
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 oil industry has
2 in the past, and if unchecked, will likely in the future, use
3 oligopolistic powers to set artificially high prices in Hawaii
4 for motor fuel and other petroleum products. Disadvantaged by
5 the secrecy in the industry, elected officials and the public are
6 denied accurate assessments of the true causes of higher prices.
7 True and effective transparency would be an effective tool to
8 prevent the use of retail price maintenance schemes or other
9 illegal behavior that artificially raises consumer prices.

10 While true transparency should provide benefits for Hawaii
11 consumers, the combination of the State's geographical isolation
12 and the market control exercised by the oil companies necessitate
13 additional measures to safeguard the public. Enforcement of the
14 current maximum wholesale price of gasoline should be suspended
15 while leaving the public utilities commission with the ability to
16 temporarily reinstate the maximum wholesale price in the event
17 transparency does not provide the relief needed and the oil
18 industry restores and maintains prices higher than would have



1 been allowed had the maximum wholesale price provision not been
2 suspended.

3 As was more than evident during the aftermath of hurricanes
4 Katrina and Rita and the refinery fires in Texas, natural and
5 man-caused disasters halfway around the world can cause
6 volatility and instability in the wholesale gasoline prices in
7 Hawaii. To ensure the effectiveness of Hawaii's wholesale
8 gasoline price control program, the State must prevent disasters
9 in other far-away locations from unreasonably influencing our
10 wholesale gasoline prices. To reduce instability, an additional
11 geographic market needed to be added to provide more flexibility
12 in establishing the baseline gasoline price.

13 In setting a maximum pre-tax wholesale price of gasoline,
14 the legislature inserted a location adjustment factor to take
15 into account the added costs of doing business in Hawaii.
16 However, in the implementation of the gasoline price control
17 program, the public utilities commission established zone price
18 adjustments for the eight geographic zones established in the
19 State, including a zone price adjustment for zone one, the
20 Honolulu base zone. These zone price adjustments, adopted by the
21 public utilities commission, were determined by using the highest
22 actual costs of doing business by wholesaler distributors in the

1 various zones. Accordingly, the location adjustment factor
2 became redundant.

3 A sustained review of the spot daily price for conventional
4 regular unleaded gasoline in a number of mainland markets and a
5 review of wholesale prices in those markets published by the
6 United States Department of Energy indicates that the marketing
7 margin factor may have been set too high.

8 Further, with regard to the zone price adjustments, some
9 distributors were taking more than an equitable share to the
10 detriment of other distributors in the chain of distribution. To
11 ensure that there is an equitable sharing of the zone price
12 adjustment, the zone price adjustments must be divided by
13 wholesale distributors based upon the functions that each
14 provides in the chain of distribution.

15 It cannot be overemphasized that the entire reason for this
16 Act, amending Act 242, Session Laws of Hawaii 2004, as codified,
17 which amended Act 77, Session Laws of Hawaii 2002, is the need to
18 protect the gasoline consumers in this State from the predatory
19 practices of an oligopolistic petroleum industry. The various
20 courts have found and the parties themselves acknowledge that the
21 wholesale gasoline industry in this State is an uncompetitive
22 oligopoly with the industry parties enjoying exorbitant profit



1 margins in their wholesale transactions, all to the detriment of
2 the Hawaii consumer. Therefore, the legislature reiterates that
3 the objective of Act 242 is to enhance the consumer welfare by
4 fostering the opportunity for prices to reflect and correlate
5 with competitive market conditions.

6 To ensure that oil companies do not further raise prices
7 artificially high, the suspension of the maximum wholesale price
8 will not suspend or affect the mechanisms to enforce the
9 prohibition on unfair trade practices and to require the timely
10 reporting of information by the gasoline industry, nor the duty
11 of the public utilities commission to timely analyze and publicly
12 disclose information provided by the gasoline industry and to
13 calculate and post what would have been the weekly price cap.
14 The public utilities commission is directed to proactively
15 enforce the provisions of the law to enable the consumers of
16 Hawaii to enjoy the lowest possible prices for gasoline, while
17 allowing the refiners, jobbers, and wholesalers to make a
18 reasonable return on their investments.

19 The legislature further finds that the establishment and
20 allocation of adequate resources for a vigorous state watchdog
21 system to monitor and oversee the petroleum industry and gasoline
22 market is a prerequisite to ensure the efficient and equitable



1 regulation of gasoline pricing. The public disclosure,
2 collection, aggregation, and analyses of current data relating to
3 Hawaii petroleum fuel prices, volumes, costs, and profits, and
4 the subsequent reporting of this information to planning and
5 enforcement agencies, such as the departments of the attorney
6 general, business, economic development, and tourism, and
7 taxation, for review and assessment, is critical in ensuring
8 compliance with the letter and spirit of the laws and regulations
9 aimed at promoting fair and competitive gasoline prices for
10 Hawaii's consumers.

