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# A BILL FOR AN ACT

RELATING TO THE PETROLEUM INDUSTRY.

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

1           SECTION 1. The legislature finds that the establishment  
2 and allocation of adequate resources for a vigorous state  
3 watchdog system to monitor and oversee the petroleum industry  
4 and gasoline market is a prerequisite to ensure the efficient  
5 and equitable regulation of gasoline pricing. The collection,  
6 aggregation, and analyses of current data relating to Hawaii  
7 petroleum fuel prices, volumes, costs, and profits, and the  
8 subsequent reporting of this information to planning and  
9 enforcement agencies, such as the departments of the attorney  
10 general, business, economic development, and tourism, and  
11 taxation, for review and assessment, is critical in ensuring  
12 compliance with the letter and spirit of the laws and  
13 regulations aimed at promoting fair and competitive gasoline  
14 prices for Hawaii's consumers.

15           Most importantly, the legislature finds that current global  
16 energy supplies cannot keep pace with the increased global  
17 demands for energy. The growing energy needs of burgeoning  
18 economies, such as China and India, place Hawaii in a very



1 vulnerable position in the global competition for the same  
2 fossil fuel resources. Further, with many oil-producing  
3 countries facing political instability and sensitive diplomatic  
4 relations, Hawaii's deep dependency on imported fossil fuels  
5 leaves it susceptible to factors it cannot control that affect  
6 its energy security and economy.

7 The legislature also finds that a comprehensive approach is  
8 needed to ensure the adoption of energy policies and programs  
9 that optimize the security, cost-efficiency, and environmental  
10 soundness of Hawaii's fuel resources and minimize the social and  
11 economic costs and supply dislocations to Hawaii's energy users.  
12 For example, the requirement for ethanol blending may have some  
13 adverse financial effect on existing industry participants but  
14 may provide wider, long-term benefits to the State's economy,  
15 environment, and overall energy strategy.

16 An integrated energy strategy will give the legislature and  
17 other policy makers a broad range of policy options, including  
18 improved planning, enhanced data collection, and monitoring to  
19 support the development of a long-term plan with realistic  
20 goals. An integrated energy strategy with long-range objectives  
21 may also lead to an improved investment climate. Such a plan  
22 will also greatly improve strategic partnerships. Additionally,



1 developing an integrated energy strategy will allow the State to  
2 pursue meaningful investment strategies and technology options.

3 The purposes of this Act are to:

4 (1) Establish the petroleum industry monitoring, analysis,  
5 and reporting special fund;

6 (2) Require the public utilities commission to develop and  
7 maintain the petroleum industry monitoring, analysis,  
8 and reporting system, including an automated petroleum  
9 industry information reporting system;

10 (3) Redelineate the types of information that the  
11 petroleum industry must submit to the public utilities  
12 commission;

13 (4) Make appropriations out of the petroleum industry  
14 monitoring, analysis, and reporting special fund to be  
15 expended by the public utilities commission to:

16 (A) Establish the petroleum industry monitoring,  
17 analysis, and reporting program; and

18 (B) Implement and operate the petroleum price control  
19 program established by chapter 486H, Hawaii  
20 Revised Statutes; and

21 (5) Establish as an unfair trade practice, any  
22 misrepresentations made by the petroleum industry.



Part I

SECTION 2. Chapter 486J, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§486J-A Informational cost reports.** (a) Each refiner, on a semi-annual basis, at such reporting dates as the commission may establish, shall file with the commission, on forms prescribed, prepared, and furnished by the commission, a certified statement of operating and overhead costs for the refiner's Hawaii operations, which shall include but not be limited to the following:

- (1) Crude oil costs and sources;
- (2) Other feedstock costs and sources;
- (3) Refinery operating expenses;
- (4) Marketing operating expenses by petroleum product;
- (5) Distribution expenses by petroleum product;
- (6) Corporate overhead expenses; and
- (7) The percentage of the total number of wholesale gallons of unleaded regular and premium unleaded gasoline sold during the reporting period at wholesale prices per gallon that exceed two hundred per cent of



1           the total costs and expenses reported in this  
2           subsection on a per gallon basis.

