

A Bill for an Act Relating to the Regulation of Chlorofluorocarbons, Halons, and Other Synthetic Compounds that Destroy the Earth's Protective Ozone Layer.

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

SECTION 1. The legislature finds and declares that:

- (1) The stratospheric ozone layer shields the Earth's surface from dangerous ultraviolet radiation;
- (2) The release of ozone-depleting compounds, such as chlorofluorocarbons (CFCs) and halons, into the atmosphere is responsible for a breakdown of the ozone layer, not only in the polar regions and the mid-latitudes, but also over Hawaii and other subtropical regions;
- (3) A decrease in this stratospheric defense shield increases the exposure of humans and other organisms to dangerous doses of ultraviolet radiation, causing an increased risk of skin cancer, cataracts—the leading cause of blindness in this country—suppression of the human immune system, reduction of photosynthesis in food crops, and declines in oceanic phytoplankton productivity. Increased exposure to ultraviolet radiation could severely affect Hawaii's sun-oriented visitor industry, raise the State's already high health and insurance costs, damage crop productivity, and cause declines in regional fishery production;
- (4) The Montreal Protocol on Substances that Deplete the Ozone Layer, an international agreement in force since January 1989, called for cutting CFC emissions in half (based on 1986 production) by 1996, and freezing the production of halons by 1992. Worse than predicted ozone layers depletion measurements reported during meetings in London in June 1990, led to a revised agreement for a complete and total phase-out of CFCs and halons not later than the year 2000;
- (5) The 1990 amendments to the Federal Clean Air Act likewise call for a phase-out of CFCs and halons by the year 2000. Additionally, section 606(a)(1) of the Clean Air Act requires this target date to be moved up in light of evidence that "a more stringent schedule may be necessary to protect human health and the environment". Despite recent scientific evidence that ozone layer depletion is occurring more rapidly than previously thought, and that a more rapid phase-out may be necessary, the United States Environmental Protection Agency has rejected petitions advocating such a schedule change;
- (6) The United States is the world's largest producer and user of ozone-depleting compounds, responsible for approximately thirty per cent of the world's total production, output, and consumption. Recognizing that present control measures at the federal level do not go far enough, it becomes the responsibility of state and local governments to take the initiative in eliminating the unnecessary release of ozone-depleting compounds by banning nonessential uses, recovering and recycling essential compounds until nonozone-depleting substitutes can be found;
- (7) On January 1, 1991, the State of Hawaii implemented the nation's first ozone layer protection law designed to regulate the release of CFCs into the atmosphere. Act 77, Session Laws of Hawaii 1989, as

amended by Act 316, Session Laws of Hawaii 1990, prohibits over-the-counter sales of CFC refrigerants in containers smaller than fifteen pounds, and requires the use of refrigerant recovery and recycling equipment when making repairs to air conditioners;

- (8) The State recognizes and supports all international and federal regulations designed to prevent further depletion of the ozone layer. The State also recognizes that, until international and federal regulations are fully implemented, additional unnecessary releases of ozone-depleting compounds present an unacceptable hazard to the long-term health, safety, and welfare of the general public;
- (9) Measures adopted by the State to protect the stratospheric ozone layer have, to date, focused on CFCs. The State, however, recognizes that halons also pose a significant threat to the ozone layer because they contain bromine, a significantly more potent ozone depleter than the chlorine in CFCs. Halon-1211 is three times more destructive to ozone than CFC-11 and CFC-12, while Halon-1301 is 10 times more destructive than either CFC-11 or CFC-12;
- (10) The State considers the testing and use of portable halon fire extinguishers to be an unnecessary release of ozone-depleting compounds. Adequate, thoroughly tested, nonozone-depleting substitutes for these halons are currently available; and
- (11) To protect the environment and the health, safety, and welfare of its citizens, the State intends to take whatever action it can to significantly reduce the unnecessary release of halons and other ozone-depleting chemicals into the Earth's atmosphere.

SECTION 2. Section 342C-1, Hawaii Revised Statutes, is amended by:

1. Adding five new definitions to be appropriately inserted and to read as follows:

““Director” means the director of health.

“Halon” means any fully halogenated carbon compound containing bromine, chlorine, or fluorine, including, without limitation, those compounds known as Halon-1301, Halon-1211, and Halon-2402.

“Ozone-depleting compound” means any chlorofluorocarbon or halon, including those compounds known as methyl chloroform and carbon tetrachloride, or any other compound designated by the United States Environmental Protection Agency as being an ozone-depleting compound pursuant to Title 40, Part 82, Code of Federal Regulations, or any other compound designated by the department as being an ozone-depleting compound.

“Person” includes any individual, firm, association, partnership, or corporation, whether domestic or foreign, whether acting as a principal, agent, employee, or otherwise, and includes any governmental entity or charitable organization.

“Portable” means capable of being carried in hand by one individual.”

2. Amending the definition of “CFC” to read as follows:

““Chlorofluorocarbon” or “CFC” means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115[. The terms “chlorofluorocarbon” and “CFC” do not include any hydrofluorocarbon (“HFC”)

or hydrochlorofluorocarbon ("HCFC") compounds.], CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds."

