

A Bill for an Act Relating to the Petroleum Industry.

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

SECTION 1. The legislature finds that the oil industry has in the past, and if unchecked, will likely in the future, use oligopolistic powers to set artificially high prices in Hawaii for motor fuel and other petroleum products. Disadvantaged by the secrecy in the industry, elected officials and the public are denied accurate assessments of the true causes of higher prices. True and effective transparency would be an effective tool to prevent the use of price maintenance schemes or other illegal behavior that artificially raises consumer prices.

While true transparency should provide benefits for Hawaii consumers, the legislature further finds that the combination of the State's geographical isolation and the market control exercised by the oil companies necessitate additional measures to safeguard the public. While the effectiveness of the increased transparency is tested, the current maximum wholesale price of gasoline should be suspended but the governor should have the ability to reinstate it in the event transparency does not provide the relief needed and the oil industry maintains excessively high prices. The governor should have the authority to reinstate the maximum wholesale price upon publication of a finding that its reinstatement is beneficial to the economic well-being, health, and safety of the people of the State.

The legislature further finds that the method for calculating the maximum wholesale price should be refined to maximize savings to consumers in the event that the governor reinstates the maximum price. As was more than evident during the aftermath of hurricanes Katrina and Rita and the refinery fires in Texas, natural and man-caused disasters halfway around the world can cause volatility and instability in the wholesale gasoline prices in Hawaii. The State must prevent disasters in other far-away locations from unreasonably influencing its wholesale gasoline prices. To reduce instability, an additional geographic market needs to be added to provide more flexibility in establishing the baseline gasoline price.

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

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

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

It cannot be overemphasized that the entire reason for this Act, amending Act 242, Session Laws of Hawaii 2004, as codified, which amended Act 77, Session Laws of Hawaii 2002, is the need to protect the gasoline consumers in this State

from the predatory practices of an oligopolistic petroleum industry. The various courts have found, and the parties themselves acknowledge, that the wholesale gasoline industry in this State is an uncompetitive oligopoly with the industry parties enjoying exorbitant profit margins in their wholesale transactions, all to the detriment of the Hawaii consumer. Therefore, the legislature reiterates that the objective of Act 242 is to enhance the consumer welfare by fostering the opportunity for prices to reflect and correlate with competitive market conditions.

The legislature further finds that the establishment and allocation of adequate resources for a vigorous state watchdog system to monitor and oversee the petroleum industry and gasoline market is a prerequisite to ensure an efficient market. The public disclosure, collection, aggregation, and analyses of current data relating to Hawaii petroleum fuel prices, volumes, costs, and profits, and the subsequent reporting of this information to planning and enforcement agencies, such as the departments of the attorney general, business, economic development, and tourism, and taxation, for review and assessment, is critical in ensuring compliance with the letter and spirit of the laws and regulations designed to promote fair and competitive gasoline prices for Hawaii's consumers.

To ensure that oil companies do not further raise prices artificially high, the suspension of the maximum wholesale gasoline price will not suspend or affect the duty of the public utilities commission to calculate and publish what the maximum wholesale price would be under the statutory formula. Publication of this fair price indicator will ensure that the governor has the information necessary to determine whether reinstatement of the maximum wholesale price would benefit the people of the State. Further, the public utilities commission is directed to proactively enforce the petroleum industry monitoring, analysis, and reporting program and the provisions of the unfair trade practices to enable the consumers of Hawaii to enjoy the lowest possible prices for gasoline, while allowing the refiners, jobbers, and wholesalers to make a reasonable return on their investments.