11 The purposes of this Act are to:

- 12 (1) Require true transparency by the industry to increase
13 competition and provide the public and elected
14 officials with the necessary monitoring capability to
15 discourage the oil industry from utilizing retail
16 price maintenance schemes or other anti-competitive
17 practices that artificially raise prices to consumers;
- 18 (2) Suspend the maximum wholesale price provision while
19 leaving the public utilities commission the ability to
20 temporarily reinstate the provision if oil companies
21 raise and maintain prices higher than would have been
22 allowed if the provision was not suspended;



- 1 (3) Require the public utilities commission, during any
2 time that enforcement of the maximum pre-tax wholesale
3 price of gasoline is suspended, to calculate and
4 publish what that maximum price would have been, to
5 allow consumers to compare that price with current
6 actual prices;
- 7 (4) Refine the method for calculating the maximum pre-tax
8 wholesale gasoline price that will be applicable if the
9 enforceable ceiling is reinstated, by:
- 10 (A) Adding the Singapore spot price weekly average
11 price of conventional regular unleaded gasoline to
12 the baseline price determination, with the three
13 lowest weekly averages being averaged, to
14 determine the baseline price for regular unleaded
15 gasoline;
- 16 (B) In the event of a holiday or holidays in the prior
17 week, requiring the public utilities commission to
18 average the prices of the days that were not
19 holidays;
- 20 (C) Eliminating the location adjustment factor;
- 21 (D) Reducing the marketing margin factor to 14 cents;



- 1 (E) Allocating percentages of zone price adjustment in
2 zones 2 through 8 to distributors based upon
3 different functions; and
- 4 (F) Providing for adjustments of zone price
5 adjustments and allocations of zone price
6 adjustments on a zone by zone basis;
- 7 (5) Establish the petroleum industry monitoring, analysis,
8 and reporting special fund;
- 9 (6) Require the public utilities commission to develop and
10 maintain the petroleum industry monitoring, analysis,
11 and reporting system, including an automated petroleum
12 industry information reporting system;
- 13 (7) Redelineate the types of information that the petroleum
14 industry must submit to the public utilities
15 commission;
- 16 (8) Make an appropriation out of the petroleum industry
17 monitoring, analysis, and reporting special fund to be
18 expended by the public utilities commission to
19 establish the petroleum industry monitoring, analysis,
20 and reporting program; and
- 21 (9) Prohibit unfair trade practices by the petroleum
22 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 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 that 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 the maximum pre-tax wholesale price under section 486H-13.

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

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

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

18 **§486J-B Petroleum industry information reporting system.**

19 The commission shall develop and maintain an automated petroleum
20 industry information reporting system that meets the requirements
21 of government, industry, and the public while promoting sound
22 policy making and consumer information and protection. The



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

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

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

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

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

21 (2) Establish full-time staff positions in the
22 commission to implement and maintain the automated



1 petroleum industry information reporting system
2 established by section 486J-B."

3 SECTION 3. Section 486H-13, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§486H-13 Maximum pre-tax wholesale price for the sale of**
6 **gasoline; civil actions.** (a) The prohibition under subsection
7 (b) against selling gasoline above the maximum pre-tax wholesale
8 price shall be suspended on the effective date of this Act. The
9 suspension shall remain in effect unless the commission
10 determines that the average pre-tax wholesale price charged in a
11 zone for two consecutive weeks has exceeded the maximum price
12 that would have been allowed had the suspension not been in
13 effect. Upon every such determination, the commission
14 immediately shall temporarily waive the suspension and resume
15 enforcement of the maximum pretax wholesale price under
16 subsection (c) in the zone for a period of two weeks, following
17 which the suspension of the maximum price provision shall be
18 automatically reinstated.

19 (b) Notwithstanding any law to the contrary, during any
20 period for which the commission waives the suspension as provided
21 in subsection (a), no manufacturer, wholesaler, or jobber may
22 sell regular unleaded, mid-grade, or premium gasoline to a dealer



1 retail station, an independent retail station, or to another
 2 jobber or wholesaler at a price above the maximum pre-tax
 3 wholesale prices established pursuant to subsection ~~[(b)].~~ The
 4 ~~commission shall publish the maximum pre-tax wholesale prices by~~
 5 ~~means that shall include the Internet website for the State of~~
 6 ~~Hawaii.]~~ (c).

