

CHAPTER 486J
ENERGY INDUSTRY INFORMATION REPORTING ACT

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Chapter heading amended by L 2010, c 152, §2.

Cross References

Unfair trade practices by petroleum industry, see chapter 486B.

"PART I. GENERALLY

§486J-1 Definitions. As used in this chapter:

"Aviation fuel" means and includes all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

"Biofuels" means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues, and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

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

- (1) Company-operated station that is a retail service station owned and operated by a refiner or wholesale distributor and where retail prices are set by that refiner or wholesale distributor;
- (2) Lessee dealer-operated station that is a retail service station owned by a refiner or wholesale distributor and operated by a qualified gasoline dealer other than a refiner or wholesale distributor under a franchise; or
- (3) Owner-operated station that is a retail service station not owned by a refiner or wholesale distributor and operated by a qualified gasoline dealer.

"Commission" means the public utilities commission.

"Department" means the department of business, economic development, and tourism.

"Director" means the director of business, economic development, and tourism.

"Distributor" means:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State and sells it at wholesale or at retail;

- (2) Every person who imports or causes to be imported into the State, or exports or causes to be exported from the State, any fuel;
- (3) Every person who acquires fuel through exchanges with another distributor; or
- (4) Every person who purchases fuel for resale at wholesale or retail from any person described in paragraph (1), (2), or (3); provided that "distributor" shall not include a marina, lessee dealer-operated station, owner-operated station, or other retailer that retails fuel only to end users or the public.

"Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

"Fuel" means fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom, including petroleum and petroleum products and gases, coal, coal tar, vegetable ferments, and all fuel alcohols.

"Inventory" means the volume, in barrels, of reserve that is normally maintained by the reporting entity on a monthly basis.

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

"Month" or "calendar month" means each full month of the calendar year.

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

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

"Refinery" means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

"Storage capacity" means the maximum volume, in barrels, of used and useful facility capacity for storage. [L 1997, c 257, pt of §2; am L 2002, c 77, §3(1); am L 2006, c 78, §3; am L 2007, c 182, §3; am L 2010, c 152, §3]

" **§486J-2 Distributors to register.** Every distributor, and any person before becoming a distributor, shall register as such

with the department on forms to be prescribed, prepared, and furnished by the department. [L 1997, c 257, pt of §2; am L 2002, c 77, §4; am L 2006, c 78, §4; am L 2013, c 259, §3]

" **§486J-3 Statements.** Each month, every refiner and distributor, on a reporting date established by the director, shall file with the research and economic analysis division of the department, on forms furnished by the department showing separately for each county and for the islands of Lanai and Molokai within which and whereon fuel is sold or used during the last preceding reporting month, the following:

- (1) The total volume of fuel imported into and exported from Hawaii, and if for ultimate sale or consumption in another county or on another island, the total volume of fuel, in barrels, by import location (foreign and domestic), by specific crude oil imported, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, that is sold, exchanged, or otherwise transferred or used by the distributor;
- (2) The total volume of fuel refined, manufactured, or compounded by refineries, in barrels, by company, and by specific crude oil and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, including No. 2 diesel fuel, No. 1 distillate, No. 2 fuel oil, No. 4 fuel oil, kerosene, finished aviation gasoline, kerosene-type jet fuel, residual fuel oil, consumer grade propane, and gasoline (regular, midgrade, and premium);
- (3) The total volume of fuel distributed, in barrels, by company, by island, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, and by:
 - (A) Classes of retail trade;
 - (B) Federal, state, county agencies, ships stores, or base exchanges, commercial agriculture accounts, commercial non-agriculture accounts, retail dealers, and other customers as required by the department; and
 - (C) Wholesale distributor; and
- (4) The total volume of inventory and storage capacity, in barrels, by reporting entity, by method of transportation of receipts and distribution, by specific crude oil, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department. [L 1997, c 257, pt of

§2; am L 2002, c 77, §4; am L 2006, c 78, §5; am L 2007, c 182, §4; am L 2010, c 152, §4]

