

## ACT 238

S.B. NO. 487

A Bill for an Act Relating to Gasoline Dealers.

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

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

“**§486H- Violation; penalties.** Any person who violates section 486H-10 shall be assessed a civil penalty of \$1,000 per day for each violation.”

SECTION 2. Section 486H-10, Hawaii Revised Statutes, is amended to read as follows:

“**[[§486H-10]] Prohibition of manufacturer or jobber from operating a service station.** (a) From July 31, 1993, to August 1, [1995,] 1997, no manufacturer or jobber shall operate a major brand, secondary brand, or unbranded retail service station in Hawaii to sell its petroleum products[.]; provided that for each dealer operated retail service station owned by a manufacturer or jobber opened on or after July 31, 1995, that manufacturer or jobber may open one company operated retail service station, up to a maximum of two company owned retail service stations.

For purposes of this subsection:

“Company operated retail service station” means a retail service station owned and operated by a manufacturer or jobber.

“Dealer operated retail service station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer.

(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. Nor shall anything contained in this section prohibit a manufacturer or jobber from acquiring or constructing replacement retail service stations to replace any company-operated retail service stations in existence on July 30, 1993, that have subsequently closed due to the expiration or termination of the retail service station’s ground lease; provided that:

- (1) The manufacturer or jobber shall negotiate in good faith to renew the ground lease of the retail service stations; and
- (2) The replacement retail service stations shall be located within a one-mile radius of the retail service stations that they replace.

As used in this subsection, “good faith” means an honest and sincere intention to renew the ground lease of retail service stations.”

SECTION 3. Act 329, Session Laws of Hawaii 1993, is amended by amending section 3 to read as follows:

“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] one hundred eighty 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. The attorney general shall provide a legal opinion twenty days prior to the convening of the regular session of 1996 on whether permanent divorcement would constitute a “taking” in violation of the Fifth Amendment of the United States and Hawaii constitutions and any other legal ramifications which may arise from permanent divorcement legislation.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 29, 1995.)

**Note**

1. Edited pursuant to HRS §23G-16.5.