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

17 ~~[(e)]~~ (d) The baseline price for regular unleaded gasoline
 18 referred to in subsection ~~[(b)]~~ (c) shall be determined on a
 19 weekly basis and shall be equal to the average of~~[,~~] the three
 20 lowest of the four weekly averages of the spot daily price for
 21 conventional regular unleaded gasoline or its equivalent
 22 standard:

- 1 (1) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for Los Angeles;
- 3 (2) The weekly average of the spot daily price for
4 conventional regular unleaded gasoline for New York
5 Harbor; [~~and~~]
- 6 (3) The weekly average of the spot daily price for
7 conventional regular unleaded gasoline for the United
8 States Gulf Coast; and
- 9 (4) The weekly average of the spot daily price for
10 conventional regular unleaded gasoline for Singapore,
11 as reported and published by the Oil Price Information Service
12 for the five business days of the preceding week; provided that
13 if the preceding week contains a holiday or holidays, then the
14 average of the remaining business days of the preceding week
15 shall be used; and provided further that the commission, in its
16 discretion, may determine a more appropriate baseline or a more
17 appropriate price information reporting service[~~-~~]
- 18 [~~(d) The location adjustment factor referred to in~~
19 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~
20 ~~determined by the commission and shall thereafter be subject to~~
21 ~~adjustment pursuant to section 486H-16(a).~~] or use multiple price
22 information reporting services.



1 (e) The marketing margin factor referred to in subsection
2 ~~[(b)]~~ (c) shall be [~~\$.18~~] 14 cents per gallon or as otherwise
3 determined by the commission and shall thereafter be subject to
4 adjustment pursuant to section 486H-16(a).

5 (f) The mid-grade adjustment factor shall be [~~\$.05~~] 5 cents
6 per gallon or as otherwise determined by the commission and shall
7 thereafter be subject to adjustment pursuant to section
8 486H-16(a).

9 (g) The premium adjustment factor shall be [~~\$.09~~] 9 cents
10 per gallon or as otherwise determined by the commission and shall
11 thereafter be subject to adjustment pursuant to section
12 486H-16(a).

13 (h) For purposes of this chapter, the State shall be
14 divided into the following zones:

- 15 (1) Zone 1 shall include the island of Oahu;
- 16 (2) Zone 2 shall include the island of Kauai;
- 17 (3) Zone 3 shall include the island of Maui, except the
18 district of Hana;
- 19 (4) Zone 4 shall include the district of Hana on the island
20 of Maui;
- 21 (5) Zone 5 shall include the island of Molokai;
- 22 (6) Zone 6 shall include the island of Lanai;

1 (7) Zone 7 shall include the districts of Puna, south Hilo,
2 north Hilo, and Hamakua on the island of Hawaii; and

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

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

9 (j) The zone price adjustments for zones 2 through 8, set
10 forth in subsection (h), shall be divided as follows:

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

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

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

20 [~~+~~] (k) Every manufacturer, wholesaler, or jobber, upon
21 the request of the commission, shall furnish to the commission,
22 in the form requested, all documents, data, and information the



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

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

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



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

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

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



1 (p) Any suspension of enforcement of the maximum pre-tax
2 wholesale price shall not suspend or affect:

3 (1) Any duty to register, timely provide information, make
4 a report, or file a statement under chapter 486J; or

5 (2) Any duty of the commission to publish, by means that
6 shall include the internet website for the State of
7 Hawaii, the maximum pre-tax wholesale prices for each
8 zone that would be in effect but for the suspension; to
9 timely obtain, analyze, or publicly disclose or report
10 information and conduct periodic audits or inspections
11 under chapter 486J; and to enforce chapter and
12 other provisions of this chapter and chapter 486J.

13 [~~+~~] (q) The commission [~~shall~~] may adopt rules pursuant
14 to chapter 91 as may be necessary to implement this section and
15 section 486H-16."

16 SECTION 4. Section 486H-15, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§486H-15 Governor's emergency powers.** (a)

19 [~~Notwithstanding~~] Subject to subsections (b) and (c), and
20 notwithstanding any law to the contrary, the governor may
21 [~~suspend, in whole or in part,~~] suspend enforcement of the
22 maximum pre-tax wholesale price under section 486H-13 or any rule



1 adopted pursuant to that section, on a zone by zone basis,
2 whenever the governor issues a written determination containing
3 findings of fact that demonstrate that strict compliance with the
4 section or a rule will cause a [~~major adverse~~] negative impact on
5 the economy, public order, or the health, welfare, or safety of
6 the people of Hawaii. In the written determination, the governor
7 shall state the specific provision of the section or rule that
8 strict compliance with will cause a [~~major adverse~~] negative
9 impact on the economy, public order, or the health, welfare, or
10 safety of the people of the State, along with specific reasons
11 and findings of fact for that determination. The governor shall
12 publish this determination in accordance with section 1-28.5.
13 The suspension shall take effect upon issuance of the written
14 determination by the governor.

