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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 an appropriation out of the petroleum industry  
14 monitoring, analysis, and reporting special fund to be  
15 expended by the public utilities commission to  
16 establish the petroleum industry monitoring, analysis,  
17 and reporting program;
- 18 (5) Suspend the duties of the public utilities commission  
19 with respect to enforcement of the petroleum price  
20 control program on the effective date of this Act;
- 21 (6) Repeal the petroleum price control program effective  
22 July 1, 2008; and



1 (7) Establish as an unfair trade practice, any  
2 misrepresentations made by the petroleum industry.

3 Part I

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

7 "§486J-A Informational cost reports. (a) Each refiner,  
8 on a semi-annual basis, at such reporting dates as the  
9 commission may establish, shall file with the commission, on  
10 forms prescribed, prepared, and furnished by the commission, a  
11 certified statement of operating and overhead costs for the  
12 refiner's Hawaii operations that shall include but not be  
13 limited to the following:

- 14 (1) Crude oil costs and sources;  
15 (2) Other feedstock costs and sources;  
16 (3) Refinery operating expenses;  
17 (4) Marketing operating expenses by petroleum product;  
18 (5) Distribution expenses by petroleum product;  
19 (6) Corporate overhead expenses; and  
20 (7) The percentage of the total number of wholesale  
21 gallons of unleaded regular and premium unleaded  
22 gasoline sold during the reporting period at wholesale



1 prices per gallon that exceed two hundred per cent of  
2 the total costs and expenses reported in this  
3 subsection on a per gallon basis.

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

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

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

21 **§486J-B Petroleum industry information reporting system.**

22 The commission shall develop and maintain an automated petroleum



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

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

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

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

21 (1) Administer the petroleum industry information  
22 reporting program pursuant to this chapter; and



1       (2) Establish full-time staff positions in the  
2       commission to implement and maintain the automated  
3       petroleum industry information reporting system  
4       established by section 486J-B."

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

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

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

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

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



1       (3) Owner-operated station that is a retail service  
2       station not owned by a refiner or wholesale  
3       distributor and operated by a qualified gasoline  
4       dealer.

5       "Commission" means the public utilities commission.

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

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

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

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





1       (2) "Nonrefiner wholesale price" which means the wholesale  
2       price at which liquid fuel is sold by any distributor,  
3       not a refiner, to any other distributor, not a  
4       refiner, for resale at any subsequent wholesale or  
5       retail transaction; and

6       (3) "Dealer tank wagon price" means the wholesale price at  
7       which liquid fuel is sold to any retail outlet by any  
8       distributor priced on a delivered basis to a retail  
9       outlet."

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

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

12       (1) Every person who refines, manufactures, produces, or  
13       compounds fuel in the State[~~;~~] and sells it at  
14       wholesale or at retail, or who utilizes it directly in  
15       the manufacture of products or for the generation of  
16       power;

17       (2) Every person who imports or causes to be imported into  
18       the State, or exports or causes to be exported from  
19       the State, any fuel; [~~and~~]

20       (3) Every person who acquires fuel through exchanges with  
21       another distributor[~~;~~]; or



1        (4) Every person who purchases fuel for resale at  
2                    wholesale or retail from any person described in  
3                    paragraph (1), (2), or (3)."

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

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

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

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

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

20           "Refiner" means any person who owns, operates, or controls  
21 the operations of one or more refineries[~~r~~] in Hawaii."



1           6. By repealing the definition of "petroleum  
2 commissioner".

3           ["~~"Petroleum commissioner" or "commissioner" means the~~  
4 ~~administrator of the energy, resources, and technology division~~  
5 ~~of the department of business, economic development, and~~  
6 ~~tourism.~~"]

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

9           "**§486J-2 Distributors to register.** Every distributor, and  
10 any person before becoming a distributor, shall register as such  
11 with the [~~commissioner~~] commission on forms to be prescribed,  
12 prepared, and furnished by the [~~commissioner.~~] commission."

