflect and
12 correlate with competitive market conditions.

13 (c) The baseline price for regular unleaded gasoline
14 referred to in subsection (b) shall be determined on a weekly
15 basis and shall be equal to the average of[+] the three lowest
16 of the four weekly averages of the spot daily price for
17 conventional regular unleaded gasoline or its equivalent
18 standard:

19 (1) The weekly average of the spot daily price for
20 conventional regular unleaded gasoline for Los
21 Angeles;



1 (2) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for New York
3 Harbor; [~~and~~]

4 (3) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for the United
6 States Gulf Coast; and

7 (4) The weekly average of the spot daily price for
8 conventional regular unleaded gasoline for Singapore,
9 as reported and published by the Oil Price Information Service
10 for the five business days of the preceding week; provided that
11 if the preceding week contains a holiday or holidays, then the
12 average of the remaining business days of the preceding week
13 shall be used; and provided further that the commission, in its
14 discretion, may determine a more appropriate baseline or a more
15 appropriate price information reporting service[~~-~~] or use
16 multiple price information reporting services.

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

21 ~~(e)]~~ (d) The marketing margin factor referred to in
22 subsection (b) shall be [~~\$.18~~] 14 cents per gallon or as



1 otherwise determined by the commission and shall thereafter be
2 subject to adjustment pursuant to section 486H-16(a).

3 ~~[(f)]~~ (e) The mid-grade adjustment factor shall be [~~\$.05~~]
4 5 cents per gallon or as otherwise determined by the commission
5 and shall thereafter be subject to adjustment pursuant to
6 section 486H-16(a).

7 ~~[(g)]~~ (f) The premium adjustment factor shall be [~~\$.09~~]
8 9 cents per gallon or as otherwise determined by the commission
9 and shall thereafter be subject to adjustment pursuant to
10 section 486H-16(a).

11 ~~[(h)]~~ (g) For purposes of this chapter, the State shall be
12 divided into the following zones:

- 13 (1) Zone 1 shall include the island of Oahu;
14 (2) Zone 2 shall include the island of Kauai;
15 (3) Zone 3 shall include the island of Maui, except the
16 district of Hana;
17 (4) Zone 4 shall include the district of Hana on the
18 island of Maui;
19 (5) Zone 5 shall include the island of Molokai;
20 (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)]~~ (h) The commission shall establish zone price
8 adjustments to the maximum pre-tax wholesale regular unleaded,
9 mid-grade, and premium gasoline prices on a zone by zone basis.

10 (i) The zone price adjustments for zones 2 through 8, set
11 forth in subsection (g) shall be divided as follows:

12 (1) Thirty per cent of the zone price adjustment shall be
13 allocated to the shipper of the gasoline from zone to
14 zone;

15 (2) Twenty per cent of the zone price adjustment shall be
16 allocated to the terminal holding the gasoline in
17 zones 2 through 8; and

18 (3) Fifty per cent of the zone price adjustments shall be
19 allocated to the person or entity that delivers the
20 gasoline to the retail station in zones 2 through 8.

21 (j) Every manufacturer, wholesaler, or jobber, upon the
22 request of the commission, shall furnish to the commission, in



1 the form requested, all documents, data, and information the
2 commission may require to make its determination on zone price
3 adjustments. Any person who refuses or fails to comply with a
4 request for information by the commission shall be subject to a
5 fine of up to \$50,000 per day. Each day a violation continues
6 shall constitute a separate offense.

7 (k) The maximum pre-tax wholesale gasoline price imposed
8 by this section shall take effect on September 1, 2005,
9 notwithstanding the lack of the adoption of rules pursuant to
10 this section.

11 (l) Any manufacturer, wholesaler, or jobber who knowingly
12 violates any requirement imposed or rule adopted under this
13 section, except for subsection (j), shall be subject to a civil
14 penalty, for each violation, equal to three times the amount of
15 the overcharge or \$250,000, whichever is greater, and shall be
16 liable for the costs of the action and reasonable attorney's
17 fees as determined by the court. Within two years from the date
18 the commission obtains actual knowledge of the violation, the
19 commission may institute a civil action in a court of competent
20 jurisdiction to collect the civil penalty, the costs, and
21 attorney's fees. In the case of ongoing violation, the two-year
22 period shall start from the date of the last violation. The



1 commission may refer any such action to the attorney general as
2 it deems appropriate. As used in this subsection, "overcharge"
3 means the number of gallons of gasoline sold, times the
4 wholesale price at which the manufacturer or jobber sold regular
5 unleaded, mid-grade, or premium gasoline to a dealer retail
6 station, an independent retail station, or another jobber or
7 wholesaler, less taxes assessed, less the maximum pre-tax
8 wholesale price established pursuant to subsection (b).

9 (m) The commission shall have the power to determine the
10 extent to which a manufacturer, wholesaler, or jobber is
11 complying with any requirement imposed or rule adopted under
12 this section, including the power to compel a manufacturer,
13 wholesaler, or jobber to submit documents, data, and information
14 necessary and appropriate for the commission to determine such
15 compliance. The commission may use data collected [~~by the~~
16 ~~department of business, economic development, and tourism]~~
17 pursuant to chapter 486J[, ~~as well as obtain the assistance of~~
18 ~~that department]~~ in determining such compliance.

19 (n) The commission shall report to the governor and the
20 legislature, in a timely manner, on any significant aberrations,
21 trends, or conditions that may adversely impact the gasoline
22 consumers in the State.



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

4 SECTION 3. Section 486H-16, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) A manufacturer, wholesaler, or jobber may petition
7 the commission to adjust the maximum pre-tax wholesale price of
8 regular unleaded, mid-grade, or premium gasoline in the event of
9 a change in the value of the baseline price for regular unleaded
10 gasoline, [~~the location adjustment factor,~~] the marketing margin
11 factor, the mid-grade adjustment factor, the premium adjustment
12 factor, [~~or~~] a zone price adjustment[~~-~~] on a zone by zone basis,
13 or an allocation of a zone price adjustment on a zone by zone
14 basis. 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[+] the three lowest of the four weekly
20 averages of the spot daily price for conventional
21 regular unleaded gasoline or its equivalent standard:



- 1 (A) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for Los
3 Angeles;
- 4 (B) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for New
6 York Harbor; [~~and~~]
- 7 (C) The weekly average of the spot daily price for
8 conventional regular unleaded gasoline for the
9 United States Gulf Coast[~~7~~]; and
- 10 (D) The weekly average of the spot daily price for
11 conventional regular unleaded gasoline for
12 Singapore,
- 13 as reported and published by the Oil Price Information
14 Service for the five business days of the preceding
15 week; provided that if the preceding week contains a
16 holiday or holidays, the average of the remaining
17 business days of the preceding week shall be used; and
18 provided further that the commission, in its
19 discretion, may determine a more appropriate baseline
20 or a more appropriate price information reporting
21 service[~~7~~] or use multiple price information reporting
22 services;