15 ~~[(b) Except as provided in subsection (c), the suspension~~
16 ~~under subsection (a) shall remain in effect until the earlier of:~~

17 ~~(1) The adjournment of the next regular or special session~~
18 ~~of the legislature; or~~

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

21 ~~provided that if the legislature has passed legislation to~~
22 ~~address the major adverse impact, and the governor vetoes the~~



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

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

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

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

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

18 ~~provided that if the legislature has passed legislation to~~
 19 ~~address the major adverse impact, and the governor vetoes the~~
 20 ~~presented legislation, the suspension shall terminate on the date~~
 21 ~~of that veto, and the maximum pre-tax wholesale gasoline prices~~
 22 ~~in effect immediately prior to the issuance of the written~~

~~1 determination by the governor shall take effect on the day after
2 the date of the veto; and provided further that if no action is
3 taken by the legislature during the regular or special session to
4 address the major adverse impact, then the maximum pre-tax
5 wholesale gasoline prices in effect immediately prior to the
6 issuance of the written determination by the governor shall take
7 effect on the day after adjournment sine die of the regular or
8 special session.]~~

9 (b) The suspension shall remain in effect for thirty days
10 and may be renewed for additional thirty-day periods whenever the
11 governor issues a written determination containing findings of
12 fact that demonstrate that strict compliance with section
13 486H-13, or a rule adopted pursuant to that section, during the
14 thirty-day period will cause a negative impact on the economy,
15 public order, or the health, welfare, or safety of the people of
16 Hawaii. In the written determination, the governor shall state
17 the specific provision of the section or rule that strict
18 compliance with will cause a negative impact on the economy,
19 public order, or the health, welfare, or safety of the people of
20 the State, along with specific reasons and findings of fact for
21 that determination. The governor shall publish this
22 determination in accordance with section 1-28.5. The renewal of



1 the suspension shall take effect upon issuance of the written
2 determination by the governor.

3 (c) Any suspension shall not suspend or affect:

4 (1) Any duty to register, timely provide information, make
5 a report, or file a statement under chapter 486J; or

6 (2) Any duty of the commission to publish, by means that
7 shall include the internet website for the State of
8 Hawaii, the maximum pre-tax wholesale prices for each
9 zone that would be in effect but for the suspension; to
10 timely obtain, analyze, or publicly disclose or report
11 information and conduct periodic audits or inspections
12 under chapter 486J; and to enforce chapter _____ and
13 other provisions of this chapter and chapter 486J."

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

16 "(a) A manufacturer, wholesaler, or jobber may petition the
17 commission to adjust the maximum pre-tax wholesale price of
18 regular unleaded, mid-grade, or premium gasoline in the event of
19 a change in the value of the baseline price for regular unleaded
20 gasoline, [~~the location adjustment factor,~~] the marketing margin
21 factor, the mid-grade adjustment factor, the premium adjustment
22 factor, [~~or~~] a zone price adjustment[~~-~~] on a zone by zone basis,

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

6 (1) The value of the baseline price shall be equal to the
7 average of[+] the three lowest of the four weekly
8 averages of the spot daily price for conventional
9 regular unleaded gasoline or its equivalent standard:

10 (A) The weekly average of the spot daily price for
11 conventional regular unleaded gasoline for Los
12 Angeles;

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

16 (C) The weekly average of the spot daily price for
17 conventional regular unleaded gasoline for the
18 United States Gulf Coast[~~7~~]; and

19 (D) The weekly average of the spot daily price for
20 conventional regular unleaded gasoline for
21 Singapore,

1 as reported and published by the Oil Price Information
2 Service for the five business days of the preceding
3 week; provided that if the preceding week contains a
4 holiday or holidays, the average of the remaining
5 business days of the preceding week shall be used; and
6 provided further that the commission, in its
7 discretion, may determine a more appropriate baseline
8 or a more appropriate price information reporting
9 service[+] or use multiple price information reporting
10 services;

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

~~this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;~~

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

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

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

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

for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less

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

- 1 (i) The dealer tank wagon price for sales for
2 resale for "regular" gasoline; and
- 3 (ii) The bulk price for sales for resale for
4 "regular" gasoline,
5 for Petroleum Administration for Defense (PAD)
6 District V, as reported and published by the
7 Energy Information Administration or its successor
8 in Table 31 - "Motor Gasoline Prices by Grade,
9 Sales Type, PAD District, and State" or other
10 source containing the same information;
- 11 [~~4~~] (3) The value of the mid-grade and premium adjustment
12 factors in effect at the time the petition is filed
13 shall be adjusted by any material change in the mid-
14 grade and premium adjustment factor as published by an
15 appropriate price information reporting service; and
- 16 [~~5~~] (4) The value of any zone price adjustment on a zone
17 by zone basis or zone price adjustment allocation,
18 pursuant to section 486H-13(j), on a zone by zone
19 basis, in effect at the time the petition is filed,
20 shall be adjusted based upon material changes in the
21 operating costs for a zone, such as terminaling,



1 storage, or distribution costs, and other empirical
2 data the commission deems appropriate."