13           SECTION 5. Section 486J-3, Hawaii Revised Statutes, is  
14 amended to read as follows:

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



- 1           (1) The total number of gallons or units of fuel, by the  
2           type or grade, refined, manufactured, or compounded by  
3           the distributor within the State [~~and sold or used by~~  
4           ~~the distributor,~~] and, if for ultimate [~~use~~] sale or  
5           consumption in another county or on another island,  
6           [~~the name of that county or island;~~] the number of  
7           gallons or units of fuel, by type or grade, sold,  
8           exchanged, or otherwise transferred or used in each  
9           county or island;
- 10          (2) The total number of gallons or units of fuel, by type  
11          or grade, imported or exported by the distributor [~~or~~  
12          ~~sold~~]; the total volumes of fuel, by type or grade,  
13          sold, exchanged, or otherwise transferred or used by  
14          the distributor[~~;~~]; and if for ultimate [~~use~~] sale or  
15          consumption in another county or on another island,  
16          [~~the name of that~~] the number of gallons or units of  
17          fuel, by type or grade, sold, exchanged, or otherwise  
18          transferred or used in each county or island;
- 19          (3) The total number of gallons or units of fuel sold as  
20          liquid fuel, aviation fuel, diesel fuel, and other  
21          types of fuel as required by the [~~commissioner;~~]  
22          commission;



- 1 (4) The total number of gallons or units of fuel [~~and the~~  
2 ~~types thereof~~], by type or grade, and their respective  
3 sales prices for all fuel sold to[+] federal, state,  
4 and county agencies, ships stores, or base exchanges,  
5 commercial agricultural accounts, commercial  
6 nonagricultural accounts, retail dealers, and other  
7 customers as required by the [commissioner+]  
8 commission;
- 9 (5) Monthly weighted average acquisition cost per barrel  
10 and volumes of foreign or domestic crude oil or other  
11 liquid fuels, finished or unfinished, imported to  
12 Hawaii, including information identifying the source  
13 of the crude oil or other liquid fuels;
- 14 [~~(5) Monthly Hawaii~~] (6) Weekly weighted average wholesale  
15 prices and sales volumes of finished [leaded regular,]  
16 unleaded regular[7] and premium motor gasoline, and of  
17 each other grade of gasoline sold [through company-  
18 operated], by island, to retail outlets, [to other  
19 end users,] by classes of retail trade, and to  
20 wholesale [customers+] distributors;
- 21 (7) Weekly weighted average retail prices, and sales  
22 volumes of finished unleaded regular and premium motor



1 gasoline, and of each other grade of gasoline sold, by  
2 island, by retail distributor outlets of all classes  
3 of retail trade and by any distributor to other end-  
4 users. The commission may purchase retail price data  
5 from data service companies that the commission may  
6 use to substitute some or all data to meet the  
7 reporting requirement for retail price data under this  
8 paragraph;

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

20 (9) Weekly weighted average retail prices, and sales  
21 volumes of No. 2 diesel fuel and No. 2 fuel oil sold,  
22 by island, by retail distributor outlets of all



1 classes of retail trade and by any distributor to  
2 other end-users. The commission may purchase retail  
3 price data from data service companies that the  
4 commission may use to substitute some or all data to  
5 meet the reporting requirement for retail price data  
6 under this paragraph;

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

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



1           prices for each gallon or unit of fuel sold, by county  
2           or island, to another distributor, retail dealers,  
3           end-users, or consumers.

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

8           ~~[(b) In addition to the above reporting, each distributor~~  
9 ~~shall file with the commissioner, Federal Form FEO 1000 or an~~  
10 ~~equivalent state form to be prescribed, prepared, and furnished~~  
11 ~~by the commissioner, showing the expected supply of fuel~~  
12 ~~products for the coming month, and their intended distribution~~  
13 ~~as categorized by Form FEO 1000 or the equivalent state form.~~

14 ~~The state form shall be supplied in the event that the Federal~~  
15 ~~Mandatory Petroleum Allocation Regulations should expire, be~~  
16 ~~revoked, or be amended to delete or substantially change the~~  
17 ~~reporting requirements provided therein.~~

18           ~~(e)]~~ (b) Each major marketer shall submit to the  
19 [~~commissioner,~~] commission, at a time and in a form as the  
20 [~~commissioner]~~ commission shall prescribe, information including  
21 petroleum and petroleum product receipts, exchanges,





1 inventories, and distributions. [~~The commissioner shall~~  
2 ~~prescribe by rule when the first report shall be submitted.~~

3 ~~(d)~~ (c) The [~~commissioner~~] commission may request  
4 additional information as and when [~~the commissioner~~] the  
5 commission deems necessary to perform [~~the commissioner's~~] the  
6 commission's responsibilities under this chapter."

