
A BILL FOR AN ACT

RELATING TO PETROLEUM PRODUCTS.

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

1 SECTION 1. There is a need to ensure that motor fuel and
2 other petroleum products are readily available at fair prices to
3 all consumers in Hawaii throughout any given year. While oil
4 companies are entitled to receive a fair return on their
5 investments, they should be discouraged from using natural
6 disasters, emergencies, or other events to dramatically increase
7 profitability by raising prices to Hawaii consumers.

8 The price and availability of petroleum products greatly
9 impact the economy of the State and the quality of life for
10 residents of Hawaii. Consumers are entitled to full disclosure
11 of all factors that effect the price and availability of
12 petroleum products, to allow for long range planning and
13 knowledgeable purchasing decisions. Further, publicly elected
14 officials need greater access to industry information to
15 formulate appropriate public policy regarding the refining,
16 marketing, and distribution of petroleum products within the
17 State.



1 The legislature further finds that while chapter 486H
2 imposes a maximum pre-tax wholesale price for gasoline, there is
3 no similar provision for diesel fuel. The price of diesel in
4 the State has soared and it is placing an enormous burden on
5 businesses, particularly small businesses.

6 Finally, the legislature notes that based on monthly
7 figures posted on the United States Department of Energy web-
8 page, the baseline for determining the State's maximum pre-tax
9 wholesale gasoline price from the markets of New York, Los
10 Angeles, and the gulf coast are substantially lower than the
11 maximum price in Hawaii set by chapter 486H. This indicates
12 that the marketing margin set in section 486H-13 may be overly
13 generous.

14 The purposes of this Act are to:

- 15 (1) Establish the petroleum consumers bill of rights that
16 requires oil companies to publicly disclose materially
17 significant information that is currently not readily
18 accessible; and imposes criminal penalties for
19 violators thereof;
- 20 (2) Impose a maximum pre-tax wholesale price for the sale
21 of diesel; and



1 (3) Reduce the marketing margin contained in section 486H-
2 13.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 PETROLEUM CONSUMERS BILL OF RIGHTS

8 § -1 Definitions. Unless specifically defined otherwise
9 or unless the context clearly indicates otherwise, as used in
10 this chapter:

11 "Oil company" means any person, firm, or corporation,
12 including any affiliate of the person, firm, or corporation,
13 that is engaged in the refining of crude oil into petroleum
14 products or in the operation of a terminal facility servicing or
15 exporting bulk quantities of petroleum products in Hawaii
16 outside the boundaries of the State. Each oil company shall be
17 deemed a public service company under this chapter.

18 "Affiliate of the person, firm, or corporation" means a
19 person, firm, or corporation, that controls or is controlled by
20 an oil company, and includes any subsidiary or affiliated
21 corporation in which the oil company or its shareholders,



1 officers, agents, or employees hold or control more than twenty-
2 five percent of the voting shares.

3 "Petroleum products" means gasoline, gasoline components,
4 diesel, and residential heating oil, however modified.

5 "Fund" means the "consumer protection fund" as established
6 in section -6.

7 "Class of trade" has the same meaning as used by the
8 industry including, but not limited to, motor fuel retailers and
9 wholesale distributors or jobbers that purchase petroleum
10 products at a price set by the oil company. Retail motor fuel
11 outlets operated by an oil company, its subsidiary, or its
12 affiliate shall be considered in the same class of trade as
13 retailers as defined in section 486H-1. Class of trade does not
14 include end users that are purchasing the petroleum products for
15 their own consumption and not for resale to others.

16 "Commission" means the public utilities commission.

17 "Price" means the net purchase price, after adjustment for
18 commission, brokerage, rebate, discount, or any other
19 adjustment. The value of a petroleum product exchanged or
20 transferred between oil companies or motor fuel delivered to a
21 retail motor fuel outlet operated by the same oil company, its
22 subsidiary, or its affiliate shall be considered its price.



1 "Bulk quantities" means transactions of volumes exceeding
2 the capacity of trucks or vehicles utilizing public roads
3 including, but not limited to petroleum, products transported
4 via rail, ship, barge, pipeline, or other means.