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

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

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

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

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

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

22 "Commission" means the public utilities commission.

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

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

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

13 "Nonrefiner wholesale price" means the wholesale price at
14 which liquid fuel is sold by any distributor, not a refiner, to
15 any other distributor, not a refiner, for resale at any
16 subsequent wholesale or retail transaction.

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

21 "Wholesale liquid fuel prices" means the prices at which
22 liquid fuel is sold at wholesale for resale at wholesale or



1 retail, typically but not limited to gasoline and diesel for
2 motor vehicles, and include "dealer tank wagon price,"
3 "nonrefiner wholesale price," and "refiner wholesale price"."

4 2. By amending the definitions of "distributor," "fuel,"
5 "person," and "refiner" to read:

6 "'Distributor" means [~~and includes~~]:

- 7 (1) Every person who refines, manufactures, produces, or
8 compounds fuel in the State[~~7~~] and sells it at
9 wholesale or at retail, or who [~~utilizes~~] uses it
10 directly in the manufacture of products or for the
11 generation of power;
- 12 (2) Every person who imports or causes to be imported into
13 the State, or exports or causes to be exported from the
14 State, any fuel; [~~and~~]
- 15 (3) Every person who acquires fuel through exchanges with
16 another distributor[~~7~~]; or
- 17 (4) Every person who purchases fuel for resale at wholesale
18 or retail from any person described in paragraph (1),
19 (2), or (3).

20 "Fuel" means [~~and includes~~] fuels, whether liquid, solid, or
21 gaseous, commercially usable for energy needs, power generation,
22 and fuels manufacture, that may be manufactured, grown, produced,



1 or imported into the State or that may be exported therefrom[+],
2 including petroleum and petroleum products and gases, coal, coal
3 tar, vegetable ferments, and all fuel alcohols.

4 "Person"[+] means any person, firm, association,
5 organization, partnership, business trust, corporation, or
6 company. "Person" also includes any city, county, public
7 district or agency, the State, or any department or agency
8 thereof, and the United States to the extent authorized by
9 federal law.

10 "Refiner" means any person who owns, operates, or controls
11 the operations of one or more refineries[-] in Hawaii."

12 3. By deleting the definition of "petroleum commissioner."

13 [~~"Petroleum commissioner" or "commissioner" means the~~
14 ~~administrator of the energy, resources, and technology division~~
15 ~~of the department of business, economic development, and~~
16 ~~tourism."~~]

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

19 "**§486J-2 Distributors to register.** Every distributor, and
20 any person before becoming a distributor, shall register as such
21 with the [~~commissioner~~] commission on forms to be prescribed,
22 prepared, and furnished by the [~~commissioner.~~] commission."



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

3 **"§486J-3 Statements.** (a) Each week every distributor,
4 [~~shall, at such~~] on the reporting dates as the [~~commissioner~~]
5 commission may establish, shall file with the [~~commissioner,~~]
6 commission, on forms prescribed, prepared, and furnished by the
7 [~~commissioner,~~] commission, a certified statement showing
8 separately for each county and for the islands of Lanai and
9 Molokai within which and whereon fuel is sold or used during the
10 last preceding reporting [~~period,~~] week, the following:

11 (1) The total number of gallons or units of fuel, by type
12 or grade, refined, manufactured, or compounded by the
13 distributor within the State [~~and sold or used by the~~
14 ~~distributor,~~] and, if for ultimate [~~use~~] sale or
15 consumption in another county or on another island,
16 [~~the name of that county or island,~~] the number of
17 gallons or units of fuel, by type or grade, sold,
18 exchanged, or otherwise transferred or used by the
19 distributor in each county or island;

20 (2) The total number of gallons or units of fuel, by type
21 or grade, imported or exported by the distributor [~~or~~
22 ~~sold~~]; the total volumes of fuel, by type or grade,



1 sold, exchanged, or otherwise transferred or used by
 2 the distributor~~[,]~~; and if for ultimate ~~[use]~~ sale or
 3 consumption in another county or on another island,
 4 ~~[the name of that]~~ the number of gallons or units of
 5 fuel, by type or grade, sold, exchanged, or otherwise
 6 transferred or used by the distributor in each county
 7 or island;

8 (3) The total number of gallons or units of fuel sold as
 9 liquid fuel, aviation fuel, diesel fuel, and other
 10 types of fuel as required by the ~~[commissioner,]~~
 11 commission;

12 (4) The total number of gallons or units of fuel ~~[and the~~
 13 ~~types thereof]~~, by type or grade, and their respective
 14 sales prices for all fuel sold to~~[+]~~ federal, state,
 15 and county agencies, ships stores, or base exchanges,
 16 commercial agricultural accounts, commercial
 17 nonagricultural accounts, retail dealers, and other
 18 customers as required by the ~~[commissioner,]~~
 19 commission;