1 ~~[-(2)] The value of the location adjustment factor in effect~~
2 ~~at the time the petition is filed shall be adjusted to~~
3 ~~reflect the average of the actual acquisition cost to~~
4 ~~non-refiner marketers to obtain gasoline from refiners~~
5 ~~or importers for sale on the island of Oahu over the~~
6 ~~prior twelve-month period, which cost shall be taken~~
7 ~~from arm's length transactions between non-refiner~~
8 ~~marketers[,] and refiners or importers, such as~~
9 ~~exchange agreements, sales agreements, or other~~
10 ~~similar agreements; provided that the location~~
11 ~~adjustment factor shall not exceed the reasonable cost~~
12 ~~of importing gasoline to the island of Oahu. As used~~
13 ~~in this paragraph, "actual acquisition cost" means the~~
14 ~~amount over the base price of regular unleaded~~
15 ~~gasoline that a non-refiner marketer pays to a third~~
16 ~~party for delivery of such gasoline into a terminal~~
17 ~~located on the island of Oahu;~~

18 ~~-(3)]~~ (2) The value of the marketing margin factor in
19 effect at the time the petition is filed shall be
20 adjusted by adding to such value the difference
21 between:



- 1 (A) The average of the difference over the prior
2 twelve-month period 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 less
- 14 (B) The average of the difference over the period
15 from 1994 until the most current year between:
- 16 (i) The dealer tank wagon price for sales for
17 resale for "regular" gasoline; and
- 18 (ii) The bulk price for sales for resale for
19 "regular" gasoline,
20 for Petroleum Administration for Defense (PAD)
21 District V, as reported and published by the
22 Energy Information Administration or its



1 successor in Table 31 - "Motor Gasoline Prices by
2 Grade, Sales Type, PAD District, and State" or
3 other source containing the same information;

4 [~~4~~] (3) The value of the mid-grade and premium adjustment
5 factors in effect at the time the petition is filed
6 shall be adjusted by any material change in the mid-
7 grade and premium adjustment factor as published by an
8 appropriate price information reporting service; and

9 [~~5~~] (4) The value of any zone price adjustment on a zone
10 by zone basis or zone price adjustment allocation,
11 pursuant to section 486H-13(i), on a zone by zone
12 basis, in effect at the time the petition is filed,
13 shall be adjusted based upon material changes in the
14 operating costs for a zone, such as terminaling,
15 storage, or distribution costs, and other empirical
16 data the commission deems appropriate."

17 PART III.

18 SECTION 4. Chapter 486J, Hawaii Revised Statutes, is
19 amended by adding three new sections to be appropriately
20 designated and to read as follows:

21 "§486J-A Informational cost reports. (a) Each refiner,
22 on a semi-annual basis, at such reporting dates as the



1 commission may establish, shall file with the commission, on
2 forms prescribed, prepared, and furnished by the commission, a
3 certified statement of operating and overhead costs for the
4 refiner's Hawaii operations that shall include but not be
5 limited to the following:

- 6 (1) Crude oil costs and sources;
- 7 (2) Other feedstock costs and sources;
- 8 (3) Refinery operating expenses;
- 9 (4) Marketing operating expenses by petroleum product;
- 10 (5) Distribution expenses by petroleum product;
- 11 (6) Corporate overhead expenses; and
- 12 (7) The percentage of the total number of wholesale
13 gallons of unleaded regular and premium unleaded
14 gasoline sold during the reporting period at wholesale
15 prices per gallon that exceed two hundred per cent of
16 the total costs and expenses reported in this
17 subsection on a per gallon basis.

18 (b) In addition to the reporting required under subsection
19 (a), each distributor shall file with the commission all
20 Securities and Exchange Commission Forms 10-K, 10-Q, annual
21 reports, quarterly reports, and earnings supplements published
22 by the distributor.



1 (c) Each distributor, except a distributor who is so
2 defined solely by criteria in paragraph (4) of that definition
3 in section 486J-1, who sells liquid fuel only at retail and is
4 not a refiner, shall file with the commission, on a semi-annual
5 basis at such reporting dates as the commission may establish,
6 on forms prescribed, prepared, and furnished by the commission,
7 a certified statement of operating and overhead costs that shall
8 include the following:

- 9 (1) Gasoline purchases and exchanges and sources;
10 (2) Diesel purchases and exchanges and sources;
11 (3) Marketing expenses; and
12 (4) Distribution expenses.

13 **§486J-B Petroleum industry monitoring, analysis, and**
14 **reporting program.** The commission shall establish a petroleum
15 industry monitoring, analysis, and reporting program that
16 includes development and maintenance of an automated reporting
17 system that meets the requirements of government, industry, and
18 the public while promoting sound policy making and consumer
19 information and protection. The purpose of the petroleum
20 industry monitoring, analysis, and reporting program is to
21 conduct and facilitate the efficient analysis and reporting of
22 all information and data provided by the petroleum industry



1 pursuant to this chapter. The commission shall develop the
2 petroleum industry monitoring, analysis, and reporting program
3 in a manner that will result in greater market transparency and
4 provide useful information to the commission and any other
5 affected agency in conducting oversight of the petroleum
6 industry and ensure compliance with all relevant laws.

7 **§486J-C Petroleum industry monitoring, analysis, and**
8 **reporting special fund.** (a) There is established a petroleum
9 industry monitoring, analysis, and reporting special fund to be
10 administered by the commission.

11 (b) The legislature may make appropriations from the
12 general revenues of the State of Hawaii, not to exceed
13 \$2,000,000 in any fiscal year, for the petroleum industry
14 monitoring, analysis, and reporting special fund.

15 (c) Moneys in the special fund shall be used to:

16 (1) Administer the petroleum industry monitoring,
17 analysis, and reporting program pursuant to this
18 chapter; and

19 (2) Establish full-time staff positions in the
20 commission to implement and maintain the petroleum
21 industry monitoring, analysis, and reporting program,



1 including the automated reporting system, established
2 by section 486J-B."

3 SECTION 5. Section 486J-1, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding five new definitions to be appropriately
6 inserted and to read:

7 "Classes of retail trade" means the separate subdivisions,
8 or "classes", of outlets or methods of retail sales of liquid
9 fuels, typically but not limited to gasoline and diesel for
10 motor vehicles, and includes any:

11 (1) Company-operated station that is a retail service
12 station owned and operated by a refiner or wholesale
13 distributor and where retail prices are set by that
14 refiner or wholesale distributor;

15 (2) Lessee dealer-operated station that is a retail
16 service station owned by a refiner or wholesale
17 distributor and operated by a qualified gasoline
18 dealer other than a refiner or wholesale distributor
19 under a franchise; or

20 (3) Owner-operated station that is a retail service
21 station not owned by a refiner or wholesale



1 distributor and operated by a qualified gasoline
2 dealer.

3 "Commission" means the public utilities commission.

