

---

---

# A BILL FOR AN ACT

RELATING TO CONSUMERS.

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

1           SECTION 1. Section 486H-1 , Hawaii Revised Statutes, is  
2 amended by deleting the definitions of "commission",  
3 "independent retail station", "non-refiner marketer", "pre-tax",  
4 and "self-serve basis".

5           ~~["Commission" means the public utilities commission.~~

6           ~~"Independent retail station" means a retail service station  
7 not owned by a manufacturer or jobber and operated by a  
8 qualified gasoline dealer.~~

9           ~~"Non-refiner marketer" means any person who acquires  
10 gasoline for sale in the State of Hawaii, and who is not a  
11 refiner located and operating in the State of Hawaii, nor an  
12 importer owned by or affiliated with, directly or indirectly, by  
13 a refiner located and operating in the State of Hawaii.~~

14           ~~"Pre-tax" when used in reference to a price means such  
15 price net of the fuel-related or other taxes assessed when the  
16 gasoline is sold.~~

17           ~~"Self-serve basis" means that the retail station allows  
18 customers to dispense gasoline into vehicles." ]~~



1 SECTION 2. 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2 repealed.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~~  
19 ~~price adjustment, and for mid-grade and premium gasoline, the~~  
20 ~~applicable mid-grade and premium adjustment factor, such that~~  
21 ~~the maximum pre-tax wholesale gasoline prices reflect and~~  
22 ~~correlate with competitive market conditions.~~



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

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

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

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

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

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



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

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

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

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

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

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

15       ~~(4) Zone 4 shall include the district of Hana on the~~  
16       ~~island of Maui;~~

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

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

19       ~~(7) Zone 7 shall include the districts of Puna, south~~  
20       ~~Hilo, north Hilo, and Hamakua on the island of Hawaii;~~  
21       ~~and~~



1       ~~(8) Zone 8 shall include the districts of north Kohala,~~  
2               ~~south Kohala, north Kona, south Kona, and Kau on the~~  
3               ~~island of Hawaii.~~

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

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

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

19       ~~(l) Any manufacturer, wholesaler, or jobber who knowingly~~  
20       ~~violates any requirement imposed or rule adopted under this~~  
21       ~~section, except for subsection (j), shall be subject to a civil~~  
22       ~~penalty, for each violation, equal to three times the amount of~~



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

17 ~~(m) The commission shall have the power to determine the~~  
18 ~~extent to which a manufacturer, wholesaler, or jobber is~~  
19 ~~complying with any requirement imposed or rule adopted under~~  
20 ~~this section, including the power to compel a manufacturer,~~  
21 ~~wholesaler, or jobber to submit documents, data, and information~~  
22 ~~necessary and appropriate for the commission to determine such~~



1 ~~compliance. The commission may use data collected by the~~  
2 ~~department of business, economic development, and tourism~~  
3 ~~pursuant to chapter 486J, as well as obtain the assistance of~~  
4 ~~that department in determining such compliance.~~

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

9 ~~(o) The commission shall adopt rules pursuant to chapter~~  
10 ~~91 as may be necessary to implement this section and section~~  
11 ~~486H-16." ]~~

12 SECTION 3. Sections 486H-15, 486H-16, and 486H-17 Hawaii  
13 Revised Statutes, are repealed.

14 [~~§486H-15 Governor's emergency powers. (a)~~  
15 ~~Notwithstanding any law to the contrary, the governor may~~  
16 ~~suspend, in whole or in part, section 486H-13 or any rule~~  
17 ~~adopted pursuant to that section whenever the governor issues a~~  
18 ~~written determination that strict compliance with the section or~~  
19 ~~a rule will cause a major adverse impact on the economy, public~~  
20 ~~order, or the health, welfare, or safety of the people of~~  
21 ~~Hawaii. In the written determination, the governor shall state~~  
22 ~~the specific provision of the section or rule that strict~~



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

8 ~~(b) Except as provided in subsection (c), the suspension~~  
9 ~~under subsection (a) shall remain in effect until the earlier~~  
10 ~~of:~~

11 ~~(1) The adjournment of the next regular or special session~~  
12 ~~of the legislature; or~~