20 (5) Weekly weighted average acquisition cost per barrel and
 21 volumes of foreign or domestic crude oil or other
 22 liquid fuels, finished or unfinished, imported to

1 Hawaii, including information identifying the source of
2 the crude oil or other liquid fuels;
3 ~~[(5) Monthly Hawaii]~~ (6) The effective date and time, and
4 the amount of change in cents per gallon, of any
5 increase or decrease in wholesale price occurring
6 during the week and the weekly weighted average
7 wholesale prices and sales volumes of finished [~~leaded~~
8 regular,] unleaded regular[~~,~~] and premium motor
9 gasoline, and of each other grade of gasoline sold
10 [~~through company-operated~~], by island, to retail
11 outlets, [~~to other end-users,~~] by classes of retail
12 trade, and to wholesale [~~customers,~~] distributors;
13 (7) Weekly weighted average retail prices, and sales
14 volumes of finished unleaded regular and premium motor
15 gasoline, and of each other grade of gasoline sold, by
16 island, by retail distributor outlets of all classes of
17 retail trade and by any distributor to other end-users;
18 provided that the commission may purchase retail price
19 data from data service companies that the commission
20 may use to substitute some or all data to meet the
21 reporting requirement for retail price data under this
22 paragraph;



1 [~~(6) Monthly Hawaii~~] (8) The effective date and time, and
2 the amount of change in cents per gallon, of any
3 increase or decrease in wholesale price occurring
4 during the week and the weekly weighted average
5 wholesale prices, and sales volumes [for residential
6 sales, commercial and institutional sales, industrial
7 sales, sales through company-operated retail outlets,
8 sales to other end-users, and wholesale sales of No. 2
9 diesel fuel and No. 2 fuel oil; and] of No. 2 diesel
10 fuel and No. 2 fuel oil, by island, to retail
11 distributor outlets, by classes of retail trade, and to
12 all other wholesale distributors. Weighted average
13 wholesale prices and sales volumes shall be reported by
14 type of wholesale liquid fuel price;

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



1 [~~(7) Monthly Hawaii~~] (10) Weekly weighted average prices,
2 and sales volumes for retail sales and wholesale sales,
3 by island, of No. 1 distillate, kerosene, finished
4 aviation gasoline, kerosene-type jet fuel, No. 4 fuel
5 oil, residual fuel oil, and consumer grade propane[-];
6 (11) For each distributor that is a refiner, the gross
7 margins or spreads between a refiner's average weighted
8 acquisition price for each gallon of crude oil and
9 blendstock refined within the State and the average
10 weighted prices for each gallon or unit of fuel sold,
11 by county or island, to another distributor, a retail
12 dealer, end-user, and consumer; and
13 (12) For each distributor that is not a refiner, the gross
14 margins or spreads between the distributor's average
15 weighted price for each gallon or unit of fuel acquired
16 by the distributor and the average weighted prices for
17 each gallon or unit of fuel sold, by county or island,
18 to another distributor, a retail dealer, end-user, or
19 consumer.
20 The [~~commissioner~~] commission shall prescribe [~~by rule when the~~
21 ~~first report shall be submitted.~~] applicable standards and



1 practices for reporting to facilitate uniformity, consistency,
2 and comparability of the data to be submitted.

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

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

19 ~~(d)] (c)~~ The ~~[commissioner]~~ commission may request
20 additional information as and when ~~[the commissioner]~~ the
21 commission deems necessary to perform ~~[the commissioner's]~~ the
22 commission's responsibilities under this chapter.



1 (d) Information in the statements filed pursuant to this
2 section shall be collected and maintained for the purpose of
3 facilitating the analysis required by section 486J-5; provided
4 that the commission shall make available to the public the
5 information contained in the statements, but not the statements
6 themselves, as provided in sections 486J-6 and 486J-8."

7 SECTION 9. 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~~] a form
12 as 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 of
3 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 deems
14 it necessary to perform ~~[the commissioner's]~~ the commission's
15 responsibilities under this chapter."