3           (b) In addition to the reporting required under subsection  
4           (a), each distributor shall file with the commission all  
5           Securities and Exchange Commission Forms 10-K, 10-Q, annual  
6           reports, quarterly reports, and earnings supplements published  
7           by the distributor.

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

- 16           (1) Gasoline purchases and exchanges and sources;
- 17           (2) Diesel purchases and exchanges and sources;
- 18           (3) Marketing expenses; and
- 19           (4) Distribution expenses.

20          **§486J-B Petroleum industry information reporting system.**

21          The commission shall develop and maintain an automated petroleum  
22          industry information reporting system that meets the



1 requirements of government, industry, and the public while  
2 promoting sound policy making and consumer information and  
3 protection. The purpose of the petroleum industry information  
4 reporting system is to conduct and facilitate the efficient  
5 reporting analysis of information described in section 486J-5.  
6 The commission shall develop the petroleum industry information  
7 reporting system in a manner that will result in greater market  
8 transparency and provide useful information to those agencies  
9 that are authorized to conduct oversight of the petroleum  
10 industry and ensure compliance with all relevant laws.

11 **§486J-C Petroleum industry monitoring, analysis, and**  
12 **reporting special fund.** (a) There is established a petroleum  
13 industry monitoring, analysis, and reporting special fund to be  
14 administered by the commission.

15 (b) The legislature may make appropriations from the  
16 general revenues of the State of Hawaii, not to exceed  
17 \$2,000,000 in any fiscal year, for the petroleum industry  
18 monitoring, analysis, and reporting special fund.

19 (c) Moneys in the special fund shall be used to:  
20 (1) Administer the petroleum industry information  
21 reporting program pursuant to this chapter; and



1       (2) Establish full-time staff positions in the  
 2           public utilities commission to implement and maintain  
 3           the programs established by chapter 486H and 486J."

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

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

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

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

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

21       (3) Owner-operated station that is a retail service  
 22 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 the refiners that reflect their Hawaii business  
6 units' share of corporate staff costs, such as 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 therefrom, 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:

17           (1) "Refiner wholesale price" which 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" which 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" means the wholesale price at  
 5           which liquid fuel is sold to any retail outlet by any  
 6           distributor priced on a delivered basis to a retail  
 7           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[~~+~~], including petroleum and petroleum  
7 products and gases, coal, coal tar, vegetable ferments, and all  
8 fuel alcohols."

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

10 ""Person"[~~+~~] 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, and the United States to the extent authorized by  
15 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[~~+~~] 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 4. 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 5. 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 fuel is sold or used during the last preceding reporting  
18 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~~,~~ 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 class of retail trade, and to wholesale  
16 [~~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 class of retail trade, and to  
13 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 6. 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 7. Section 486J-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§486J-5 Analysis of information; audits and inspections;**  
13 **summary reports.** (a) The ~~[petroleum commissioner]~~ commission,  
14 with the ~~[commissioner's]~~ commission's own staff and other  
15 support staff with expertise and experience in, or with, the  
16 petroleum industry, shall gather, analyze, and interpret the  
17 information submitted to it pursuant to sections 486J-3 ~~[and]~~,  
18 486J-4, and 486J-A and other information relating to the supply  
19 ~~[and price]~~, prices, margins, and profits of petroleum products,  
20 with particular emphasis on motor vehicle fuels, including~~[7]~~  
21 but not limited to~~[7]~~ all of the following:



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



1           companies in other regions of the United States or  
2           other countries; and

3       ~~[(+6)]~~ (4) The emerging trends relating to supply, demand,  
4           ~~[and conservation of petroleum and petroleum products;~~

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

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

14       ~~(b)~~ ~~The commissioner shall conduct random or periodic~~  
15       ~~audits and inspections of any supplier or suppliers of oil or~~  
16       ~~petroleum products to determine whether they are unnecessarily~~  
17       ~~withholding supplies from the market or are violating applicable~~  
18       ~~policies, laws, or rules. The commissioner may solicit~~  
19       ~~assistance of the department of taxation in any such audit. The~~  
20       ~~commissioner shall cooperate with other state and federal~~  
21       ~~agencies to ensure that any audit or inspection conducted by the~~  
22       ~~commissioner is not duplicative of the data received by any of~~



1 ~~their audits or inspections which is available to the~~  
2 ~~commissioner.]~~ price, margins, and profits.