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

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

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



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

4 (3) Refiners shall report on facility capacity and  
5 utilization and method of transportation of refinery  
6 receipts and distributions; and

7 (4) Major oil marketers shall report on facility capacity  
8 and methods of transportation of receipts and  
9 distributions.

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

12 (b) The ~~[commissioner]~~ commission may request additional  
13 information as and when ~~[the commissioner]~~ the commission  
14 deems it necessary to perform ~~[the commissioner's]~~ the  
15 commission's responsibilities under this chapter."

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

18 "**§486J-5 Analysis of information; audits and inspections;**  
19 **summary reports.** (a) The ~~[petroleum commissioner,]~~ commission,  
20 with the ~~[commissioner's]~~ commission's own staff and other  
21 support staff with expertise and experience in, or with, the  
22 petroleum industry, shall gather, analyze, and interpret the



1 information submitted to it pursuant to sections 486J-3 [~~and~~],  
2 486J-4, and 486J-A and other information relating to the supply  
3 [~~and price~~], prices, margins, and profits of petroleum products,  
4 with particular emphasis on motor vehicle fuels, including[~~]~~  
5 but not limited to[~~]~~ all of the following:

6 (1) The nature, cause, and extent of any petroleum or  
7 petroleum products [~~shortage~~] situation or condition  
8 affecting supply[~~]~~, price, margins, or profits;

9 [~~(2)~~] ~~The economic and environmental impacts of any~~  
10 ~~petroleum and petroleum product shortage or condition~~  
11 ~~affecting supply;~~

12 [~~(3)~~] ~~Petroleum or petroleum product demand and supply~~  
13 ~~forecasting methodologies utilized by the petroleum~~  
14 ~~industry in Hawaii;~~

15 (+4)] (2) The prices, with particular emphasis on wholesale  
16 and retail motor vehicle fuel prices, and any  
17 significant changes in prices charged by the petroleum  
18 industry for petroleum or petroleum products sold in  
19 Hawaii and the reasons for such changes;

20 [~~(5)~~] (3) The income, expenses, margins, and profits[~~]~~ in  
21 Hawaii, both before and after taxes, ~~of the industry~~  
22 ~~as a whole and of major firms within it, including a~~



1 ~~comparison with other major industry groups and major~~  
2 ~~firms within them as to profits, return on equity and~~  
3 ~~capital, and price earnings ratio;] of each~~  
4 ~~distributor and the income, expenses, margins, and~~  
5 ~~profits, both before and after taxes, of major oil~~  
6 ~~companies in other regions of the United States or~~  
7 ~~other countries; and~~

8 [~~(6)~~] (4) The emerging trends relating to supply, demand,  
9 [and conservation of petroleum and petroleum products;

10 ~~(7)~~ The nature and extent of efforts of the petroleum  
11 industry to expand refinery capacity and to make  
12 acquisitions of additional supplies of petroleum and  
13 petroleum products; and

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

19 ~~(b)~~ The commissioner shall conduct random or periodic  
20 audits and inspections of any supplier or suppliers of oil or  
21 petroleum products to determine whether they are unnecessarily  
22 withholding supplies from the market or are violating applicable



1 ~~policies, laws, or rules. The commissioner may solicit~~  
2 ~~assistance of the department of taxation in any such audit. The~~  
3 ~~commissioner shall cooperate with other state and federal~~  
4 ~~agencies to ensure that any audit or inspection conducted by the~~  
5 ~~commissioner is not duplicative of the data received by any of~~  
6 ~~their audits or inspections which is available to the~~  
7 ~~commissioner.] price, margins, and profits.~~

8       ~~[(c)]~~ (b) The ~~[commissioner]~~ commission shall analyze the  
9 impacts of state and federal policies, rules, and regulations  
10 upon the supply and pricing of petroleum products.

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



1 ~~196 4(11), in the director's role as state energy resources~~  
2 ~~coordinator.]"~~

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

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

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

14 ~~(e)]~~ (b) Unless otherwise provided by law, with respect to  
15 data provided pursuant to [~~sections~~] section 486J-3 [~~and~~], 486J-  
16 4, or 486J-A, neither the [~~commissioner~~], commission, nor any  
17 employee of the [~~department~~], commission, may do any of the  
18 following:

19 (1) Use the information furnished under [~~sections~~] section  
20 486J-3 [~~and~~], 486J-4, or 486J-A for any purpose other  
21 than the statistical purposes for which it is  
22 supplied;



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

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

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

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



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

3 **"§486J-8 Sharing of information obtained by the**  
4 **[~~commissioner.~~] commission.** The [~~commissioner~~] commission shall  
5 make all information obtained by the [~~commissioner~~] commission  
6 under this chapter, including confidential information,  
7 available only to the attorney general, the department of  
8 taxation, [~~the public utilities commission,~~] the consumer  
9 advocate, and the authorized representative of each, who shall  
10 safeguard the confidentiality of all confidential information  
11 received."