16 SECTION 10. 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[~~7~~] but
5 not limited to[~~7~~] 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[~~7~~], price, margins, or profits;

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

20 [~~(5)~~] (3) The income, expenses, margins, and profits[~~7~~] 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 distributor~~
4 ~~and the income, expenses, margins, and profits, both~~
5 ~~before and after taxes, of major oil companies in other~~
6 ~~regions of the United States and other countries; and~~

7 [~~6~~] (4) ~~The emerging trends relating to supply, demand,~~
8 ~~[and conservation of petroleum and petroleum products;~~

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

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

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



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

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

10 ~~[(d)]~~ (c) The ~~[commissioner]~~ commission shall publish
11 annually and submit to the governor and the legislature twenty
12 days prior to the first day of ~~[the current]~~ each legislative
13 session a summary, including any analysis and interpretation of
14 the information submitted to it pursuant to this chapter, and any
15 other activities taken by the ~~[commissioner,]~~ commission,
16 including civil penalties imposed and referrals of violations to
17 the attorney general under section 486J-9. Any person may submit
18 comments in writing regarding the accuracy or sufficiency of the
19 information submitted. ~~[At the option of the director, this~~
20 ~~report may be combined with reporting required by section~~
21 ~~196-4(11), in the director's role as state energy resources~~
22 ~~coordinator.] "~~



1 SECTION 11. Section 486J-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§486J-6 Confidential information.** (a) [~~Confidential~~
4 ~~commercial~~] Commercial information [~~presented~~] provided to the
5 [~~commissioner~~] commission pursuant to this chapter that is exempt
6 from public disclosure under section 92F-13(4) shall be held in
7 confidence by the [~~commissioner~~] commission or aggregated to the
8 extent necessary to [~~assure~~] ensure confidentiality as [~~governed~~
9 ~~by~~] required by chapter 92F[~~, including its penalty provisions.~~].

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

13 (c) Unless otherwise provided by law, with respect to data
14 that the commission obtains or is provided pursuant to [sections]
15 section 486J-3 [and], 486J-4, 486J-5, or 486J-A, neither the
16 [~~commissioner,~~] commission nor any employee of the [~~department,~~]
17 commission may do any of the following:

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



- 1 (2) Make any publication whereby the data furnished by any
2 [~~particular establishment or individual under sections~~
3 ~~486J-3 and 486J-4~~] person can be identified; or
- 4 (3) Permit [~~anyone~~] any person other than the commission,
5 the department of taxation, the attorney general, the
6 consumer advocate, and the authorized representatives
7 and employees of each to examine the individual reports
8 or statements provided [~~under sections 486J-3 and~~
9 ~~486J-4 other than the public utilities commission, the~~
10 ~~attorney general, and the consumer advocate, and the~~
11 ~~authorized representatives and employees of each.~~]."

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

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



1 SECTION 13. 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]~~ (a) Except as
5 provided in subsections (b) and (c), the commission shall make
6 all information obtained by the ~~[commissioner]~~ commission under
7 this chapter, including confidential information, available only
8 to the attorney general, the department of taxation, ~~[the public~~
9 ~~utilities commission,~~ the consumer advocate, an appropriate
10 legislative committee, and the authorized representative of each,
11 who shall safeguard the confidentiality of all confidential
12 information received.

13 (b) Notwithstanding any law to the contrary, no later than
14 fourteen days after the reporting date established by the
15 commission under section 486J-3, the commission shall disclose to
16 the public, using the best readily available technology, the
17 information contained in the statements, but not the statements
18 themselves, that are filed pursuant to section 486J-3.

19 (c) Nothing in this section shall be construed to prohibit
20 the implementation of the petroleum industry information
21 reporting system under section 486J-B or the public disclosure of

1 the analysis of information and reports described in section
2 486J-5."

3 SECTION 14. Section 486J-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§486J-9 Failure to timely provide information; failure to**
6 **make and file statements; false statements; penalties; referral**
7 **to the attorney general.** (a) The [~~petroleum commissioner~~]
8 commission shall notify those persons who have failed to timely
9 provide the information specified in section 486J-3, ~~[or]~~ 486J-4,
10 or 486J-A or requested by the [~~commissioner~~] commission under
11 section 486J-3 ~~[or]~~, 486J-4, or 486J-A. ~~[or]~~ If, within five
12 business days after being notified of the failure to provide the
13 specified or requested information, the person fails to supply
14 the specified or requested information, the person shall be
15 subject to a civil penalty of not less than \$50,000 per day nor
16 more than \$100,000 per day for each day the submission of
17 information is refused or delayed~~[, unless the person has timely~~
18 ~~filed objections with the commissioner regarding the information~~
19 ~~and the commissioner has held a hearing and, following a ruling~~
20 ~~by the commissioner, the person has properly submitted the issue~~
21 ~~to a court of competent jurisdiction for review].~~

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

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

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

15 SECTION 15. Section 486J-10, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) The [~~commissioner~~] director shall adopt rules in
19 accordance with chapter 91 to require that gasoline sold in the
20 State for use in motor vehicles contain ten per cent ethanol by
21 volume. The amounts of gasoline sold in the State containing ten
22 per cent ethanol shall be in accordance with rules as the



1 ~~[commissioner]~~ director may deem appropriate. The ~~[commissioner]~~
2 director may authorize the sale of gasoline that does not meet
3 these requirements as provided in subsection (d)."

