

## ACT 213

H.B. NO. 3280-76

A Bill for an Act Relating to Franchises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that gasoline dealers are in an unequal bargaining position when dealing with petroleum distributors. Act 133, Session Laws of Hawaii 1975, was designed to afford protection to gasoline dealers from arbitrary and unreasonable termination of franchises. The purpose of this Act is to provide further protection to gasoline dealers who deal in petroleum products under franchises with petroleum dealers.

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

**“Sec. 486H- Gasoline dealer’s rights.** (a) A petroleum distributor shall not in any way dictate, force, or attempt to set the retail price of any product sold by the gasoline dealer.

(b) After the effective date of this Act it shall be illegal for any petroleum distributor by any action to require a gasoline dealer to purchase only those tires, batteries, and other automotive accessories sold by the distributor. A gasoline dealer may sell any tires, batteries, and other automotive accessories as may be available to him for retail sale.

**Sec. 486H- Petroleum distributor’s penalty; collection.** The petroleum distributor’s executive officer, representative, or agent who negotiates any contract in violation of section 486H- or who otherwise coerces a gasoline dealer in violation of section 486H- shall in addition to other penalties provided by this chapter be subject to a civil penalty of up to \$50,000 for each offense.

The penalty shall be assessed and recovered in a civil action brought by the attorney general or by any county attorney or prosecuting attorney in any court of competent jurisdiction. If brought by a county attorney or prosecuting attorney, the entire amount of the penalty shall be paid to the general fund of the county in which the judgment was entered. If brought by the attorney general, one-half of the penalty shall be paid to the county general fund where the action was brought and one-half shall be paid to the State general fund.

**Sec. 486H- Right to sue.** Any person who is injured in his business or property by reason of a violation of section 486H- may sue in any court having

jurisdiction in the county where the defendant resides or is found, or where any agent of the defendant resides or is found, or where service may be obtained, without respect to the amount in controversy, to recover the damages sustained by him, and he shall be awarded, if judgment is rendered in his favor, attorney's fees together with the costs of the suit. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued.

**Sec. 486H- Disposition of inventory.** Upon termination of a franchise by either the petroleum distributor or the gasoline dealer, whether or not for cause, the distributor shall at the request of the dealer, take back any inventory from the dealer which was supplied by it and which has not diminished substantially in value and is of similar quality as when originally supplied. The petroleum distributor shall reimburse the gasoline dealer for not less than ninety per cent of the cost paid by the gasoline dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory.”

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

““Inventory” means any product sold to a gasoline dealer for resale purposes by a petroleum distributor.”

SECTION 4. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 1976.)

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\*Edited accordingly.