SECTION 3. Section 342C-2, Hawaii Revised Statutes, is amended to read as follows:

"**[§342C-2] Prohibited acts.** [(1)] (a) Effective January 1, 1991, no person in this State shall sell or offer for sale any CFC refrigerant suitable for use in air conditioners or mobile air conditioners in containers [which] that are smaller than fifteen pounds net.

[(2)] (b) No person in this State shall wilfully cause or allow CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.

(c) Effective July 1, 1993, no person in this State shall:

- (1) Purchase, distribute, manufacture, import, sell, or offer for sale, any portable fire extinguisher that contains a halon or other ozone-depleting compound; or
- (2) Repair, service, or perform maintenance on any portable fire extinguishing system or unit without using a reclamation system to recapture, recycle, or properly dispose of unspent halons or other ozone-depleting compounds.

Exempted from this prohibition is the sale of portable halon fire extinguishers for use in aircraft, which may be sold to purchasing agents of airline companies, or to private individuals upon presentation of a pilots license."

SECTION 4. Section 342C-5, Hawaii Revised Statutes, is amended to read as follows:

"**[§342C-5] Penalties.** (a) Any person who violates the provisions of this chapter pertaining to ozone layer protection or any rule adopted by the department pursuant to this chapter shall be fined not more than [\$100] \$1000 for each separate offense.

(b) Each unit of CFC refrigerant sold or offered for sale, and each wilful release of CFCs into the air, shall constitute a separate offense.

(c) Each portable fire extinguisher, containing a halon or other ozone-depleting compound, that is purchased, distributed, manufactured, imported, sold, or offered for sale, shall constitute a separate offense.

(d) Each portable fire extinguishing system or unit that is repaired, serviced, or upon which maintenance is performed, without using a reclamation system to recapture, recycle, or properly dispose of unspent halons or other ozone-depleting compounds, shall constitute a separate offense.

(e) Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action."

SECTION 5. Section 437B-1, Hawaii Revised Statutes, is amended by:

1. Adding a new definition to be appropriately designated and to read as follows:

“Hydrochlorofluorocarbon” or “HCFC” means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123, and any combination or mixture containing any of these hydrochlorofluorocarbon compounds.”

2. Amending the definition of “CFC” to read as follows:

“Chlorofluorocarbon” or “CFC” means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115[. The term “CFC” does not include any hydrofluorocarbon (“HFC”) or hydrochlorofluorocarbon (“HCFC”) compounds.], CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds.”

3. Amending the definition of “refrigerant recovery and recycling equipment” to read as follows:

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

SECTION 6. 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 the document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or rules 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) Subcontracting, recommending, or referring motor vehicle repair work to, or in any way assisting, a motor vehicle repair dealer or mechanic whose registration or certification is not in full compliance with this chapter;
- (13) Failure to directly supervise a motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper; [and]
- (14) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated or was in use by the motor vehicle repair industry prior to December 31, 1989[.];
- (15) Performing service on any motor vehicle or mobile air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; and
- (16) Violating chapter 342C."

SECTION 7. Section 437B-12, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Each [mobile];

- (1) Mobile air conditioner serviced without using refrigerant recovery and recycling equipment[.];
- (2) Motor vehicle or mobile air conditioner serviced after January 1, 1994, without successful completion of an appropriate training course dealing with the recovery and recycling of CFC and HCFC refrigerants[.],¹ and each instance of wilfully causing or allowing CFCs to be released into the air from any source or process regulated under this chapter, other than through common use of a product or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules,]; and²
- (3) Violation of chapter 342C; constitutes a separate offense for which fines may be imposed under subsection (b).³"

SECTION 8. Section 444-1, Hawaii Revised Statutes, is amended by:

1. Adding a new definition to be appropriately designated and to read as follows:

"“Hydrochlorofluorocarbon” or “HCFC” means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123 and any combination or mixture containing any of three¹ hydrochlorofluorocarbon compounds.”

2. Amending the definition of "CFC" to read as follows:

"[(9)] "Chlorofluorocarbon" or "CFC" means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115. The term "CFC" does not include any hydrofluorocarbon ("HFC") or hydrochlorofluorocarbon ("HCFC") compounds.], CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds."

SECTION 9. 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,] pursuant to this section, or suspend the right of [the] a licensee to use [such licenses,] a license, or refuse to renew [any such] a license for any of the following causes:

- (1) Any dishonest [or], fraudulent, or deceitful act as a contractor [which] that causes a substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (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;
- (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] the plans and specifications;
- (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;
- (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] those records by the board;
- (8) When the licensee being a copartnership or a joint venture permits any member or employee of [such] the copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of [such] the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;

- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if [such] the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules [and regulations promulgated] adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (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;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for [the] a licensee, the licensee's employer, or other person, any discount of [such] the debt or with intent to hinder, delay, or defraud the person to whom [such] the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (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] Performing service on a residential or commercial air conditioner, 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; and
- (20) Wilfully causing or allowing CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.]
- (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; and
- (20) Violating chapter 342C.

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 10. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 18, 1992.)

Notes

1. So in original.
2. “; and” should be underscored.
3. “Constitutes a separate offense for which fines may be imposed under subsection (b).” should not be underscored.