4 "Corporate overhead expenses" means the expenses or costs
5 allocated by refiners that reflect their Hawaii business units'
6 share of corporate staff costs, including legal, finance,
7 accounting, information technology, and similar costs.

8 "Liquid fuel" means fuels in liquid form, commercially
9 usable for energy needs, power generation, and fuels manufacture
10 that may be manufactured, produced, or imported into the State
11 or that may be exported from the State, including petroleum and
12 petroleum products and all fuel alcohols.

13 "Wholesale liquid fuel prices" means the prices at which
14 liquid fuel is sold at wholesale for resale at wholesale or
15 retail, typically but not limited to gasoline and diesel for
16 motor vehicles, and includes the:

17 (1) "Refiner wholesale price" that means the wholesale
18 price at which liquid fuel is sold by a refiner to any
19 distributor, not a refiner, for resale at any
20 subsequent wholesale or retail transaction;

21 (2) "Nonrefiner wholesale price" that means the wholesale
22 price at which liquid fuel is sold by any distributor,



1 not a refiner, to any other distributor, not a
2 refiner, for resale at any subsequent wholesale or
3 retail transaction; and
4 (3) "Dealer tank wagon price" that means the wholesale
5 price at which liquid fuel is sold to any retail
6 outlet by any distributor priced on a delivered basis
7 to a retail outlet."

8 2. By amending the definition of "distributor" to read:

9 "Distributor" means [~~and includes~~]:

- 10 (1) Every person who refines, manufactures, produces, or
11 compounds fuel in the State, and sells it at wholesale
12 or at retail, or who utilizes it directly in the
13 manufacture of products or for the generation of
14 power;
- 15 (2) Every person who imports or causes to be imported into
16 the State, or exports or causes to be exported from
17 the State, any fuel; [~~and~~]
- 18 (3) Every person who acquires fuel through exchanges with
19 another distributor[~~-~~]; or
- 20 (4) Every person who purchases fuel for resale at
21 wholesale or retail from any person described in
22 paragraph (1), (2), or (3)."



1 3. By amending the definition of "fuel" to read:

2 "Fuel" means [~~and includes~~] fuels, whether liquid, solid,
3 or gaseous, commercially usable for energy needs, power
4 generation, and fuels manufacture that may be manufactured,
5 grown, produced, or imported into the State or that may be
6 exported [~~therefrom~~] from the State, including petroleum and
7 petroleum products and gases, coal, coal tar, vegetable
8 ferments, and all fuel alcohols."

9 4. By amending the definition of "person" to read:

10 "Person"[~~7~~] means any person, firm, association,
11 organization, partnership, business trust, corporation, or
12 company. "Person" also includes any city, county, public
13 district or agency, the State or any department or agency
14 [~~thereof~~7] of the State, and the United States to the extent
15 authorized by federal law."

16 5. By amending the definition of "refiner" to read:

17 "Refiner" means any person who owns, operates, or controls
18 the operations of one or more refineries[~~7~~] in Hawaii."

19 6. By repealing the definition of "petroleum
20 commissioner".

21 [~~"Petroleum commissioner" or "commissioner" means the~~
22 ~~administrator of the energy, resources, and technology division~~



1 ~~of the department of business, economic development, and~~
2 ~~tourism."~~]

3 SECTION 6. Section 486J-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§486J-2 Distributors to register.** Every distributor, and
6 any person before becoming a distributor, shall register as such
7 with the [~~commissioner~~] commission on forms to be prescribed,
8 prepared, and furnished by the [~~commissioner.~~] commission."

9 SECTION 7. Section 486J-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§486J-3 Statements.** (a) Each distributor [~~shall~~], at
12 [~~such~~] reporting dates as the [~~commissioner~~] commission may
13 establish, shall file with the [~~commissioner,~~] commission, on
14 forms prescribed, prepared, and furnished by the [~~commissioner,~~]
15 commission, a certified statement showing separately for each
16 county and for the islands of Lanai and Molokai within which and
17 [~~whereon~~] where fuel is sold or used during the last preceding
18 reporting period, the following:

19 (1) The total number of gallons or units of fuel, by the
20 type or grade, refined, manufactured, or compounded by
21 the distributor within the State [~~and sold or used by~~
22 ~~the distributor,~~] and, if for ultimate [use] sale or



1 consumption in another county or on another island,
2 ~~[the name of that county or island;]~~ the number of
3 gallons or units of fuel, by type or grade, sold,
4 exchanged, or otherwise transferred or used in each
5 county or island;

6 (2) The total number of gallons or units of fuel, by type
7 or grade, imported or exported by the distributor ~~[or~~
8 ~~sold]~~; the total volumes of fuel, by type or grade,
9 sold, exchanged, or otherwise transferred or used by
10 the distributor~~[-]~~; and if for ultimate ~~[use]~~ sale or
11 consumption in another county or on another island,
12 ~~[the name of that]~~ the number of gallons or units of
13 fuel, by type or grade, sold, exchanged, or otherwise
14 transferred or used in each county or island;

15 (3) The total number of gallons or units of fuel sold as
16 liquid fuel, aviation fuel, diesel fuel, and other
17 types of fuel as required by the ~~[commissioner;]~~
18 commission;

19 (4) The total number of gallons or units of fuel ~~[and the~~
20 ~~types thereof]~~, by type or grade, and their respective
21 sales prices for all fuel sold to[+] federal, state,
22 and county agencies, ships stores, or base exchanges,



1 commercial agricultural accounts, commercial
2 nonagricultural accounts, retail dealers, and other
3 customers as required by the [~~commissioner~~]
4 commission;

5 (5) Monthly weighted average acquisition cost per barrel
6 and volumes of foreign or domestic crude oil or other
7 liquid fuels, finished or unfinished, imported to
8 Hawaii, including information identifying the source
9 of the crude oil or other liquid fuels;

10 [~~(5) Monthly Hawaii~~] (6) Weekly weighted average wholesale
11 prices and sales volumes of finished [~~leaded regular,~~
12 unleaded regular[~~7~~] and premium motor gasoline, and of
13 each other grade of gasoline sold [~~through company-~~
14 operated], by island, to retail outlets, [~~to other~~
15 end users,] by classes of retail trade, and to
16 wholesale [~~customers~~] distributors;

17 (7) Weekly weighted average retail prices, and sales
18 volumes of finished unleaded regular and premium motor
19 gasoline, and of each other grade of gasoline sold, by
20 island, by retail distributor outlets of all classes
21 of retail trade and by any distributor to other end-
22 users. The commission may purchase retail price data



1 from data service companies that the commission may
2 use to substitute some or all data to meet the
3 reporting requirement for retail price data under this
4 paragraph;