The purposes of this Act are to:

- (1) Require true transparency by the oil industry to increase competition and provide the public and elected officials with the necessary monitoring capability to discourage the industry from using price maintenance schemes or other anti-competitive practices that artificially raise consumer prices;
- (2) Suspend the maximum gasoline wholesale price while leaving the governor the ability to reinstate it if oil companies maintain excessively high prices that are detrimental to the economic well-being, health, and safety of the people of the State;
- (3) Refine the method for calculating the maximum wholesale gasoline price to increase consumer savings if the governor reinstates the maximum price, by:
  - (A) Adding the Singapore spot price weekly average price of conventional regular unleaded gasoline to the baseline price determination, with the three lowest weekly averages being averaged, to determine the baseline price for regular unleaded gasoline;
  - (B) In the event of a holiday or holidays in the prior week, requiring the public utilities commission to average the prices of the days that were not holidays;
  - (C) Eliminating the location adjustment factor;
  - (D) Reducing the marketing margin factor to 14 cents;
  - (E) Allocating percentages of zone price adjustment in zones 2 through 8 to distributors based upon different functions; and
  - (F) Providing for adjustments of zone price adjustments and allocations of zone price adjustments on a zone by zone basis;

- (4) Establish the petroleum industry monitoring, analysis, and reporting special fund;
- (5) Require the public utilities commission to develop and maintain the petroleum industry monitoring, analysis, and reporting program, including an automated petroleum industry information reporting system;
- (6) Redelineate the types of information that the petroleum industry must submit to the public utilities commission;
- (7) Make an appropriation into and an appropriation from the petroleum industry monitoring, analysis, and reporting special fund to be expended by the public utilities commission to establish and maintain the petroleum industry monitoring, analysis, and reporting program; and
- (8) Prohibit unfair trade practices by the petroleum 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 calculated by the commission under section 486H-13.

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

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

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

**§486J-B Petroleum industry monitoring, analysis, and reporting program.** The commission shall establish the petroleum industry monitoring, analysis, and reporting program that includes development and maintenance of an automated petroleum industry information reporting system that meets the requirements of government, industry, and the public while promoting sound policy making and consumer information and protection. The purpose of the petroleum industry moni-

toring, analysis, and reporting program is to conduct and facilitate the efficient analysis and reporting of all information and data provided by the petroleum industry pursuant to this chapter. The commission shall develop the petroleum industry monitoring, analysis, and reporting program in a manner that will result in greater market transparency and provide useful information to the general public and those agencies that are authorized to conduct oversight of the petroleum industry and ensure compliance with all relevant laws.

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

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

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

- (1) Administer the petroleum industry monitoring, analysis, and reporting program pursuant to this chapter; and
- (2) Establish full-time staff positions in the commission to implement and maintain the petroleum industry monitoring, analysis, and reporting program, including the automated petroleum industry information reporting system established by section 486J-B."

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

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

"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.

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

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

"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.

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

“Refiner wholesale price” means the wholesale price at which liquid fuel is sold by a refiner to any distributor, not a refiner, for resale at any subsequent wholesale or retail transaction.

“Wholesale liquid fuel prices” means the prices at which liquid fuel is sold at wholesale for resale at wholesale or retail, typically but not limited to gasoline and diesel for motor vehicles, and include “dealer tank wagon price,” “nonrefiner wholesale price,” and “refiner wholesale price.””

2. By amending the definitions of “distributor,” “fuel,” “person,” and “refiner” to read:

““Distributor” means [and includes]:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State[,] and sells it at wholesale or at retail[,] or who [utilizes] uses it directly in the manufacture of products or for the generation of power;
- (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; [and]
- (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.

“Fuel” means [and includes] 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.

“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.”

3. By deleting the definition of “petroleum commissioner.”

[~~““Petroleum commissioner” or “commissioner” means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.”~~]

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

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

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

**“§486J-3 Statements.** (a) Each week every distributor [shall, at such], on the reporting dates as the [commissioner] commission may establish, shall file with

the ~~[commissioner,]~~ commission, on forms prescribed, prepared, and furnished by the ~~[commissioner,]~~ commission, a certified statement 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 ~~[period,]~~ week, the following:

