

ACT 295

S.B. NO. 1757

A Bill for an Act Relating to Prohibition Against Retailing of Motor Fuel by Refiners.

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

SECTION 1. As used in this Act:

“Affiliate” means any person who, other than by means of a franchise, controls, is controlled by, or is under common control with any other person.

“Direct operation” or “directly operated” means operating through employees, through an affiliate, or through persons under any contract which is not a franchise.

“Distributor” means any person, including any affiliate of such person, who either purchases motor fuel for sale, consignment, or distribution to another, or receives motor fuel on consignment for consignment or distribution to his or her own motor fuel accounts or to accounts of his or her supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

“Franchise” means any contract between a refiner and a distributor, between a distributor and a retailer, under which a refiner or distributor authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits the use. The term “franchise” includes any of the following:

- (1) Any contract under which a retailer or distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits the occupancy.
- (2) Any contract pertaining to the supply of motor fuel which is to be sold, consigned, or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed

continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned, or distributed under a trademark owned or controlled on that date by a refiner.

- (3) The unexpired portion of any franchise, as defined by paragraph (1) and (2) of this subsection, which is transferred or assigned as authorized by the franchise or by any applicable law which permits the transfer or assignment without regard to any provision of the franchise.

“Motor fuel” means gasoline, diesel, and any other fuel of a type distributed for use as a fuel in self-propelled vehicles primarily for use on public streets, roads, and highways.

“Refiner” means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

“Retail motor fuel outlet” means any location where motor fuel is distributed for purposes other than resale.

“Retailer” means any person who purchases motor fuel for sale to the general public for ultimate consumption.

“Service station” means any establishment where motor fuel is sold to the general public for ultimate consumption.

SECTION 2. The attorney general shall gather and assess authoritative reports on the subject of the impact on motor fuel prices to consumers of a prohibition (better known as “divorcement”) on direct retailing of motor fuel by refiners and distributors in competition with franchised and independent service stations. The attorney general shall also collect and analyze Hawaii data on the impact of divorcement on the price of motor fuel to customers in Hawaii. The attorney general shall submit a final report no later than fifteen days prior to the convening of the 1993 session of the legislature.

SECTION 3. The department of commerce and consumer affairs shall gather data and study the impact of direct retailing of motor fuel by refiners and distributors in competition with franchised and independent service stations. The department shall review information and data related to the preservation of a mixed marketplace in terms of the level of customer service provided, the maintenance of geographical dispersed “neighborhood” stations, the level of consumer problems associated with the various types of stations, and any alternatives that consumers have for services which are otherwise lost through market changes. The department shall submit its final report no later than fifteen days prior to the convening of the 1993 session of the legislature. The department shall submit an interim report setting forth its research methods and progress to date no later than fifteen days prior to the convening of the 1992 session of the legislature.

SECTION 4. This chapter shall not be applied in a manner that would render such application preempted by the Petroleum Marketing Practices Act (15 U.S.C. §2801, et. seq.) or other applicable federal or state law.

SECTION 5. For a period beginning on the effective date of this Act, and ending August 1, 1993, refiners and distributors are prohibited from opening any

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new direct operated service stations or retail motor fuel outlets except where:

- (1) A refiner or distributor has executed a binding lease or has acquired real property in fee simple;
- (2) The land involved has been zoned appropriately to permit service station use or retail motor fuel outlet use and has received a shoreline management area permit, if applicable, as of the effective date of this Act; and
- (3) A refiner or distributor has obtained all of the other necessary permits to commence construction of real property improvements for the purpose of constructing a service station or retail motor fuel outlet, prior to the effective date of this Act.

Provided, however, a refiner shall be allowed to replace two service stations or retail motor fuel outlets within the same county where the refiner or distributor has had to close a station or outlet due to the termination of the real property lease.

SECTION 6. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 7. This Act shall not apply to existing retailing operations of any refiner or distributor as of the effective date of this Act, but shall apply to any refiner or distributor establishing a retail operation on or after the effective date of this Act.

SECTION 8. This Act shall take effect upon its approval and be repealed August 1, 1993.

(Approved June 20, 1991.)