5 [~~(6) Monthly Hawaii~~] (8) Weekly weighted average wholesale
6 prices, and sales volumes [~~for residential sales,~~
7 commercial and institutional sales, industrial sales,
8 sales through company-operated retail outlets, sales
9 to other end users, and wholesale sales of No. 2
10 diesel fuel and No. 2 fuel oil; and] of No. 2 diesel
11 fuel and No. 2 fuel oil, by island, to retail
12 distributor outlets, by classes of retail trade, and
13 to all other wholesale distributors. Weighted average
14 wholesale prices and sales volumes shall be reported
15 by type of wholesale liquid fuel price;

16 (9) Weekly weighted average retail prices, and sales
17 volumes of No. 2 diesel fuel and No. 2 fuel oil sold,
18 by island, by retail distributor outlets of all
19 classes of retail trade and by any distributor to
20 other end-users. The commission may purchase retail
21 price data from data service companies that the
22 commission may use to substitute some or all data to



1 meet the reporting requirement for retail price data
2 under this paragraph;

3 [~~(7)~~] (10) Monthly [~~Hawaii~~] weighted average prices, and
4 sales volumes for retail sales and wholesale sales, by
5 island, of No. 1 distillate, kerosene, finished
6 aviation gasoline, kerosene-type jet fuel, No. 4 fuel
7 oil, residual fuel oil, and consumer grade propane~~[-]~~;
8 and

9 (11) The gross margins or spreads between a refiner's
10 average weighted acquisition price for each gallon of
11 crude oil and blendstock refined within the State and
12 the average weighted prices for each gallon or unit of
13 fuel sold, by county or island, to another
14 distributor, retail dealers, end-users, and consumers.
15 For each distributor that is not a refiner, the gross
16 margins or spreads between the distributor's average
17 weighted price for each gallon or unit of fuel
18 acquired by the distributor and the average weighted
19 prices for each gallon or unit of fuel sold, by county
20 or island, to another distributor, retail dealers,
21 end-users, or consumers.



1 The commissioner shall prescribe [~~by rule when the first report~~
2 ~~shall be submitted.~~] applicable standards and practices for
3 reporting to facilitate uniformity, consistency, and
4 comparability of the data to be submitted.

5 [~~(b) In addition to the above reporting, each distributor~~
6 ~~shall file with the commissioner, Federal Form FEO-1000 or an~~
7 ~~equivalent state form to be prescribed, prepared, and furnished~~
8 ~~by the commissioner, showing the expected supply of fuel~~
9 ~~products for the coming month, and their intended distribution~~
10 ~~as categorized by Form FEO-1000 or the equivalent state form.~~
11 ~~The state form shall be supplied in the event that the Federal~~
12 ~~Mandatory Petroleum Allocation Regulations should expire, be~~
13 ~~revoked, or be amended to delete or substantially change the~~
14 ~~reporting requirements provided therein.~~

15 ~~(e)]~~ (b) Each major marketer shall submit to the
16 [~~commissioner,~~] commission, at a time and in a form as the
17 [~~commissioner]~~ commission shall prescribe, information including
18 petroleum and petroleum product receipts, exchanges,
19 inventories, and distributions. [~~The commissioner shall~~
20 ~~prescribe by rule when the first report shall be submitted.~~

21 ~~(d)]~~ (c) The [~~commissioner]~~ commission may request
22 additional information as and when [~~the commissioner]~~ the



1 commission deems necessary to perform [~~the commissioner's~~] the
2 commission's responsibilities under this chapter."

3 SECTION 8. Section 486J-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§486J-4 Informational reports.** (a) Each major oil
6 producer, refiner, marketer, oil transporter, and oil storer
7 shall submit to the [~~commissioner,~~] commission, in such form as
8 the [~~commissioner~~] commission shall prescribe, information
9 [~~which~~] that includes the following:

10 (1) Major oil transporters shall report on petroleum by
11 reporting the capacities of each major transportation
12 system, the amount transported by each system, and
13 inventories thereof. The provision of the information
14 shall not be construed to increase and decrease any
15 authority the [~~commissioner~~] commission may otherwise
16 have;

17 (2) Major oil storers shall report on storage capacity,
18 inventories, receipts and distributions, and methods
19 of transportation of receipts and distributions;

20 (3) Refiners shall report on facility capacity and
21 utilization and method of transportation of refinery
22 receipts and distributions; and



1 (4) Major oil marketers shall report on facility capacity
2 and methods of transportation of receipts and
3 distributions.

4 ~~[The commissioner shall prescribe by rule when the first report~~
5 ~~shall be submitted.]~~

6 (b) The ~~[commissioner]~~ commission may request additional
7 information as and when ~~[the commissioner]~~ the commission
8 deems it necessary to perform ~~[the commissioner's]~~ the
9 commission's responsibilities under this chapter."

10 SECTION 9. Section 486J-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§486J-5 Analysis of information; ~~[audits and~~**
13 **~~inspections;]~~ summary reports.** (a) The ~~[petroleum~~
14 ~~commissioner,]~~ commission, with the ~~[commissioner's]~~
15 commission's own staff and other support staff with expertise
16 and experience in, or with, the petroleum industry, shall
17 gather, analyze, and interpret the information submitted to it
18 pursuant to sections 486J-3 ~~[and]~~, 486J-4, and 486J-A and other
19 information relating to the supply ~~[and price]~~, prices, margins,
20 and profits of petroleum products, with particular emphasis on
21 motor vehicle fuels, including~~[]~~ but not limited to~~[]~~ all of
22 the following:



- 1 (1) The nature, cause, and extent of any petroleum or
2 petroleum [~~products shortage~~] product situation or
3 condition affecting supply[+], price, margins, or
4 profits;
- 5 [~~(2)~~] ~~The economic and environmental impacts of any~~
6 ~~petroleum and petroleum product shortage or condition~~
7 ~~affecting supply;~~
- 8 ~~(3)~~ ~~Petroleum or petroleum product demand and supply~~
9 ~~forecasting methodologies utilized by the petroleum~~
10 ~~industry in Hawaii;~~
- 11 (+4)] (2) The prices, with particular emphasis on wholesale
12 and retail motor vehicle fuel prices, and any
13 significant changes in prices charged by the petroleum
14 industry for petroleum or petroleum products sold in
15 Hawaii and the reasons for such changes;
- 16 [~~(5)~~] (3) The income, expenses, margins, and profits[~~7~~] in
17 Hawaii, both before and after taxes, [~~of the industry~~
18 ~~as a whole and of major firms within it, including a~~
19 ~~comparison with other major industry groups and major~~
20 ~~firms within them as to profits, return on equity and~~
21 ~~capital, and price earnings ratio;~~] of each
22 distributor and the income, expenses, margins, and



1 profits, both before and after taxes, of major oil
2 companies in other regions of the United States or
3 other countries; and

4 ~~[(6)] (4) The emerging trends relating to supply, demand,~~
5 ~~[and conservation of petroleum and petroleum products;~~

6 ~~(7) The nature and extent of efforts of the petroleum~~
7 ~~industry to expand refinery capacity and to make~~
8 ~~acquisitions of additional supplies of petroleum and~~
9 ~~petroleum products; and~~