- (1) The total number of gallons or units of fuel, by type or grade, refined, manufactured, or compounded by the distributor within the State ~~[and sold or used by the distributor,]~~ and, if for ultimate ~~[use]~~ sale or consumption in another county or on another island, ~~[the name of that county or island,]~~ the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (2) The total number of gallons or units of fuel, by type or grade, imported or exported by the distributor ~~[or sold,]~~ the total volumes of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor~~;~~; and if for ultimate ~~[use]~~ sale or consumption in another county or on another island, ~~[the name of that]~~ the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (3) The total number of gallons or units of fuel sold as liquid fuel, aviation fuel, diesel fuel, and other types of fuel as required by the ~~[commissioner,]~~ commission;
- (4) The total number of gallons or units of fuel ~~[and the types thereof,]~~ by type or grade, and their respective sales prices for all fuel sold to~~;~~ federal, state, and county agencies, ships stores, or base exchanges, commercial agricultural accounts, commercial nonagricultural accounts, retail dealers, and other customers as required by the ~~[commissioner,]~~ Monthly Hawaii] commission;
- ~~(5)~~ Weekly weighted average acquisition cost per barrel and volumes of foreign or domestic crude oil or other liquid fuels, finished or unfinished, imported to Hawaii, including information identifying the source of the crude oil or other liquid fuels;
- (6) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices and sales volumes of finished ~~[leaded regular,]~~ unleaded regular~~;~~ and premium motor gasoline, and of each other grade of gasoline sold ~~[through company-operated,]~~ by island, to retail outlets, ~~[to other end-users,]~~ by classes of retail trade, and to wholesale ~~[customers,]~~ Monthly Hawaii] distributors;
- (7) Weekly weighted average retail prices, and sales volumes of finished unleaded regular and premium motor gasoline, and of each other grade of gasoline sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users; provided that the commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;
- (8) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices, and sales volumes ~~[for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil; and~~ Monthly Hawaii] of No. 2 diesel fuel and No. 2 fuel oil, by island, to retail distributor outlets, by classes of retail trade, and to all other

- wholesale distributors. Weighted average wholesale prices and sales volumes shall be reported by type of wholesale liquid fuel price;
- (9) Weekly weighted average retail prices, and sales volumes of No. 2 diesel fuel and No. 2 fuel oil sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users. The commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;
- (10) Weekly weighted average prices, and sales volumes for retail sales and wholesale sales, by island, of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil, and consumer grade propane[-];
- (11) For each distributor that is a refiner, the gross margins or spreads between a refiner's average weighted acquisition price for each gallon of crude oil and blendstock refined within the State and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, and consumer; and
- (12) For each distributor that is not a refiner, the gross margins or spreads between the distributor's average weighted price for each gallon or unit of fuel acquired by the distributor and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, or consumer.

The [commissioner] commission shall prescribe [by rule when the first report shall be submitted.

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

(e) applicable standards and practices for reporting to facilitate uniformity, consistency, and comparability of the data to be submitted.

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

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

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

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

**"§486J-4 Informational reports.** (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the [commissioner,]

commission, in [such] a form as the [commissioner] commission shall prescribe, information [which] that includes the following:

- (1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The provision of the information shall not be construed to increase and decrease any authority the [commissioner] commission may otherwise have;
- (2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions;
- (3) Refiners shall report on facility capacity and utilization and method of transportation of refinery receipts and distributions; and
- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

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

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

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

**“§486J-5 Analysis of information; [audits and inspections] summary reports.** (a) The [petroleum commissioner,] commission, with the [commissioner's] commission's own staff and other support staff with expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to sections 486J-3 [and], 486J-4, and 486J-A and other information relating to the supply [and price], prices, margins, and profits of petroleum products, with particular emphasis on motor vehicle fuels, including[;] but not limited to[;] all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum [~~products shortage~~] product situation or condition affecting supply[;], price, margins, or profits;
- ~~[(2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;~~
- ~~(3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;~~
- ~~(4) (2) The prices, with particular emphasis on wholesale and retail motor vehicle fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for [such] the changes;~~
- ~~[(5) (3) The income, expenses, margins, and profits[;] in Hawaii, both before and after taxes, [of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price earnings ratio;] of each distributor and the income, expenses, margins, and profits, both before and after taxes, of major oil companies in other regions of the United States and other countries; and~~
- ~~[(6) (4) The emerging trends relating to supply, demand, [and conservation of petroleum and petroleum products;~~
- ~~(7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and~~