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

14 **"§486J-9 Failure to timely provide information; failure to**  
15 **make and file statements; false statements; penalties; referral**  
16 **to the attorney general.** (a) The [~~petroleum commissioner~~]  
17 commission shall notify those persons who have failed to timely  
18 provide the information specified in section 486J-3 [~~or~~],  
19 486J-4, or 486J-A or requested by the [~~commissioner~~] commission  
20 under section 486J-3 [~~or~~], 486J-4[-], or 486J-A. If, within  
21 five business days after being notified of the failure to  
22 provide the specified or requested information, the person fails





1 to supply the specified or requested information, the person  
2 shall be subject to a civil penalty of not less than \$50,000 per  
3 day nor more than \$100,000 per day for each day the submission  
4 of information is refused or delayed[~~, unless the person has~~  
5 ~~timely filed objections with the commissioner regarding the~~  
6 ~~information and the commissioner has held a hearing and,~~  
7 ~~following a ruling by the commissioner, the person has properly~~  
8 ~~submitted the issue to a court of competent jurisdiction for~~  
9 ~~review].~~

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

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



1           ~~(c)~~ (d) For the purposes of this section, "person"  
2 means, in addition to the definition contained in section  
3 486J-1, any responsible corporate officer."

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

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

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

20           (c) Ethanol used in the manufacture of ethanol-based  
21 gasoline additives, such as ethyl tertiary butyl ether, may be  
22 considered to contribute to the distributor's conformance with



1 this section; provided that the total quantity of ethanol used  
2 by the distributor is an amount equal to or greater than the  
3 amount of ethanol required under this section.

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

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

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

12 (e) Each distributor, at such reporting dates as the  
13 [~~commissioner~~] director may establish, shall file with the  
14 [~~commissioner~~], director, on forms prescribed, prepared, and  
15 furnished by the [~~commissioner~~], director, a certified statement  
16 showing:

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

18 (2) The amount of ethanol-blended fuel sold by the  
19 distributor;

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



1 (4) Any other information the [~~commissioner~~] director  
2 shall require for the purposes of compliance with this  
3 section.

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

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

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

14 SECTION 13. 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 14. Section 486J-12, Hawaii Revised Statutes, is  
5 repealed.

6 [~~"§486J-12 Rules. The commissioner shall adopt, amend, or~~  
7 ~~repeal such rules as [the commissioner] may deem proper to fully~~  
8 ~~effectuate this chapter." ]~~

9 SECTION 15. On the effective date of this Act, the public  
10 utilities commission shall suspend any and all duties with  
11 respect to sections 486H-13 and 486H-16, Hawaii Revised  
12 Statutes.

13 SECTION 16. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ , or so much  
15 thereof as may be necessary for fiscal year 2006-2007, to be  
16 deposited into the petroleum industry monitoring, analysis, and  
17 reporting special fund.

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

20 SECTION 17. There is appropriated out of the petroleum  
21 industry monitoring, analysis, and reporting special fund the  
22 sum of \$ , or so much thereof as may be necessary for



1 fiscal year 2006-2007, to establish the petroleum industry  
2 monitoring, analysis, and reporting program established under  
3 chapter 486J, Hawaii Revised Statutes. The sum appropriated  
4 shall be expended by the public utilities commission for the  
5 purposes of this Act.

6 Part II

7 SECTION 18. 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 whatsoever 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 19. In codifying the new sections added by section  
13 2 and section 18 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 20. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18       SECTION 21. This Act shall take effect on July 1, 2006;  
19 provided that section 13 shall take effect on January 1, 2008  
20 and section 18 shall take effect on January 1, 2007.



**Report Title:**

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

**Description:**

Establishes: (1) petroleum industry monitoring, analysis, and reporting special fund; (2) petroleum industry information reporting system; and (3) unfair practices by petroleum industry. Suspends enforcement of gasoline price limit program by PUC as of 7/1/06. Repeals gasoline price limit program 1/1/08. (HB3115 HD1)