10 ~~(8) The development of a petroleum and petroleum products~~
11 ~~information system in a manner which will enable the~~
12 ~~State to take action to meet and mitigate any~~
13 ~~petroleum or petroleum products shortage or condition~~
14 ~~affecting supply.~~

15 ~~(b) The commissioner shall conduct random or periodic~~
16 ~~audits and inspections of any supplier or suppliers of oil or~~
17 ~~petroleum products to determine whether they are unnecessarily~~
18 ~~withholding supplies from the market or are violating applicable~~
19 ~~policies, laws, or rules. The commissioner may solicit~~
20 ~~assistance of the department of taxation in any such audit. The~~
21 ~~commissioner shall cooperate with other state and federal~~
22 ~~agencies to ensure that any audit or inspection conducted by the~~



1 ~~commissioner is not duplicative of the data received by any of~~
2 ~~their audits or inspections which is available to the~~
3 ~~commissioner.] price, margins, and profits.~~

4 [~~(e)~~] (b) The [~~commissioner~~] commission shall analyze the
5 impacts of state and federal policies, rules, and regulations
6 upon the supply and pricing of petroleum products.

7 [~~(d)~~] (c) The [~~commissioner~~] commission shall publish
8 annually and submit to the governor and the legislature twenty
9 days prior to the first day of [~~the current~~] each legislative
10 session a summary, including any analysis and interpretation of
11 the information submitted to it pursuant to this chapter, and
12 any other activities taken by the [~~commissioner,~~] commission,
13 including civil penalties imposed and referrals of violations to
14 the attorney general under section 486J-9. Any person may
15 submit comments in writing regarding the accuracy or sufficiency
16 of the information submitted. [~~At the option of the director,~~
17 ~~this report may be combined with reporting required by section~~
18 ~~196-4(11), in the director's role as state energy resources~~
19 ~~coordinator.]"~~

20 SECTION 10. Section 486J-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§486J-6 Confidential information.** (a) Confidential
2 commercial information [~~presented~~] provided to the
3 [~~commissioner~~] commission pursuant to this chapter shall be held
4 in confidence by the [~~commissioner~~] commission or aggregated to
5 the extent necessary to [~~assure~~] ensure confidentiality as
6 governed by chapter 92F, including its penalty provisions.

7 ~~[(b) No data or information submitted to the commissioner~~
8 ~~shall be deemed confidential if the person submitting the~~
9 ~~information or data has made it public.~~

10 ~~(e)]~~ (b) Unless otherwise provided by law, with respect to
11 data provided pursuant to [~~sections~~] section 486J-3 [~~and~~], 486J-
12 4, or 486J-A, neither the [~~commissioner,~~] commission, nor any
13 employee of the [~~department,~~] commission, may do any of the
14 following:

15 (1) Use the information furnished under [~~sections~~] section
16 486J-3 [~~and~~], 486J-4, or 486J-A for any purpose other
17 than the statistical purposes for which it is
18 supplied;

19 (2) Make any publication whereby the data furnished by any
20 [~~particular establishment or individual~~] person under
21 [~~sections~~] section 486J-3 [~~and~~], 486J-4, or 486J-A can
22 be identified; or



1 (3) Permit [~~anyone~~] any person to examine the individual
2 reports provided under [~~sections~~] section 486J-3
3 [~~and~~], 486J-4, or 486J-A other than the [~~public~~
4 ~~utilities~~] commission, the department of taxation, the
5 attorney general, and the consumer advocate, and the
6 authorized representatives and employees of each."

7 SECTION 11. Section 486J-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§486J-7 Confidential information obtained by another**
10 **state agency.** Any confidential information pertinent to the
11 responsibilities of the [~~commissioner~~] commission specified in
12 this chapter that is obtained by another state agency, including
13 the department of taxation, [~~the public utilities commission,~~]
14 the attorney general, and the consumer advocate, shall be made
15 available only to the attorney general, the attorney general's
16 authorized representatives, and the [~~commissioner~~] commission
17 and shall be treated in a confidential manner."

18 SECTION 12. Section 486J-8, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§486J-8 Sharing of information obtained by the**
21 [~~commissioner~~] commission. The [~~commissioner~~] commission shall
22 make [~~all~~] any information obtained by the [~~commissioner~~]



1 commission under this chapter, including confidential
2 information, available only to the attorney general, the
3 department of taxation, [~~the public utilities commission,~~] the
4 consumer advocate, the department of business, economic
5 development, and tourism, and the authorized representative of
6 each, who shall safeguard the confidentiality of all
7 confidential information received."

8 SECTION 13. Section 486J-9, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§486J-9 Failure to timely provide information; failure to**
11 **make and file statements; false statements; penalties; referral**
12 **to the attorney general.** (a) The [~~petroleum commissioner~~]
13 commission shall notify those persons who have failed to timely
14 provide the information specified in section 486J-3 [~~or~~],
15 486J-4, or 486J-A or requested by the [~~commissioner~~] commission
16 under section 486J-3 [~~or~~], 486J-4[-], or 486J-A. If, within
17 five business days after being notified of the failure to
18 provide the specified or requested information, the person fails
19 to supply the specified or requested information, the person
20 shall be subject to a civil penalty of not less than \$50,000 per
21 day nor more than \$100,000 per day for each day the submission
22 of information is refused or delayed[~~, unless the person has~~



1 ~~timely filed objections with the commissioner regarding the~~
2 ~~information and the commissioner has held a hearing and,~~
3 ~~following a ruling by the commissioner, the person has properly~~
4 ~~submitted the issue to a court of competent jurisdiction for~~
5 ~~review].~~

6 (b) Any person who wilfully makes any false statement,
7 representation, or certification in any record, report, plan, or
8 other document filed with the [~~commissioner~~] commission shall be
9 subject to a civil penalty not to exceed \$500,000[~~7~~] and shall
10 be deemed to have committed an unfair or deceptive act or
11 practice in the conduct of a trade or commerce and subject to
12 the penalties specified in chapter 480.

13 (c) The [~~commissioner~~] commission shall refer any matter
14 under [~~this~~] subsection (a) or (b) to the attorney general, who
15 may exercise any appropriate legal or equitable remedies that
16 may be available to the State.

17 [~~(e)~~] (d) For the purposes of this section, "person"
18 means, in addition to the definition contained in section
19 486J-1, any responsible corporate officer."

20 SECTION 14. Section 486J-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§486J-10 Ethanol content requirement.** (a) The
2 [~~commissioner~~] director shall adopt rules in accordance with
3 chapter 91 to require that gasoline sold in the State for use in
4 motor vehicles contain ten per cent ethanol by volume. The
5 amounts of gasoline sold in the State containing ten per cent
6 ethanol shall be in accordance with rules as the [~~commissioner~~]
7 director may deem appropriate. The [~~commissioner~~] director may
8 authorize the sale of gasoline that does not meet these
9 requirements as provided in subsection (d).