4 2. By amending subsections (d), (e), and (f) to read:

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

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

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

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

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

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

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

1 (4) Any other information the [~~commissioner~~] director shall
2 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 3. By amending subsection (h) to read:

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

11 SECTION 16. Section 486J-12, Hawaii Revised Statutes, is
12 repealed.

13 [~~"§486J-12 Rules. The commissioner shall adopt, amend, or
14 repeal such rules as [the commissioner] may deem proper to fully
15 effectuate this chapter."~~]

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

21 The sum appropriated shall be expended by the public
22 utilities commission for the purposes of this part.

1 SECTION 18. There is appropriated out of the petroleum
2 industry monitoring, analysis, and reporting special fund the sum
3 of \$ or so much thereof as may be necessary for fiscal
4 year 2006-2007 to establish the petroleum industry monitoring,
5 analysis, and reporting program established under chapter 486J,
6 Hawaii Revised Statutes.

7 The sum appropriated shall be expended by the public
8 utilities commission for the purposes of this part.

9 PART II

10 SECTION 19. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 "CHAPTER

14 UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

15 § -1 **Definitions.** As used in this chapter, unless the
16 context otherwise requires:

17 "Advertising" includes the use of any banner, sign, placard,
18 poster, streamer, card, or any publication in the media.

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



1 "Person" means an individual, corporation, government, or
2 governmental subdivision or agency, business trust, estate,
3 trust, partnership, unincorporated association, two or more of
4 any of the foregoing having a joint or common interest, or any
5 other legal or commercial entity.

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

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

16 § -2 **Misrepresentations.** (a) It is unlawful for any
17 person to make any deceptive, false, or misleading statement by
18 any means whatsoever regarding quality, quantity, performance,
19 price, discount, profit, or savings used in the sale or selling
20 of any petroleum product regulated pursuant to this chapter or
21 chapters 486H and 486J.

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

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

7 (2) Using false or deceptive representations or
8 designations in connection with the pricing, profits,
9 or sale of petroleum products;

10 (3) Advertising petroleum products or services and not
11 selling them as advertised;

12 (4) Advertising petroleum products of a designated brand,
13 grade, trademark, or trade name not actually sold or
14 available for sale;

15 (5) Making false, deceptive, or misleading statements
16 concerning conditions of sale, price reductions, costs
17 of operations, profits, or failing to disclose business
18 relationships within the petroleum industry that affect
19 the wholesale pricing of petroleum products;

20 (6) Representing that the consumer will receive a rebate,
21 discount, or other economic benefit and then failing to



1 give that rebate, discount, or other economic benefit;
2 and

3 (7) Forging or falsifying any records or documents required
4 by this chapter or chapter 486H or 486J or knowingly
5 keeping, using, or displaying the false or forged
6 records or documents.

7 § -3 **Unlawful profiteering.** Any person who sells
8 petroleum products and who, with intent to enhance the price or
9 restrict the supply of petroleum products:

10 (1) Wilfully causes or permits preventable waste in the
11 production, manufacture, storage, or distribution of
12 petroleum products;

13 (2) Prevents, limits, lessens, or restricts the
14 manufacture, production, supply, or distribution of
15 petroleum products;

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

18 (4) Exacts or demands any unjust or unreasonable profit in
19 the sale, exchange, or handling of petroleum products;
20 or

21 (5) In any way aids or abets the doing of any act
22 prohibited in subsections (1) to (4),

1 commits an unlawful trade practice.

2 § **-4 Penalty.** Any person who violates this chapter shall
3 be fined not more than \$10,000 for each violation or imprisoned
4 for not more than five years, or both.

5 § **-5 Injunctions.** Any person who violates this chapter
6 may be enjoined by the circuit court by a mandatory injunction or
7 temporary restraining order necessary or proper to effectuate the
8 purposes of this chapter in a suit brought by the attorney
9 general in the name of the State or by any private person in the
10 person's own name.

11 § **-6 Remedies cumulative.** The remedies prescribed in
12 this chapter are cumulative and in addition to any other remedies
13 provided by law."

14 SECTION 20. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 21. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 22. This Act shall take effect upon approval;
21 provided that section 19 shall take effect on July 1, 2007.



Report Title:

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

Description:

- (1) Provides increased industry transparency;
- (2) Suspends the current maximum wholesale price cap while leaving mechanisms in place as an assurance oil companies do not further raise prices artificially high;
- (3) Increases the savings potential for consumers if oil companies attempt to maintain prices higher than what would have been allowed if the maximum price provision had not been suspended, by modifying formulas as follows.
- (4) Establishes petroleum industry information reporting system;
- (5) Establishes petroleum industry monitoring, analysis, and reporting special fund;
- (6) Prohibits unfair practices by petroleum industry; and
- (7) Makes appropriation. (SD1)