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

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

19 SECTION 8. Section 486J-6, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§486J-6 Confidential information.** (a) Confidential  
22 commercial information presented to the ~~[commissioner]~~



1 commission pursuant to this chapter shall be held in confidence  
2 by the [~~commissioner~~] commission or aggregated to the extent  
3 necessary to [~~assure~~] ensure confidentiality as governed by  
4 chapter 92F, including its penalty provisions.

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

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

13 (1) Use the information furnished under [~~sections~~] section  
14 486J-3 [~~and~~], 486J-4, or 486J-A for any purpose other  
15 than the statistical purposes for which it is  
16 supplied;

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

21 (3) Permit anyone to examine the individual reports  
22 provided under [~~sections~~] section 486J-3 [~~and~~], 486J-



1           4, or 486J-A other than the department of taxation,  
2           public utilities commission, the attorney general, and  
3           the consumer advocate, and the authorized  
4           representatives and employees of each."

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

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

16          SECTION 10. Section 486J-8, Hawaii Revised Statutes, is  
17          amended to read as follows:

18          "**§486J-8 Sharing of information obtained by the**  
19          [~~commissioner~~.] commission. The [~~commissioner~~] commission shall  
20          make all information obtained by the [~~commissioner~~] commission  
21          under this chapter, including confidential information,  
22          available to the attorney general, the department of taxation,



1 ~~[the public utilities commission,~~ the consumer advocate, and  
2 the authorized representative of each, who shall safeguard the  
3 confidentiality of all confidential information received."

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

6 **"§486J-9 Failure to timely provide information; failure to**  
7 **make and file statements; false statements; penalties; referral**  
8 **to the attorney general.** (a) The ~~[petroleum commissioner]~~  
9 commission shall notify those persons who have failed to timely  
10 provide the information specified in section 486J-3 ~~[or]~~,  
11 486J-4, or 486J-A or requested by the ~~[commissioner]~~ commission  
12 under section 486J-3 ~~[or]~~, 486J-4~~[,]~~, or 486J-A. If, within  
13 five business days after being notified of the failure to  
14 provide the specified or requested information, the person fails  
15 to supply the specified or requested information, the person  
16 shall be subject to a civil penalty of not less than \$50,000 per  
17 day nor more than \$100,000 per day for each day the submission  
18 of information is refused or delayed~~[, unless the person has~~  
19 ~~timely filed objections with the commissioner regarding the~~  
20 ~~information and the commissioner has held a hearing and,~~  
21 ~~following a ruling by the commissioner, the person has properly~~





1 ~~submitted the issue to a court of competent jurisdiction for~~  
2 ~~review].~~

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

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

14 [~~(e)~~] (d) For the purposes of this section, "person"  
15 means, in addition to the definition contained in section  
16 486J-1, any responsible corporate officer."

17 SECTION 12. Section 486J-10, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§486J-10 Ethanol content requirement.** (a) The  
20 [~~commissioner~~] director shall adopt rules in accordance with  
21 chapter 91 to require that gasoline sold in the State for use in  
22 motor vehicles contain ten per cent ethanol by volume. The



1 amounts of gasoline sold in the State containing ten per cent  
2 ethanol shall be in accordance with rules as the [~~commissioner~~]  
3 director may deem appropriate. The [~~commissioner~~] director may  
4 authorize the sale of gasoline that does not meet these  
5 requirements as provided in subsection (d).