10 (b) Gasoline blended with an ethanol-based product, such
11 as ethyl tertiary butyl ether, shall be considered to be in
12 conformance with this section if the quantity of ethanol used in
13 the manufacture of the ethanol-based product represents ten per
14 cent, by volume, of the finished motor fuel.

15 (c) Ethanol used in the manufacture of ethanol-based
16 gasoline additives, such as ethyl tertiary butyl ether, may be
17 considered to contribute to the distributor's conformance with
18 this section; provided that the total quantity of ethanol used
19 by the distributor is an amount equal to or greater than the
20 amount of ethanol required under this section.

21 (d) The [~~commissioner~~] director may authorize the sale of
22 gasoline that does not meet the provisions of this section:



1 (1) To the extent that sufficient quantities of
2 competitively-priced ethanol are not available to meet
3 the minimum requirements of this section; or

4 (2) In the event of any other circumstances for which the
5 [~~commissioner~~] director determines compliance with
6 this section would cause undue hardship.

7 (e) Each distributor, at such reporting dates as the
8 [~~commissioner~~] director may establish, shall file with the
9 [~~commissioner,~~] director, on forms prescribed, prepared, and
10 furnished by the [~~commissioner,~~] director, a certified statement
11 showing:

12 (1) The price and amount of ethanol available;

13 (2) The amount of ethanol-blended fuel sold by the
14 distributor;

15 (3) The amount of non-ethanol-blended gasoline sold by the
16 distributor; and

17 (4) Any other information the [~~commissioner~~] director
18 shall require for the purposes of compliance with this
19 section.

20 (f) Provisions with respect to confidentiality of
21 information shall be the same as provided in section [~~486J-7.~~]
22 486J-6.



1 (g) Any distributor or any other person violating the
2 requirements of this section shall be subject to a fine of not
3 less than \$2 per gallon of nonconforming fuel, up to a maximum
4 of \$10,000 per infraction.

5 (h) The [~~commissioner,~~] director, in accordance with
6 chapter 91, shall adopt rules for the administration and
7 enforcement of this section."

8 SECTION 15. Section 486J-12, Hawaii Revised Statutes, is
9 repealed.

10 [~~"§486J-12 Rules. The commissioner shall adopt, amend, or
11 repeal such rules as [the commissioner] may deem proper to fully
12 effectuate this chapter."~~]

13 PART IV.

14 SECTION 16. Chapter 486H, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By repealing section 486H-13.

17 [~~"§486H-13 Maximum pre-tax wholesale price for the sale of
18 gasoline; civil actions. (a) Notwithstanding any law to the
19 contrary, no manufacturer, wholesaler, or jobber may sell
20 regular unleaded, mid-grade, or premium gasoline to a dealer
21 retail station, an independent retail station, or to another
22 jobber or wholesaler at a price above the maximum pre-tax~~



1 ~~wholesale prices established pursuant to subsection (b). The~~
2 ~~commission shall publish the maximum pre-tax wholesale prices by~~
3 ~~means that shall include the Internet website for the State of~~
4 ~~Hawaii.~~

5 ~~(b) On a weekly basis, the commission shall determine the~~
6 ~~maximum pre-tax wholesale price of regular unleaded, mid-grade,~~
7 ~~and premium gasoline as follows: the maximum pre tax wholesale~~
8 ~~price of regular unleaded gasoline shall consist of the baseline~~
9 ~~price for regular unleaded gasoline, plus the location~~
10 ~~adjustment factor, the marketing margin factor, and the zone~~
11 ~~price adjustment, and for mid grade and premium gasoline, the~~
12 ~~applicable mid-grade and premium adjustment factor, such that~~
13 ~~the maximum pre tax wholesale gasoline prices reflect and~~
14 ~~correlate with competitive market conditions.~~

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

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

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



1 ~~(3) The weekly average of the spot daily price for regular~~
2 ~~unleaded gasoline for the United States Gulf Coast;~~
3 ~~as reported and published by the Oil Price Information Service~~
4 ~~for the five business days of the preceding week; provided that~~
5 ~~the commission, in its discretion, may determine a more~~
6 ~~appropriate baseline or a more appropriate price information~~
7 ~~reporting service.~~

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

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

16 ~~(f) The mid-grade adjustment factor shall be \$.05 per~~
17 ~~gallon or as otherwise determined by the commission and shall~~
18 ~~thereafter be subject to adjustment pursuant to section 486H-~~
19 ~~16(a).~~

20 ~~(g) The premium adjustment factor shall be \$.09 per gallon~~
21 ~~or as otherwise determined by the commission and shall~~



1 ~~thereafter be subject to adjustment pursuant to section 486H-~~
2 ~~16(a).~~

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

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

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

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

9 ~~(4) Zone 4 shall include the district of Hana on the~~
10 ~~island of Maui;~~

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

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

13 ~~(7) Zone 7 shall include the districts of Puna, south~~
14 ~~Hilo, north Hilo, and Hamakua on the island of Hawaii;~~
15 ~~and~~

16 ~~(8) Zone 8 shall include the districts of north Kohala,~~
17 ~~south Kohala, north Kona, south Kona, and Kau on the~~
18 ~~island of Hawaii.~~

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



1 ~~(j) Every manufacturer, wholesaler, or jobber, upon the~~
2 ~~request of the commission, shall furnish to the commission, in~~
3 ~~the form requested, all documents, data, and information the~~
4 ~~commission may require to make its determination on zone price~~
5 ~~adjustments. Any person who refuses or fails to comply with a~~
6 ~~request for information by the commission shall be subject to a~~
7 ~~fine of up to \$50,000 per day. Each day a violation continues~~
8 ~~shall constitute a separate offense.~~

9 ~~(k) The maximum pre tax wholesale gasoline price imposed~~
10 ~~by this section shall take effect on September 1, 2005,~~
11 ~~notwithstanding the lack of the adoption of rules pursuant to~~
12 ~~this section.~~

13 ~~(l) Any manufacturer, wholesaler, or jobber who knowingly~~
14 ~~violates any requirement imposed or rule adopted under this~~
15 ~~section, except for subsection (j), shall be subject to a civil~~
16 ~~penalty, for each violation, equal to three times the amount of~~
17 ~~the overcharge or \$250,000, whichever is greater, and shall be~~
18 ~~liable for the costs of the action and reasonable attorney's~~
19 ~~fees as determined by the court. Within two years from the date~~
20 ~~the commission obtains actual knowledge of the violation, the~~
21 ~~commission may institute a civil action in a court of competent~~
22 ~~jurisdiction to collect the civil penalty, the costs, and~~



~~1 attorney's fees. In the case of ongoing violation, the two year
2 period shall start from the date of the last violation. The
3 commission may refer any such action to the attorney general as
4 it deems appropriate. As used in this subsection, "overcharge"
5 means the number of gallons of gasoline sold, times the
6 wholesale price at which the manufacturer or jobber sold regular
7 unleaded, mid grade, or premium gasoline to a dealer retail
8 station, an independent retail station, or another jobber or
9 wholesaler, less taxes assessed, less the maximum pre tax
10 wholesale price established pursuant to subsection (b).~~