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

~~(b) The commissioner shall conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The commissioner may solicit assistance of the department of taxation in any such audit. The commissioner shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the commissioner is not duplicative of the data received by any of their audits or inspections which is available to the commissioner.] price, margins, and profits.~~

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

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

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

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

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

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

- (1) Use the information furnished or obtained ~~[under sections 486J-3 and 486J-4]~~ for any purpose other than the ~~[statistical] purposes~~ for which it is supplied;
- (2) Make any publication whereby the data furnished by any ~~[particular establishment or individual under sections 486J-3 and 486J-4] person~~ can be identified; or
- (3) Permit ~~[anyone] 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 [under sections 486J-3 and 486J-4 other than the public utilities commission, the attorney general, and the consumer advocate, and the authorized representatives and employees of each].”~~

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

**“§486J-7 Confidential information obtained by another state agency.** Any confidential information pertinent to the responsibilities of the [~~commissioner~~] commission specified in this chapter that is obtained by another state agency, including the department of taxation, [~~the public utilities commission,~~] 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 [~~commissioner~~] commission and shall be treated in a confidential manner.’”

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

**“§486J-8 Sharing of information obtained by the [~~commissioner~~] commission.** [~~The commissioner~~] (a) Except as provided in subsections (b) and (c), the commission shall make [all] any information obtained by the [~~commissioner~~] commission under this chapter, including confidential information, available only to the attorney general, the department of taxation, [~~the public utilities commission,~~] the consumer advocate, the department of business, economic development and tourism, an appropriate legislative committee, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

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

(c) Nothing in this section shall be construed to prohibit the implementation of the petroleum industry monitoring, analysis, and reporting program under section 486J-B or the public disclosure of the analysis of information and reports described in section 486J-5.’”

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

**“§486J-9 Failure to timely provide information; failure to make and file statements; false statements; penalties; referral to the attorney general.** (a) The [~~petroleum commissioner~~] commission shall notify those persons who have failed to timely provide the information specified in section 486J-3 [~~or~~], 486J-4, or 486J-A or requested by the [~~commissioner~~] commission under section 486J-3 [~~or~~], 486J-4[~~], or 486J-A~~. 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[~~, unless the person has timely filed objections with the commissioner regarding the information and the commissioner has held a hearing and, following a ruling by the commissioner, the person has properly submitted the issue to a court of competent jurisdiction for review~~].

(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 [~~commissioner~~] commission 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 chapter 480.

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

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

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

1. By amending subsection (a) to read:

“(a) The [commissioner] director shall adopt rules in accordance with chapter 91 to require that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume. The amounts of gasoline sold in the State containing ten per cent ethanol shall be in accordance with rules as the [commissioner] director may deem appropriate. The [commissioner] director may authorize the sale of gasoline that does not meet these requirements as provided in subsection (d).”

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

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

- (1) To the extent that sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this section; or
- (2) In the event of any other circumstances for which the [commissioner] director determines compliance with this section would cause undue hardship.

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

- (1) The price and amount of ethanol available;
- (2) The amount of ethanol-blended fuel sold by the distributor;
- (3) The amount of non-ethanol-blended gasoline sold by the distributor; and
- (4) Any other information the [commissioner] director shall require for the purposes of compliance with this section.

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

3. By amending subsection (h) to read:

“(h) The [commissioner] director, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section.”

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

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1, or so much thereof as may be necessary for fiscal year 2006-2007, to be deposited into the petroleum industry monitoring, analysis, and reporting special fund.

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

SECTION 15. There is appropriated out of the petroleum industry monitoring, analysis, and reporting special fund the sum of \$1, or so much thereof as may be necessary for fiscal year 2006-2007, to establish the petroleum industry monitoring, analysis, and reporting program established under chapter 486J, Hawaii Revised Statutes.

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

## Part II

SECTION 16. Section 486H-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Conventional gasoline’ means a gasoline formulation with properties having the closest similarities to the gasoline then sold in the State.’”

SECTION 17. Section 486H-13, Hawaii Revised Statutes, is amended to read as follows:

**“§486H-13 Maximum pre-tax wholesale price for the sale of gasoline; civil actions.** (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The Commission shall publish the maximum pre-tax wholesale prices by means that shall include the Internet website for the State of Hawaii.