5 § -2 **Oil company disclosure.** Each oil company shall
6 file with the commission and the commission shall expeditiously
7 provide schedules for public inspection, in such form as the
8 commission prescribes, disclosing the following information:

9 (1) All prices established, or enforced, or to be charged
10 or enforced, in each location of the State that are
11 set by and known to the oil company prior to a sale,
12 transfer, or assignment of petroleum products to any
13 persons within any class of trade;

14 (2) All recent intrastate transactions or export shipments
15 of bulk quantities of petroleum products including,
16 but not limited to, the following information:

17 (A) The date and the physical location of the
18 petroleum products;

19 (B) The type, volume, and price of the petroleum
20 products;

21 (C) Identification of all the parties involved in the
22 transaction; and



1 (D) The port of exit and final destination of
2 petroleum products exported out of the State;

3 (3) The recent refining profit margins for each petroleum
4 product refined in a refinery located in the State;
5 and

6 (4) Any other information deemed by the commission to be
7 necessary to fulfill its duties under this chapter.

8 § -3 **Price changes, notice.** No change shall be made in
9 any price for petroleum products filed by an oil company in
10 compliance with the requirements of section -2 without prior
11 notice to the commission. The notice shall plainly state the
12 changes to be made in the schedule then in force. The
13 commission shall provide oil companies with the ability to file
14 notices at any point in time throughout the year. Nothing in
15 this section shall prevent the commission from adopting notice
16 requirements that comply with state or federal antitrust laws.

17 § -4 **Oil company prohibitions.** An oil company shall
18 not:

19 (1) Include, directly or indirectly, include in the price
20 of petroleum products any costs accruing from the fees
21 established in section -5; or

1 (2) Charge, demand, collect, or receive compensation for
2 any product at a rate or price that differs from the
3 schedule required under section -2 that is
4 effective on the date of the transaction.

5 § -5 **Gross revenues; fees.** (a) Every oil company
6 subject to this chapter, on or before the first day of April of
7 each year, shall file with the commission a statement under
8 oath, in a form that the commission prescribes, showing the
9 company's gross operating revenue from intrastate operations for
10 the preceding calendar year.

11 (b) Every oil company subject to this chapter shall pay to
12 the commission a fee equal to one-tenth of one per cent per
13 \$50,000 of gross operating revenue reported, unless decreased as
14 provided in subsection (c). The fee shall in no case be less
15 than \$1.

16 (c) The percentage rates of fees as set forth in
17 subsection (b) may be decreased by the commission for the
18 remainder of a calendar year, by general order entered before
19 March 1 of that year.

20 (d) The statement filed with the commission under
21 subsection (a) shall be made available for public review by the
22 commission as soon as possible, but no later than .



1 (e) All moneys collected under this section shall be paid
2 within thirty days into the petroleum consumer protection fund
3 established by section -6.

4 § -6 **Petroleum consumer protection fund.** There is
5 created in the commission a special fund to be designated the
6 "petroleum consumer protection fund" and shall be used as a
7 revolving fund for carrying out the purposes of this chapter.
8 Fees collected under section -5 shall be deposited into the
9 fund. Only the commission or the attorney general may authorize
10 expenditures from the petroleum consumer protection fund for
11 purposes set forth in section -7. The petroleum consumer
12 protection fund shall be subject to management and allotment
13 procedures under chapters 36 and 37; provided that no
14 legislative appropriation shall be required for expenditures.

15 § -7 **Allocation and use of fund.** (a) Moneys in the
16 petroleum consumer protection fund shall be used for the
17 following purposes and no others:

18 (1) Costs of the commission related to the fulfilling of
19 its powers and duties under this chapter; and

20 (2) Costs of the attorney general related to the
21 fulfilling of the attorney general's powers and duties
22 under this chapter.



1 (b) The money remaining after disbursements made under
2 this section shall be allocated to be used for fulfilling the
3 purposes of this chapter with seventy-five per cent of the
4 moneys allocated to the commission and twenty-five per cent
5 allocated to the attorney general.

6 § -8 Powers and duties. (a) The commission and the
7 attorney general shall:

- 8 (1) Exercise all the powers and perform the duties
9 prescribed by this chapter;
- 10 (2) Adopt rules under chapter 91 necessary to carry out
11 the purposes, powers, or duties assigned by this
12 chapter;
- 13 (3) Utilize the best technology, then readily available,
14 to provide public access to prices charged by oil
15 companies and the practices of oil companies supplying
16 petroleum products to any person, firm, or corporation
17 within the State;
- 18 (4) Enforce this chapter and any related rules consistent
19 with the powers and duties granted to the commission
20 and attorney general for public service companies
21 under this title; and



1 (b) Except as provided in this chapter, the commission
2 shall not have the power to set or establish prices, rates,
3 charges, or compensation for an oil company.