13 ~~(2) The effective date of any legislative enactment~~  
14 ~~intended to address the major adverse impact;~~  
15 ~~provided that if the legislature has passed legislation to~~  
16 ~~address the major adverse impact, and the governor vetoes the~~  
17 ~~presented legislation, the suspension shall terminate on the~~  
18 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~  
19 ~~prices in effect immediately prior to the issuance of the~~  
20 ~~written determination by the governor shall take effect on the~~  
21 ~~day after the date of the veto; and provided further that if no~~  
22 ~~action is taken by the legislature during the regular or special~~





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

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

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

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

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

12 ~~provided that if the legislature has passed legislation to~~

13 ~~address the major adverse impact, and the governor vetoes the~~

14 ~~presented legislation, the suspension shall terminate on the~~

15 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~

16 ~~prices in effect immediately prior to the issuance of the~~

17 ~~written determination by the governor shall take effect on the~~

18 ~~day after the date of the veto; and provided further that if no~~

19 ~~action is taken by the legislature during the regular or special~~

20 ~~session to address the major adverse impact, then the maximum~~

21 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~

22 ~~the issuance of the written determination by the governor shall~~



1 ~~take effect on the day after adjournment sine die of the regular~~  
2 ~~or special session."~~

3       ~~§486H-16 Adjustments.~~ (a) ~~A manufacturer, wholesaler, or~~  
4 ~~jobber may petition the commission to adjust the maximum pre-tax~~  
5 ~~wholesale price of regular unleaded, mid-grade, or premium~~  
6 ~~gasoline in the event of a change in the value of the baseline~~  
7 ~~price for regular unleaded gasoline, the location adjustment~~  
8 ~~factor, the marketing margin factor, the mid-grade adjustment~~  
9 ~~factor, the premium adjustment factor, or a zone price~~  
10 ~~adjustment. The petitioner shall bear the burden of proof to~~  
11 ~~establish by clear and convincing evidence the need for and the~~  
12 ~~amount of any adjustment. The adjustments shall be determined~~  
13 ~~as follows:~~

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

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

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

20                 ~~and~~



1 ~~(C) The weekly average of the spot daily price for~~  
2 ~~regular unleaded gasoline for the United States~~  
3 ~~Gulf Coast,~~

4 ~~as reported and published by the Oil Price Information~~  
5 ~~Service for the five business days of the preceding~~  
6 ~~week; provided that the commission, in its discretion,~~  
7 ~~may determine a more appropriate baseline or a more~~  
8 ~~appropriate price information reporting service;~~

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



1 ~~gasoline that a non-refiner marketer pays to a third~~  
2 ~~party for delivery of such gasoline into a terminal~~  
3 ~~located on the island of Oahu;~~

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

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

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

11 ~~(ii) The bulk price for sales for resale for~~  
12 ~~"regular" gasoline,~~

13 ~~for Petroleum Administration for Defense (PAD)~~  
14 ~~District V, as reported and published by the~~

15 ~~Energy Information Administration or its~~

16 ~~successor in Table 31 - "Motor Gasoline Prices by~~  
17 ~~Grade, Sales Type, PAD District, and State" or~~

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

19 ~~less~~

20 ~~(B) The average of the difference over the period~~  
21 ~~from 1994 until the most current year between:~~



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



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

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

12       ~~[\$486H-17] Restricting supply of petroleum products. The~~  
13 ~~attorney general shall immediately investigate any shortage or~~  
14 ~~condition affecting the supply of any petroleum products or~~  
15 ~~other matters relating to the requirements of this chapter and~~  
16 ~~shall institute all appropriate criminal and civil actions and~~  
17 ~~pursue all legal and equitable remedies that may be available to~~  
18 ~~the State. The attorney general shall submit a report to the~~  
19 ~~legislature regarding any shortage or condition affecting the~~  
20 ~~supply of petroleum products." ]~~

21       SECTION 4. Statutory material to be repealed is bracketed  
22 and stricken.



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY:

*[Signature]*  
Kirk Caldwell

*[Signature]*  
*[Signature]*  
*[Signature]*

*[Signature]*  
*[Signature]*  
*[Signature]*

*[Signature]*  
*[Signature]*  
*[Signature]*

*[Signature]*  
*[Signature]*

JAN 13 2006



HB 1811

**Report Title:**

Consumer Protection; Gasoline Pricing; Gas Cap

**Description:**

Repeals the statute that sets the maximum pre-tax wholesale price for the sale of gasoline.

