

ACT 77

S.B. NO. 1344

A Bill for an Act Relating to Ozone Depletion and Global Warming.

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

SECTION 1. The legislature finds that the adoption of strong legislation to protect the ozone layer of the atmosphere in order to protect and preserve the health of the people of the State and the State's economic well-being is a matter of compelling state interest. Chlorofluorocarbons (CFCs) and other chemicals deplete the ozone layer and contribute to the greenhouse effect, which causes global climatic changes. Negative effects of ozone depletion include: increases in skin cancers and cataracts; depression of human immune systems; damage to aquatic systems and crops; and projected losses of shoreline property because of rising ocean levels.

CFCs have atmospheric lifetimes of up to 380 years. Although substitutes for CFCs are being developed, they are not widely-tested or available. Meanwhile the ozone layer is being depleted steadily while atmospheric concentrations of CFCs continue to increase.

In the United States, air conditioners and refrigerators collectively account for forty per cent of all CFC emissions. In addition, American automobiles account for seventy-five per cent of all CFC emissions contributed by automobile air conditioners.

The legislature finds that the State of Hawaii cannot wait idly for CFC substitutes to be adopted by industry nor can it wait for international negotiations to attempt to resolve the problem.

The purpose of this Act is to take prompt, strong, local action to decrease the amount of CFCs escaping into the atmosphere by prohibiting over-the-counter sales of refrigerants, raising the standards of repair facilities, and promoting the recovery, recycling, and destruction of CFCs in this State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER APPLIANCE REPAIR

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

“CFC” means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

“Mobile air conditioner” means an air conditioner designed for installation in a motor vehicle.

“Recycled CFCs” means CFCs that have been recovered from refrigerant recovery and recycling equipment, and purified for reuse.

“Refrigerant recovery and recycling equipment” means a device used to recover and to purify CFCs for later reuse.

§ -2 **Prohibited acts.** No person in this State shall:

- (1) Perform service on an air conditioner unit, including a mobile air conditioner, utilizing CFCs, without using refrigerant recovery and recycling equipment; or

- (2) Wilfully cause or allow CFCs to be released into the air from any source.

§ -3 **Penalties.** Any person violating the provisions of section -2 shall be subject to those penalties provided under the rules adopted by the director of the office of consumer protection pursuant to section 487-5."

SECTION 3. Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . OZONE LAYER PROTECTION

§342- **Definitions.** As used in this part, unless the context otherwise requires:

"CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

"Mobile air conditioner" means an air conditioner designed for installation in a motor vehicle.

§342- **Prohibited acts.** No person in this State shall:

- (1) Sell or offer for sale CFC coolant suitable for use in air conditioners or mobile air conditioners in containers smaller than fifteen pounds net; or
- (2) Wilfully cause or allow CFCs to be released into the air from any source.

§342- **Rules.** The department shall adopt rules necessary for the purposes of this part."

SECTION 4. Section 342-11, Hawaii Revised Statutes, is amended to read as follows:

"§342-11 **Penalties.** (a) Violation of the vehicular noise control and vehicular smoke emission rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Violation of the open burning control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall not exceed \$10,000 for each separate offense. Each day of violation shall constitute a separate offense.

(c) Any person who violates this chapter or any rule, other than vehicular noise control, vehicular smoke emission control, and open burning control rules, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control, vehicular smoke emission, and open burning rules, shall be considered a civil action.

(d) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit under section 342-94 to treat, store, or dispose of that particular hazardous waste;

- (2) Treats, stores, or disposes of hazardous waste without first having a permit under section 342-94; or
- (3) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with part VIII of this chapter, shall be subject to criminal penalties of not more than \$25,000 for each day of violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.

(e) Any person who wilfully or negligently violates part VII of this chapter or any rule adopted by the department pursuant to part VII shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both.

(f) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(g) Any person who violates the provisions of this chapter pertaining to ozone layer protection or any rule adopted by the department pursuant to that part shall be fined not more than \$100 for each separate offense. Each unit of CFC coolant sold or offered for sale, and each wilful release of CFCs into the air, shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

SECTION 5. Section 437B-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

"Mobile air conditioner" means an air conditioner designed for installation in a motor vehicle.

"Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs."

SECTION 6. Section 437B-4, Hawaii Revised Statutes, is amended to read as follows:

"§437B-4 Powers and duties of board. In addition to other powers and duties established by this chapter, the board shall, in accordance with this chapter and chapter 91;

- (1) Establish such qualifications for the registration of motor vehicle repair dealers and motor vehicle mechanics as may be necessary for the welfare of the public and the motor vehicle repair industry, provided that no person shall be registered as a motor vehicle mechanic without first receiving certification as provided by this chapter.
- (2) Inquire into the practices and policies of the motor vehicle repair industry and make such rules with respect to such practices and policies as may be deemed important and necessary by the board for the welfare of the public and the motor vehicle repair industry.

- (3) Contract and cooperate with the University of Hawaii in developing and administering the certification program provided for in this chapter.
- (4) Make, amend, and repeal such rules not inconsistent with this chapter, as the board deems appropriate for effectuating the purpose of this chapter and to [insure] ensure the welfare of the public.
- (5) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs.
- [(5)] (6) Enforce this chapter and rules adopted pursuant thereto."

SECTION 7. Section 437B-11, Hawaii Revised Statutes, is amended to read as follows:

"§437B-11 Prohibited practices. The following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs such document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or regulations adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or workmanship;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the registration except that mobile repair facilities may be permitted if the registration so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year[.];
- (12) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment, certified by Underwriter Laboratories, or otherwise wilfully causing or allowing CFCs to be released into the air from any source."