~~11 (m) The commission shall have the power to determine the
12 extent to which a manufacturer, wholesaler, or jobber is
13 complying with any requirement imposed or rule adopted under
14 this section, including the power to compel a manufacturer,
15 wholesaler, or jobber to submit documents, data, and information
16 necessary and appropriate for the commission to determine such
17 compliance. The commission may use data collected by the
18 department of business, economic development, and tourism
19 pursuant to chapter 486J, as well as obtain the assistance of
20 that department in determining such compliance.~~

~~21 (n) The commission shall report to the governor and the
22 legislature, in a timely manner, on any significant aberrations,~~



1 ~~trends, or conditions that may adversely impact the gasoline~~
2 ~~consumers in the State.~~

3 ~~(o) The commission shall adopt rules pursuant to chapter~~
4 ~~91 as may be necessary to implement this section and section~~
5 ~~486H-16."]~~

6 2. By repealing section 486H-15.

7 ["~~§486H-15 Governor's emergency powers.~~ (a)
8 ~~Notwithstanding any law to the contrary, the governor may~~
9 ~~suspend, in whole or in part, section 486H-13 or any rule~~
10 ~~adopted pursuant to that section whenever the governor issues a~~
11 ~~written determination that strict compliance with the section or~~
12 ~~a rule will cause a major adverse impact on the economy, public~~
13 ~~order, or the health, welfare, or safety of the people of~~
14 ~~Hawaii. In the written determination, the governor shall state~~
15 ~~the specific provision of the section or rule that strict~~
16 ~~compliance with will cause a major adverse impact on the~~
17 ~~economy, public order, or the health, welfare, or safety of the~~
18 ~~people of the State, along with specific reasons for that~~
19 ~~determination. The governor shall publish this determination in~~
20 ~~accordance with section 1-28.5. The suspension shall take~~
21 ~~effect upon issuance of the written determination by the~~
22 ~~governor.~~



1 ~~(b) Except as provided in subsection (c), the suspension~~
2 ~~under subsection (a) shall remain in effect until the earlier~~
3 ~~of:~~

4 ~~(1) The adjournment of the next regular or special session~~
5 ~~of the legislature; or~~

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

8 ~~provided that if the legislature has passed legislation to~~
9 ~~address the major adverse impact, and the governor vetoes the~~
10 ~~presented legislation, the suspension shall terminate on the~~
11 ~~date of that veto, and the maximum pre tax wholesale gasoline~~
12 ~~prices in effect immediately prior to the issuance of the~~
13 ~~written determination by the governor shall take effect on the~~
14 ~~day after the date of the veto; and provided further that if no~~
15 ~~action is taken by the legislature during the regular or special~~
16 ~~session to address the major adverse impact, then the maximum~~
17 ~~pre tax wholesale gasoline prices in effect immediately prior to~~
18 ~~the issuance of the written determination by the governor shall~~
19 ~~take effect on the day after adjournment sine die of the regular~~
20 ~~or special session.~~



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

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

5 ~~(2) The effective date of any legislative enactment~~

6 ~~intended to address the major adverse impact;~~

7 ~~provided that if the legislature has passed legislation to~~
8 ~~address the major adverse impact, and the governor vetoes the~~
9 ~~presented legislation, the suspension shall terminate on the~~
10 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~
11 ~~prices in effect immediately prior to the issuance of the~~
12 ~~written determination by the governor shall take effect on the~~
13 ~~day after the date of the veto; and provided further that if no~~
14 ~~action is taken by the legislature during the regular or special~~
15 ~~session to address the major adverse impact, then the maximum~~
16 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~
17 ~~the issuance of the written determination by the governor shall~~
18 ~~take effect on the day after adjournment sine die of the regular~~
19 ~~or special session."]~~

20 3. By repealing section 486H-16.

21 ["~~§486H-16 Adjustments.~~ (a) A manufacturer, wholesaler,
22 or jobber may petition the commission to adjust the maximum pre-



1 ~~tax wholesale price of regular unleaded, mid grade, or premium~~
2 ~~gasoline in the event of a change in the value of the baseline~~
3 ~~price for regular unleaded gasoline, the location adjustment~~
4 ~~factor, the marketing margin factor, the mid-grade adjustment~~
5 ~~factor, the premium adjustment factor, or a zone price~~
6 ~~adjustment. The petitioner shall bear the burden of proof to~~
7 ~~establish by clear and convincing evidence the need for and the~~
8 ~~amount of any adjustment. The adjustments shall be determined~~
9 ~~as follows:~~

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

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

14 ~~(B) The weekly average of the spot daily price for~~
15 ~~regular unleaded gasoline for New York Harbor;~~

16 ~~and~~

17 ~~(C) The weekly average of the spot daily price for~~
18 ~~regular unleaded gasoline for the United States~~

19 ~~Gulf Coast,~~

20 ~~as reported and published by the Oil Price Information~~
21 ~~Service for the five business days of the preceding~~
22 ~~week; provided that the commission, in its discretion,~~



1 ~~may determine a more appropriate baseline or a more~~
2 ~~appropriate price information reporting service;~~

3 ~~(2) The value of the location adjustment factor in effect~~
4 ~~at the time the petition is filed shall be adjusted to~~
5 ~~reflect the average of the actual acquisition cost to~~
6 ~~non-refiner marketers to obtain gasoline from refiners~~
7 ~~or importers for sale on the island of Oahu over the~~
8 ~~prior twelve-month period, which cost shall be taken~~
9 ~~from arm's length transactions between non-refiner~~
10 ~~marketers, and refiners or importers, such as exchange~~
11 ~~agreements, sales agreements, or other similar~~
12 ~~agreements; provided that the location adjustment~~
13 ~~factor shall not exceed the reasonable cost of~~
14 ~~importing gasoline to the island of Oahu. As used in~~
15 ~~this paragraph, "actual acquisition cost" means the~~
16 ~~amount over the base price of regular unleaded~~
17 ~~gasoline that a non-refiner marketer pays to a third~~
18 ~~party for delivery of such gasoline into a terminal~~
19 ~~located on the island of Oahu;~~

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



- 1 ~~(A) The average of the difference over the prior~~
2 ~~twelve-month period 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 ~~less~~
- 14 ~~(B) The average of the difference over the period~~
15 ~~from 1994 until the most current year between:~~
- 16 ~~(i) The dealer tank wagon price for sales for~~
17 ~~resale for "regular" gasoline; and~~
- 18 ~~(ii) The bulk price for sales for resale for~~
19 ~~"regular" gasoline,~~
20 ~~for Petroleum Administration for Defense (PAD)~~
21 ~~District V, as reported and published by the~~
22 ~~Energy Information Administration or its~~