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

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

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

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



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

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

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

10          (2) The amount of ethanol-blended fuel sold by the  
11          distributor;

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

14          (4) Any other information the ~~[commissioner]~~ director  
15          shall require for the purposes of compliance with this  
16          section.

17          (f) Provisions with respect to confidentiality of  
18          information shall be the same as provided in section ~~[486J-7.]~~  
19          486J-6.

20          (g) Any distributor or any other person violating the  
21          requirements of this section shall be subject to a fine of not



1 less than \$2 per gallon of nonconforming fuel, up to a maximum  
2 of \$10,000 per infraction.

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

6 SECTION 13. Section 486J-12, Hawaii Revised Statutes, is  
7 repealed.

8 [~~"§486J-12 Rules. The commissioner shall adopt, amend, or  
9 repeal such rules as [the commissioner] may deem proper to fully  
10 effectuate this chapter."~~]

11 SECTION 14. There is appropriated out of the petroleum  
12 industry monitoring, analysis, and reporting special fund the  
13 sum of \$ , or so much thereof as may be necessary for  
14 fiscal year 2006-2007, to establish the petroleum industry  
15 monitoring, analysis, and reporting program established under  
16 chapter 486J, Hawaii Revised Statutes. The sums appropriated  
17 shall be expended by the public utilities commission for the  
18 purposes of this Act.

19 SECTION 15. There is appropriated out of the petroleum  
20 industry monitoring, analysis, and reporting special fund the  
21 sum of \$ , or so much thereof as may be necessary for  
22 fiscal year 2006-2007, for full-time equivalent positions



1 in the public utilities commission to implement and operate the  
 2 petroleum price control program established by chapter 486H,  
 3 Hawaii Revised Statutes. The sums appropriated shall be  
 4 expended by the public utilities commission for the purposes of  
 5 this Act.

6 Part II

7 SECTION 16. The Hawaii Revised Statutes is amended by  
 8 adding a new chapter to be appropriately designated and to read  
 9 as follows:

10 "CHAPTER

11 UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

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

14 "Advertising" includes the use of any banner, sign,  
 15 placard, poster, streamer, card, or any publication in the  
 16 media.

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

20 "Person" means an individual, corporation, government, or  
 21 governmental subdivision or agency, business trust, estate,  
 22 trust, partnership, unincorporated association, two or more of



1 any of the foregoing having a joint or common interest, or any  
2 other legal or commercial entity.

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

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

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

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



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



1 knowingly keeping, using, or displaying the false or  
2 forged records or documents.

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

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

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

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

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

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

19 shall commit an unlawful trade practice.

20 § -D **Penalty.** Any person who sells petroleum products  
21 in violation of this chapter shall be fined not more than





1 \$10,000 for each violation or imprisoned for not more than five  
2 years or both.

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

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

12 SECTION 17. In codifying the new sections added by section  
13 2 and section 16 of this Act, the revisor of statutes shall  
14 substitute appropriate section numbers for the letters used in  
15 designating the new sections in this Act.

16 SECTION 18. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 19. This Act shall take effect upon its approval,  
19 provided that section 16 shall take effect on January 1, 2007.

20

*Cab... by*  
 INTRODUCED BY *[Signature]*  
*Cindy Evans*  
*Keith A. Ankut*  
*Bobba Kewakani*  
*Manu... Lee*  
*[Signature]*  
*Numina Douita*  
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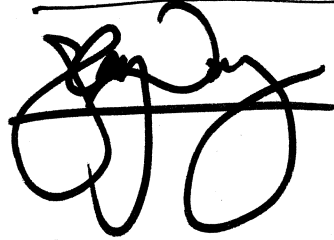
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# H.B. NO. 3115

Kirk Caldwell



John N. Karam

George P. Abernethy, Jr.

D.W.



JAN 25 2006



**Report Title:**

Petroleum Industry; Petroleum Industry Special Fund; Unfair Practices by Petroleum Industry

**Description:**

(1) Establishes petroleum industry monitoring, analysis, and reporting special fund; (2) petroleum industry information reporting system; and (3) unfair practices by petroleum industry.