SECTION 8. Section 437B-12, Hawaii Revised Statutes, is amended to read as follows:

"[§437B-12] Enforcement. (a) In accordance with the provisions of chapter 91, the board may fine, suspend, revoke, or refuse to renew the registration

of a motor vehicle repair dealer or mechanic for any violation of this chapter or rules adopted pursuant thereto. The board may also order restitution as provided in subsection (c).

(b) Any fine that is imposed shall be based on the following schedule:

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| First offense | \$ 75 |
| Second offense | \$150 |
| Subsequent offenses | \$300 to \$1,000 |

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine schedule set forth in subsection (b).

(d) If a motor vehicle repair dealer operates more than one motor vehicle repair facility in this State, the board pursuant to subsection (a) may only revoke, suspend, or refuse to renew the registration of the specific motor vehicle repair facility which has violated this chapter. Such violation, or such action by the board, shall not affect in any manner the right of such motor vehicle repair dealer to operate the dealer's other motor vehicle repair facilities; provided that the board may suspend, revoke, or refuse to renew the registration for all motor vehicle repair facilities operated in this State by a motor vehicle repair dealer upon a finding that such motor vehicle repair dealer has, or is, engaged in a course of repeated and wilful violations of this chapter, or rules adopted pursuant thereto.

(e) The expiration of a valid registration shall not deprive the board of jurisdiction to proceed with any investigation or disciplinary proceeding against a motor vehicle repair dealer or mechanic or to render a decision suspending, revoking, or refusing to renew a registration.

(f) Each mobile air conditioner serviced without using refrigerant recovery and recycling equipment, and each instance of wilfully causing or allowing CFCs to be released into the air from any source constitutes a separate offense for which fines may be imposed under subsection (b)."

SECTION 9. Section 444-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

"Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs from a device for later reuse."

SECTION 10. Section 444-4, Hawaii Revised Statutes, is amended to read as follows:

"§444-4 Powers and duties of board. In addition to any other duties and powers granted by this chapter the contractors license board shall:

- (1) Grant licenses to contractors pursuant to this chapter;
- (2) Make, amend, or repeal such rules as it may deem proper fully to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules may require contractors to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules, or as will better enable the board

from time to time to amend the rules more fully to effectuate the purposes of this chapter. The rules may require contractors to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the board's general power to make all rules necessary fully to effectuate the purpose of this chapter;

- (3) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs, including, but not limited to, procedures for the disposal of air conditioning units utilizing CFCs that include mandatory recovery and recycling of CFCs;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- [(4)] (5) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- [(5)] (6) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter; and
- [(6)] (7) Contract for professional testing services to prepare, administer, and grade such examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of such examinations and tests, whether they shall be oral, written, or both, and the score that shall be deemed a passing score."

SECTION 11. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

"§444-17 Revocation, suspension, and renewal of licenses. The contractors license board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

- (1) [[Deleted. L 1974, c 205, §2(12)].
- (2) Any dishonest or fraudulent or deceitful act as a contractor which causes a substantial damage to another;
- [(3)] (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- [(4)] (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- [(5)] (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- [(6)] (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
- [(7)] (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;

- [(8)] (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- [(9)] (8) When the licensee being a copartnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- [(10)] (9) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;
- [(11)] (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- [(12)] (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
- [(13)] (12) Wilful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
- [(14)] (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- [(15)] (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- [(16)] (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for licensee, the licensee's employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- [(17)] (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- [(18)] (17) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter[.];
- (18) Servicing an air conditioning unit utilizing CFCs without using refrigerant recovery and recycling equipment;
- (19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment;
- (20) Wilfully causing or allowing CFCs to be released into the air from any source.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 12. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

"§444-23 Violation; penalties. (a) Any licensee who violates section 444-9.3 or 444-17(18) shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Except as provided in subsection (a), any person who violates or fails to comply with any of the provisions of this chapter shall be fined not less than \$100 and not more than \$5,000 for each violation.

(c) Any licensee who violates, or whose employee violates, sections 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and \$300 to \$1000 for each subsequent offense, provided that each unit serviced in violation of section 444-17(18) or disposed of in violation of section 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense."

SECTION 13. Section 487-5, Hawaii Revised Statutes, is amended to read as follows:

"§487-5 General functions, powers, and duties. The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The director of the office of consumer protection shall have the following functions, powers, and duties:

- (1) Coordinate the consumer protection activities of all departments, divisions, and branches of state government, and of branches of the county government concerned with consumer protection;
- (2) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;
- (3) Conduct investigations, research, studies, and analysis of matters and take appropriate action affecting the interests of consumers;
- (4) Study the operation of laws affecting consumers and recommend to the governor and the legislature, new laws and amendments of laws in the consumers' interest;
- (5) Adopt rules pursuant to chapter 91 interpreting section 480-2; provided that in adopting rules, due consideration shall be given to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended;
- (6) Investigate reported or suspected violations of laws enacted and rules adopted for the purpose of consumer protection and shall enforce such laws and rules by bringing civil actions or proceedings;
- (7) Organize and hold conferences on problems affecting consumers; and undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services;
- (8) Provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations available to the general public; provided that consumer complaints may not be made available to the general public if the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency;
- (9) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- (10) Contract with other county, state, or federal governmental agencies, with nonprofit social services societies, or with private nonprofit trade, professional, or business organizations for the performance of any of the functions of the office not involving the enforcement of rules for the purpose of consumer protection under this section, or the extension

of any power or authority under section 487-11, within the budget limitations for any period not exceeding a budget year, provided that the purposes and policies of this chapter are in no way diluted, abridged, misdirected, or destroyed; [and]

- (11) Adopt rules pursuant to chapter 91 necessary to implement the provisions of chapter ; and
- (12) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section, including but not limited to, compensation of witnesses in such amounts and for such purposes as shall be prescribed by rules.”

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 1991.

(Approved May 11, 1989.)