1 ~~successor in Table 31 "Motor Gasoline Prices by~~
2 ~~Grade, Sales Type, PAD District, and State" or~~
3 ~~other source containing the same information;~~

4 ~~(4) The value of the mid-grade and premium adjustment~~
5 ~~factors in effect at the time the petition is filed~~
6 ~~shall be adjusted by any material change in the mid-~~
7 ~~grade and premium adjustment factor as published by an~~
8 ~~appropriate price information reporting service; and~~

9 ~~(5) The value of any zone price adjustment in effect at~~
10 ~~the time the petition is filed shall be adjusted based~~
11 ~~upon material changes in the operating costs for a~~
12 ~~zone, such as terminaling, storage, or distribution~~
13 ~~costs, and other empirical data the commission deems~~
14 ~~appropriate.~~

15 ~~(b) If the commission adjusts the maximum pre tax~~
16 ~~wholesale gasoline prices, the commission shall publish its~~
17 ~~findings and the adjusted prices by means that shall include the~~
18 ~~Internet website for the State of Hawaii.~~

19 ~~(c) Regardless of whether a petition has been filed and~~
20 ~~notwithstanding a determination of the adjustments made pursuant~~
21 ~~to subsection (a), the commission, in its discretion, may make~~
22 ~~such other and further adjustments deemed necessary and~~



1 ~~appropriate to establish maximum pre tax wholesale gasoline~~
2 ~~prices that reflect and correlate with competitive market~~
3 ~~conditions."]~~

4 SECTION 17. On the effective date of this Act, the public
5 utilities commission shall suspend any and all duties with
6 respect to sections 486H-13 and 486H-16, Hawaii Revised
7 Statutes.

8 PART V.

9 SECTION 18. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$, or so much
11 thereof as may be necessary for fiscal year 2006-2007, to be
12 deposited into the petroleum industry monitoring, analysis, and
13 reporting special fund.

14 The sum appropriated shall be expended by the public
15 utilities commission for the purposes of this Act.

16 SECTION 19. There is appropriated out of the petroleum
17 industry monitoring, analysis, and reporting special fund the
18 sum of \$, or so much thereof as may be necessary for
19 fiscal year 2006-2007, to establish the petroleum industry
20 monitoring, analysis, and reporting program established under
21 section 486J-B, Hawaii Revised Statutes. The sum appropriated



1 shall be expended by the public utilities commission for the
2 purposes of this Act.

3 PART VI.

4 SECTION 20. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

9 § -A Definitions. As used in this chapter, unless the
10 context otherwise requires:

11 "Advertising" includes the use of any banner, sign,
12 placard, poster, streamer, card, or any publication in the
13 media.

14 "Gasoline" means a volatile mixture of liquid hydrocarbons,
15 generally containing small amounts of additives, suitable for
16 use as a fuel in spark-ignition internal combustion engines.

17 "Person" means an individual, corporation, government, or
18 governmental subdivision or agency, business trust, estate,
19 trust, partnership, unincorporated association, two or more of
20 any of the foregoing having a joint or common interest, or any
21 other legal or commercial entity.



1 "Petroleum products" means gasoline, diesel fuel, liquefied
2 petroleum gas only when used as a motor fuel, kerosene, thinner,
3 solvent, liquefied natural gas, pressure appliance fuel, white
4 gasoline, or any motor fuel, or any oil represented as engine
5 lubricant, engine oil, lubricating or motor oil, or any oil used
6 to lubricate transmissions, gears, or axles.

7 "Sell" or any of its variants means attempt to sell, offer
8 for sale or assist in the sale of, permit to be sold or offered
9 for sale or delivery, offer for delivery, trade, barter, or
10 expose for sale.

11 **§ -B Misrepresentations.** (a) It is unlawful for any
12 person to make any deceptive, false, or misleading statement by
13 any means whatsoever regarding quality, quantity, performance,
14 price, discount, profit, or savings used in the sale or selling
15 of any petroleum product regulated pursuant to this chapter or
16 chapter 486H or 486J.

17 (b) The following misleading, unfair, or deceptive acts or
18 practices committed or permitted by any person offering to sell
19 any petroleum product that is regulated by this chapter or
20 chapter 486H or 486J are also a violation of this section:

21 (1) Misrepresenting the brand, grade, quality, or price of
22 a petroleum product;



- 1 (2) Using false or deceptive representations or
2 designations in connection with the pricing, profits,
3 or sale of petroleum products;
- 4 (3) Advertising petroleum products or services and not
5 selling them as advertised;
- 6 (4) Advertising petroleum products of a designated brand,
7 grade, trademark, or trade name not actually sold or
8 available for sale;
- 9 (5) Making false, deceptive, or misleading statements
10 concerning conditions of sale, price reductions, costs
11 of operations, profits, or failing to disclose
12 business relationships within the petroleum industry
13 that affect the wholesale pricing of petroleum
14 products;
- 15 (6) Representing that the consumer will receive a rebate,
16 discount, or other economic benefit and then failing
17 to give that rebate, discount, or other economic
18 benefit; and
- 19 (7) Forging or falsifying any records or documents
20 required by this chapter or chapter 486H or 486J or
21 knowingly keeping, using, or displaying the false or
22 forged records or documents.



1 **§ -C Unlawful profiteering.** Any person who sells
2 petroleum products and who, with intent to enhance the price or
3 restrict the supply of petroleum products:

4 (1) Willfully destroys or permits preventable waste in the
5 production, manufacture, storage, or distribution of
6 petroleum products;

7 (2) Prevents, limits, lessens, or restricts the
8 manufacture, production, supply, or distribution of
9 petroleum products;

10 (3) Enters into any contract, combination, or conspiracy
11 in restraint of trade or commerce;

12 (4) Exacts or demands any unjust or unreasonable profit in
13 the sale, exchange, or handling of petroleum products;
14 or

15 (5) In any way aids or abets the doing of any act stated
16 here,

17 shall commit an unlawful trade practice.

18 **§ -D Penalty.** Any person who sells petroleum products
19 or commits an unlawful trade practice in violation of this
20 chapter shall be fined not more than \$10,000 for each violation
21 or imprisoned for not more than five years or both.



1 **§ -E Injunctions.** Any person in violation of this
2 chapter may be enjoined by the circuit court by mandatory or
3 restraining order necessary or proper to effectuate the purposes
4 of this chapter in a suit brought by the attorney general in the
5 name of the State or by any private person in the person's own
6 name.

7 **§ -F Remedies cumulative.** The remedies prescribed in
8 this chapter are cumulative and in addition to any other
9 remedies provided by law."

10 PART VII.

11 SECTION 21. In codifying the new sections added by section
12 4 and section 20 of this Act, the revisor of statutes shall
13 substitute appropriate section numbers for the letters used in
14 designating the new sections in this Act.

15 SECTION 22. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 23. This Act shall take effect on July 1, 2006;
18 provided that section 16 shall take effect on January 1, 2011,
19 and section 20 shall take effect on January 1, 2007.

20

