

ACT 329

S.B. NO. 124

A Bill for an Act Relating to Motor Fuel.

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

SECTION 1. Chapter 486H, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§486H- Prohibition of manufacturer or jobber from operating a service station. (a) From July 31, 1993 to August 1, 1995, no manufacturer or jobber shall operate a major brand, secondary brand, or unbranded retail service station in Hawaii to sell its petroleum products.

(b) For the purposes of this section, the term “to operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any

employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

(c) This section shall not apply to any individual locations operated by any manufacturer or jobber on the effective date of this Act.

§486H- Enforcement of prohibition. (a) The attorney general shall commence a civil action to enforce section 486H- , by seeking injunctive or any other appropriate relief. The civil action shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

(b) Any person who is injured in another person's business or property by the violation of section 486H- , may bring a civil action for damages or injunctive relief, or both, against the person violating section 486H- . If the plaintiff prevails, the plaintiff shall be awarded reasonable attorneys and expert witness fees; provided that if a court awards only nominal damages to the plaintiff, those fees, in the court's discretion, need not be awarded to the plaintiff. Any action brought under this subsection shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

§486H- Preemption by federal law. This chapter shall not be applied in a manner that would render its application preempted by the "Petroleum Marketing Practices Act", 15 U.S.C. Sec. 2801, et. seq., or other applicable federal law."

SECTION 2. Section 486H-1, Hawaii Revised Statutes, is amended to read as follows:

"§486H-1 Definitions. As used in this chapter:

[(1)] "Franchise" means:

[(A)] (1) Any agreement or related agreements between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor; or

[(B)] (2) Any agreement or related agreements described in [subparagraph (A)] paragraph (1) and any agreement between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy the premises owned, leased, or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products supplied by the distributor.

"Gasoline" includes gasoline, benzol, benzine, naphtha, and any other liquid prepared, advertised, offered for sale, sold for use as, or used for, the generation of power for the propulsion of motor vehicles, including any product obtained by blending together any one or more petroleum products with or without other products, if the resultant product is capable of the same use.

[(2)] "Gasoline dealer" means any person engaged in the retail sale of petroleum products in the United States under a franchise agreement entered into with a petroleum distributor.

[(3)] "Good faith" means the duty of a gasoline dealer and a petroleum distributor to act in a fair and equitable manner in the performance and in the demanding of performance of the terms and provisions of the franchise. The petroleum distributor shall not impose on a gasoline

dealer by contract, rule, or regulation, whether written or oral, any standard of conduct [which] that is not reasonable and of material significance to the franchise relationship.

[(4)] “Inventory” means any product sold to a gasoline dealer for resale purposes by a petroleum distributor.

“Jobber” means every wholesaler of petroleum products.

“Major brand” means the primary trade name or trademark most commonly associated and identified with a manufacturer’s retail service station.

“Manufacturer” means every producer or refiner of petroleum products on January 1, 1992, or any subsidiary of that producer or refiner.

“Motor vehicle fuel” means gasoline, diesel fuel, alcohol, and any mixture of those fuels suitable for use in vehicles registered under chapter 286.

[(5)] “Petroleum distributor” means any person engaged in the sale, consignment, or distribution of petroleum products to retail outlets [which] that it owns, leases, or otherwise controls.

“Petroleum products” includes motor vehicle fuel, residual oils number 4, 5, and 6, and all grades of jet (turbo) fuel.

“Purchase” means any acquisition of ownership.

[(6)] “Retail” means the sale of a product for purposes other than resale.

“Retail service station” means a place of business where motor vehicle fuel is sold and delivered into the tanks of motor vehicles.

“Sale” means any exchange, gift, or other disposition.

“Secondary brand” means a trade name or trademark, other than a major brand, used to identify a manufacturer’s retail service station.

“Unbranded” means an independent retail service station dealer, jobber, heating oil distributor, motor fuel wholesaler, or peddler marketing gasoline or special fuels under its own brand, trade name, or trademark, other than those of a manufacturer, or any subsidiary thereof.”

SECTION 3. If a dealer vacates a location, before a replacement dealer can be found, the facility may be company operated for up to one hundred twenty days. If a dealer cancels a lease prior to the expiration of the lease, or chooses not to accept a franchise renewal offer, and there is less than three years remaining for that lease, the facility may be company operated until the termination of that lease.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 23, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.