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

(c) The baseline price for regular unleaded gasoline referred to in subsection (b) shall be determined on a weekly basis and shall be equal to the average of~~;~~ the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:

- (1) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
- (2) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor; ~~[and]~~
- (3) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast; and
- (4) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, then the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service~~[-~~.

~~(d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon or as otherwise determined by the commission and shall thereafter be~~

~~subject to adjustment pursuant to section 486H-16(a).]~~ or use multiple price information reporting services.

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

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

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

~~[(h)]~~ (g) For purposes of this chapter, the State shall be divided into the following zones:

- (1) Zone 1 shall include the island of Oahu;
- (2) Zone 2 shall include the island of Kauai;
- (3) Zone 3 shall include the island of Maui, except the district of Hana;
- (4) Zone 4 shall include the district of Hana on the island of Maui;
- (5) Zone 5 shall include the island of Molokai;
- (6) Zone 6 shall include the island of Lanai;
- (7) Zone 7 shall include the districts of Puna, south Hilo, north Hilo, and Hamakua on the island of Hawaii; and
- (8) Zone 8 shall include the districts of north Kohala, south Kohala, north Kona, south Kona, and Kau on the island of Hawaii.

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

~~[(j)]~~ (i) The zone price adjustments for zones 2 through 8, set forth in subsection (g), shall be divided as follows:

- (1) Thirty per cent of the zone price adjustment shall be allocated to the shipper of the gasoline from zone to zone;
- (2) Twenty per cent of the zone price adjustment shall be allocated to the terminal holding the gasoline in zones 2 through 8; and
- (3) Fifty per cent of the zone price adjustments shall be allocated to the person or entity that delivers the gasoline to the retail station in zones 2 through 8.

(j)<sup>1</sup> Every manufacturer, wholesaler, or jobber, upon the request of the commission, shall furnish to the commission, in the form requested, all documents, data, and information the commission may require to make its determination on zone price adjustments. Any person who refuses or fails to comply with a request for information by the commission shall be subject to a fine of up to \$50,000 per day. Each day a violation continues shall constitute a separate offense.

(k) The maximum pre-tax wholesale gasoline price imposed by this section shall take effect on September 1, 2005, notwithstanding the lack of the adoption of rules pursuant to this section[-]; provided that notwithstanding any law to the contrary, the maximum pre-tax wholesale price under this section shall be suspended indefinitely upon the effective date of Act \_\_\_\_\_,<sup>2</sup> Session Laws of Hawaii 2006, and shall not thereafter become effective until and unless the governor publishes a notice statewide in accordance with section 1-28.5 that the reinstatement of the maximum pre-tax wholesale price under this section is beneficial to the economic well-being, health, and safety of the people of the State. The maximum pre-tax wholesale price shall become effective five days after the publication of the notice by the governor unless otherwise specified by the governor, and shall remain in effect for thirty days, after which time it shall be automatically suspended. Thereafter, the governor may reinstate the maximum pre-tax wholesale price for thirty-day periods on the same

conditions as set forth above. Upon a finding that the maximum pre-tax wholesale price would impose a financial hardship upon a distributor within a zone, the governor, in the governor's discretion, may increase the maximum pre-tax wholesale price for the zone in an amount determined necessary to eliminate the financial hardship on any affected distributor who does not operate a refinery within the State. Any increase in the maximum pre-tax wholesale price shall be included in the notice published by the Governor.

(l) The suspension of the maximum pre-tax wholesale gasoline price shall suspend the commission's duty to calculate and publish the maximum pre-tax wholesale gasoline price that would have been in effect but for the suspension, but shall not suspend or affect:

- (1) Any duty to register, timely provide information, make a report, or file a statement under chapter 486J; or
- (2) Any duty of the commission to:
  - (A) Timely obtain, analyze, or publicly disclose or report information under chapter 486J; and
  - (C)<sup>3</sup> Enforce chapter \_\_\_\_\_.