- " **§§486J-4 to 5.3 REPEALED.** L 2010, c 152, §§9 to 12.
- " **§486J-4.5 REPEALED.** L 2010, c 152, §10.
- " **§486J-5 REPEALED.** L 2010, c 152, §11.
- " **§486J-5.3 REPEALED.** L 2010, c 152, §§9 to 12.
- " **§486J-5.5 Energy data collection program.** The department shall establish the energy data collection program that includes development and maintenance of an energy database system that meets the requirements of government and industry, while promoting sound policy making, energy planning, energy assurance planning, and energy security. [L 2006, c 78, pt of §2; am L 2010, c 152, §5]
- " **§486J-5.6 REPEALED.** L 2010, c 152, §13.
- " **§486J-6 Confidential information.** (a) Statements provided to the department pursuant to section 486J-3 and the data contained therein shall be deemed confidential and exempt from public disclosure under chapter 92F.
- (b) No data or information submitted to the department shall be deemed confidential if it is shown that the person submitting the information or data has made it public.
- (c) Unless otherwise provided by law, with respect to data that the commission or department obtained or was provided pursuant to this chapter, neither the commission or department nor any employee of the commission or department may do any of the following:
- (1) Use the information furnished or obtained for any purpose other than the purposes for which it is supplied;
 - (2) Make any publication whereby the data furnished by any person can be identified; or
 - (3) Permit any person other than the commission, the department of taxation, the attorney general, the consumer advocate, the department of business, economic development, and tourism, and the authorized representatives and employees of each to examine the individual reports or statements provided. [L 1997, c 257, pt of §2; am L 2002, c 77, §4; am L 2006, c 78, §8; am L 2007, c 182, §7; am L 2010, c 152, §6]

" **§486J-7 Confidential information obtained by another state agency.** Any confidential information pertinent to the responsibilities of the commission or the department specified in this chapter that is obtained by another state agency, including the department of taxation, the attorney general, and the consumer advocate, shall be available only to the attorney general, the attorney general's authorized representatives, the department of business, economic development, and tourism, and the commission and shall be treated in a confidential manner. [L 1997, c 257, pt of §2; am L 2002, c 77, §4; am L 2006, c 78, §9; am L 2010, c 152, §7]

" **§486J-8 REPEALED.** L 2010, c 152, §14.

" **§486J-9 Failure to timely provide information; failure to make and file statements; false statements; penalties; referral to the attorney general.** (a) The department shall notify those persons who have failed to timely provide the information specified in section 486J-3 or requested by the department under section 486J-3. If, within five business days after being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than \$50,000 per day nor more than \$100,000 per day for each day the submission of information is refused or delayed.

(b) Any person, or any employee of any person, who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the department shall be subject to a civil penalty not to exceed \$500,000 and shall be deemed to have committed an unfair or deceptive act or practice in the conduct of a trade or commerce and subject to the penalties specified in chapters 480 and 486B.

(c) The department shall refer any matter under subsection (a) or (b) to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State.

(d) For the purposes of this section, "person" means, in addition to the definition contained in section 486J-1, any responsible corporate officer. [L 1997, c 257, pt of §2; am L 2002, c 77, §3(3); am L 2006, c 78, §11; am L 2007, c 182, §8; am L 2010, c 152, §8]

" **§486J-10 REPEALED.** L 2015, c 161, §2.

" **§486J-11 REPEALED.** L 2013, c 259, §4.

" §486J-12 REPEALED. L 2006, c 78, §13.

"PART II. PETROLEUM ADVISORY COUNCIL

[\$486J-21] Petroleum advisory council; establishment. (a)

There is established within the department for administrative purposes a voluntary petroleum advisory council, which shall be convened at the director's discretion and shall consist of the following eleven members:

- (1) Two lessee retail service station dealers;
- (2) Two independent retail service station dealers;
- (3) Two representatives of petroleum jobbers;
- (4) Two representatives of petroleum refiners;
- (5) One representative from the department of commerce and consumer affairs;
- (6) One representative from the department of business, economic development, and tourism; and
- (7) One representative from the department of the attorney general.

(b) The members of the council shall elect a chairperson from among their number.

(c) The members of the council shall serve without compensation. [L 1997, c 257, pt of §2]

" **[\$486J-22] Duties of the council.** The council shall:

- (1) Advise the department of trends and activities in the retail petroleum industry that may require statutory consideration; and
- (2) Take such other action as may be necessary to ensure that the department is informed of all relevant developments in the retail petroleum industry affecting the health, safety, and welfare of the people of this State. [L 1997, c 257, pt of §2]