4 § -9 **Criminal penalties imposed.** (a) Any oil company,
5 or any or its employees, who knowingly violates any of the
6 provisions of this chapter, except for those violations
7 enumerated in subsection (b), shall be guilty of a misdemeanor
8 and, upon conviction, shall be punished as provided by law.

9 (b) Any oil company, or any of its employees, who
10 intentionally commits any of the following shall be guilty of a
11 class C felony and, upon conviction, shall be punished as
12 provided by law:

13 (1) Falsifies any information contained in a schedule
14 filed with the commission or fails to file schedules
15 or statements required respectively under sections
16 -2 or -5; or

17 (2) Violates section -3.

18 Each day upon which a violation of any of the provisions of this
19 chapter occurs may be deemed a separate and additional
20 violation. For the purposes of this section, "intentionally"
21 and "knowingly" shall be as defined in section 702-206.



1 § -10 Attorney general empowered to restrain prohibited
2 acts-costs-restoration of property. (a) The attorney general
3 may bring an action in the name of the State against any oil
4 company to restrain and prevent any act prohibited or declared
5 unlawful under this chapter. The attorney general, in the
6 discretion of the court, may recover the costs of an action
7 including reasonable attorneys' fees.

8 The court may make such additional orders of judgment as
9 may be necessary to restore to any person in interest any moneys
10 or property, real or personal, that may have been acquired by
11 means of an act herein prohibited or declared to be unlawful.

12 (b) Nothing in this chapter shall limit the power of the
13 State to punish any oil company for any conduct that constitutes
14 a crime by statute or at common law."

15 SECTION 3. Section 486H-1, Hawaii Revised Statutes, is
16 amended by adding a new definition to be appropriately inserted
17 and to read as follows:

18 ""Diesel" means a clear low sulfur distillate fuel sold and
19 used for the propulsion of motor vehicles."

20 SECTION 4. Section 486H-13, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending its title and subsections (a) to (c) to
2 read:

3 "**§486H-13 Maximum pre-tax wholesale price for the sale of**
4 **gasoline[+] and diesel; civil actions.** (a) Notwithstanding any
5 law to the contrary, no manufacturer, wholesaler, or jobber may
6 sell regular unleaded, mid-grade, or premium gasoline or diesel
7 to a dealer retail station, an independent retail station, or to
8 another jobber or wholesaler at a price above the maximum pre-
9 tax wholesale prices established pursuant to subsection (b).
10 The commission shall publish the maximum pre-tax wholesale
11 prices by means that shall include the Internet website for the
12 State of 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 and diesel as follows: the maximum pre-tax
16 wholesale price of regular unleaded gasoline and diesel shall
17 consist of the baseline price for regular unleaded gasoline[+] or diesel
18 plus the location adjustment factor, the marketing
19 margin factor, and the zone price adjustment, and for mid-grade
20 and premium gasoline, the applicable mid-grade and premium
21 adjustment factor, such that the maximum pre-tax wholesale



1 gasoline prices reflect and correlate with competitive market
2 conditions.

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

6 (1) The weekly average of the spot daily price for regular
7 unleaded gasoline and diesel for Los Angeles;

8 (2) The weekly average of the spot daily price for regular
9 unleaded gasoline and diesel for New York Harbor; and

10 (3) The weekly average of the spot daily price for regular
11 unleaded gasoline and diesel for the United States
12 Gulf Coast;

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

18 2. By amending subsection (e) to read:

19 "(e) The marketing margin factor referred to in subsection
20 (b) shall be [~~\$.18~~] \$.08 per gallon or as otherwise determined
21 by the commission and shall thereafter be subject to adjustment
22 pursuant to section 486H-16(a)."



1 3. By amending subsection (i) to read:

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

5 4. By amending subsections (k) and (l) to read:

6 "(k) The maximum pre-tax wholesale gasoline price imposed
7 by this section shall take effect on September 1, 2005, and the
8 maximum pre-tax wholesale price of diesel imposed by this
9 section shall take effect on September 1, 2006, notwithstanding
10 the lack of the adoption of rules pursuant to 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 or diesel sold, times
4 the wholesale price at which the manufacturer or jobber sold
5 regular unleaded, mid-grade, or premium gasoline or diesel to a
6 dealer retail station, an independent retail station, or another
7 jobber or wholesaler, less taxes assessed, less the maximum pre-
8 tax wholesale [~~price~~] prices for gasoline and diesel established
9 pursuant to subsection (b)."