~~[(4)]~~ (m) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section, except for subsection (j), shall be subject to a civil penalty, for each violation, equal to three times the amount of the overcharge or \$250,000, whichever is greater, and shall be liable for the costs of the action and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or another jobber or wholesaler, less taxes assessed, less the maximum pre-tax wholesale gasoline price established pursuant to subsection (b).

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

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

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

SECTION 18. Section 486H-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

- (1) The value of the baseline price shall be equal to the average of [:] the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:
  - (A) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
  - (B) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor; [and]
  - (C) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast[.]; and
  - (D) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service[.];

- (2) ~~The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to reflect the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of 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)]~~ or use multiple price information reporting services;

- (2) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to [such] the 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:
  - (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;

- [(4)] (3) The value of the mid-grade and premium adjustment factors in effect at the time the petition is filed shall be adjusted by any material change in the mid-grade and premium adjustment factor as published by an appropriate price information reporting service; and
- [(5)] (4) The value of any zone price adjustment on a zone by zone basis or zone price adjustment allocation, pursuant to section 486H-13(i), on a zone by zone basis, in effect at the time the petition is filed, shall be adjusted based upon material changes in the operating costs for a zone, such as terminaling, storage, or distribution costs, and other empirical data the commission deems appropriate."

SECTION 19. Section 486H-15, Hawaii Revised Statutes, is repealed.

SECTION 20. If section 486H-13, Hawaii Revised Statutes, is not reinstated by the governor within one hundred eighty days of September 1, 2006, the governor shall submit a report to the legislature no later than twenty days prior to the convening of the next regular session explaining:

- (1) The reasons, along with all relevant facts and statistics, why the governor did not believe that the operation of section 486H-13 during the previous fiscal year would have been beneficial to the economic well-being, health, and safety of the people of the State; and
- (2) All efforts the administration has undertaken during the prior fiscal year to:
  - (A) Increase competition in the gasoline wholesale market in the State;
  - (B) Reduced the pre-tax wholesale price of gasoline in the State; and
  - (C) Otherwise improve the market for gasoline in the State.

### PART III

SECTION 21. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

#### **“CHAPTER UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY**

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

“Advertising” includes the use of any banner, sign, placard, poster, streamer, card, or any publication in the media.

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

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

“Petroleum product” means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner, solvent, liquefied natural gas,



pressure appliance fuel, white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

“Sell” or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

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

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

- (1) Misrepresenting the brand, grade, quality, or price of a petroleum product;
- (2) Using false or deceptive representations or designations in connection with the pricing, profits, or sale of a petroleum product;
- (3) Advertising petroleum products or services and not selling them as advertised;
- (4) Advertising petroleum products of a designated brand, grade, trademark, or trade name not actually sold or available for sale;
- (5) Making false, deceptive, or misleading statements concerning conditions of sale, price reductions, costs of operations, profits, or failing to disclose business relationships within the petroleum industry that affect the wholesale pricing of petroleum products;
- (6) Representing that the consumer will receive a rebate, discount, or other economic benefit and then failing to give that rebate, discount, or other economic benefit; and
- (7) Forging or falsifying any records or documents required by this chapter or chapter 486H or 486J or knowingly keeping, using, or displaying the false or forged records or documents.

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

- (1) Wilfully causes or permits preventable waste in the production, manufacture, storage, or distribution of petroleum products;
- (2) Prevents, limits, lessens, or restricts the manufacture, production, supply, or distribution of petroleum products;
- (3) Enters into any contract, combination, or conspiracy in restraint of trade or commerce;
- (4) Exacts or demands any unjust or unreasonable profit in the sale, exchange, or handling of petroleum products; or
- (5) In any way aids or abets the doing of any act prohibited in paragraphs (1) to (4),

commits an unlawful trade practice.

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

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

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

SECTION 22. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>4</sup>

SECTION 24. This Act shall take effect upon approval.

(Approved May 5, 2006.)

**Notes**

1. "(j)" should be underscored.
2. "Act \_\_\_\_\_" is Act 78.
3. No subparagraph (2)(B).
4. Edited pursuant to HRS §23G-16.5.