10 5. By amending subsection (n) to read:

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

15 SECTION 5. Section 486H-15, Hawaii Revised Statutes, is
16 amended by amending subsections (b) and (c) to read as follows:

17 "(b) Except as provided in subsection (c), the suspension
18 under subsection (a) shall remain in effect until the earlier
19 of:

20 (1) The adjournment of the next regular or special session
21 of the legislature; or



1 (2) The effective date of any legislative enactment
2 intended to address the major adverse impact;
3 provided that if the legislature has passed legislation to
4 address the major adverse impact, and the governor vetoes the
5 presented legislation, the suspension shall terminate on the
6 date of that veto, and the maximum pre-tax wholesale gasoline
7 and diesel prices in effect immediately prior to the issuance of
8 the written determination by the governor shall take effect on
9 the day after the date of the veto; and provided further that if
10 no action is taken by the legislature during the regular or
11 special session to address the major adverse impact, then the
12 maximum pre-tax wholesale gasoline and diesel prices in effect
13 immediately prior to the issuance of the written determination
14 by the governor shall take effect on the day after adjournment
15 sine die of the regular or special session.

16 (c) If the written determination is issued while the
17 legislature is in session, the suspension under subsection (a)
18 shall remain in effect until the earlier of:

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

20 (2) The effective date of any legislative enactment

21 intended to address the major adverse impact;



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

14 SECTION 6. Section 486H-16, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "**§486H-16 Adjustments.** (a) A manufacturer, wholesaler,
 17 or jobber may petition the commission to adjust the maximum pre-
 18 tax wholesale price of regular unleaded, mid-grade, or premium
 19 gasoline or diesel in the event of a change in the value of the
 20 baseline price for regular unleaded gasoline[7] or diesel, the
 21 location adjustment factor, the marketing margin factor, the
 22 mid-grade adjustment factor, the premium adjustment factor, or a

1 zone price adjustment. The petitioner shall bear the burden of
2 proof to establish by clear and convincing evidence the need for
3 and the amount of any adjustment. The adjustments shall be
4 determined as follows:

5 (1) The value of the baseline price shall be equal to the
6 average of:

7 (A) The weekly average of the spot daily price for
8 regular unleaded gasoline and diesel for Los
9 Angeles;

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

13 (C) The weekly average of the spot daily price for
14 regular unleaded gasoline and diesel for the
15 United States Gulf Coast,

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

21 (2) The value of the location adjustment factor in effect
22 at the time the petition is filed shall be adjusted to

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

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

20 (A) The average of the difference over the prior
21 twelve-month period between:

1 (i) The dealer tank wagon price for sales for
2 resale for "regular" gasoline[~~7~~] or diesel;
3 and

4 (ii) The bulk price for sales for resale for
5 "regular" gasoline[~~7~~] or diesel,
6 for Petroleum Administration for Defense (PAD)
7 District V, as reported and published by the
8 Energy Information Administration or its
9 successor in Table 31 - "Motor Gasoline Prices by
10 Grade, Sales Type, PAD District, and State" or
11 other source containing the same information;
12 less

13 (B) The average of the difference over the period
14 from 1994 until the most current year between:

15 (i) The dealer tank wagon price for sales for
16 resale for "regular" gasoline[~~7~~] or diesel;
17 and

18 (ii) The bulk price for sales for resale for
19 "regular" gasoline[~~7~~] or diesel,
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 or diesel prices, the commission shall
17 publish its findings and the adjusted prices by means that shall
18 include the 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 and
2 diesel prices that reflect and correlate with competitive market
3 conditions."

4 SECTION 7. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

7 SECTION 8. If any provision of this Act, or the
8 application thereof to any person or circumstance is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act, which can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 9. This Act shall take effect upon its approval.

14

INTRODUCED BY:



JAN 25 2006



HB 2815

Report Title:

Petroleum Products; Consumers

Description:

Establishes petroleum consumers bill of rights that requires oil companies to disclose information to PUC relating to transactions within the State, price schedules, and gross operating revenues, establishes petroleum consumer protection fund, and provides criminal sanctions for violations; sets maximum pre-tax wholesale price for diesel; reduces marketing margin.

