

## ACT 257

H.B. NO. 1451

A Bill for an Act Relating to the Petroleum Industry.

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

**SECTION 1. Legislative findings and declarations.** The legislature reiterates its findings and declarations of section 1 of Act 291, Session Laws of Hawaii 1991, that:

- (1) The petroleum industry is an essential element of Hawaii's economy and is therefore of vital importance to the health and welfare of all people in the State of Hawaii;
- (2) A complete and thorough understanding of the operations of the petroleum industry is required by the state government at all times to enable it to respond to possible shortages, oversupplies, and other market disruptions or impairment of competition;
- (3) Information and data concerning all aspects of the petroleum industry, including, but not limited to, crude oil production, supplies, refining, product output, prices, distribution, and demand are essential for the State to develop and administer energy policies which are in the interest of the State's economy and the public's well-being;
- (4) Because Hawaii is a physically small and geographically remote economy, certain of its markets tend to be concentrated. Market concentration is a function of the number of firms in the market and their respective market shares. In a highly concentrated market, market prices tend to rise above competitive levels. Market prices persistently above competitive levels are harmful to consumers and the public. Barriers to competition tend to cause supracompetitive prices to persist; and
- (5) The markets for oil and oil products in Hawaii are highly concentrated markets.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
PETROLEUM INDUSTRY INFORMATION REPORTING ACT  
PART I. GENERALLY**

**§ -1 Definitions.** As used in this chapter:

“Aviation fuel” means and includes all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

“Competitively priced” means fuel-grade ethanol for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted rack price of unleaded gasoline of comparable grade published in the State.

“Department” means the department of business, economic development, and tourism.

“Director” means the director of business, economic development, and tourism.

“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 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.

“Energy” means work or heat that is, or may be, produced from any fuel or source whatsoever.

“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.

“Major marketer” means any person who sells natural gas, propane, synthetic natural gas or oil in amounts determined by the department as having a major effect on energy supplies.

“Major oil producer” means any person who produces oil in amounts determined by the department as having a major effect on energy supplies.

“Major oil storer” means any person who stores oil or other petroleum products in amounts determined by the department as having a major effect on energy supplies.

“Major oil transporter” means any person who transports oil or other petroleum products in amounts determined by the department as having a major effect on energy supplies.

“Month” or “calendar month” means each full month of the calendar year.

“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.

“Refinery” means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

**§ -2 Distributors to register.** Every distributor, and any person before becoming a distributor, shall register as such with the department on forms to be prescribed, prepared, and furnished by the department.

**§ -3 Statements.** (a) Each distributor shall, at such reporting dates as the director may establish, file with the director, on forms prescribed, prepared, and furnished by the director, 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, the following:

- (1) The total number of gallons or units of fuel refined, manufactured, or compounded by the distributor within the State and sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that county or island;

- (2) The total number of gallons or units of fuel imported or exported by the distributor or sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that 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 director;
- (4) The total number of gallons or units of fuel and the types thereof 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 director;
- (5) Monthly Hawaii weighted average 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 retail outlets, to other end-users, and to wholesale customers;
- (6) Monthly Hawaii weighted average 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
- (7) Monthly Hawaii weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil, and consumer grade propane.

The department shall prescribe by rule when the first report shall be submitted.

(b) In addition to the above reporting, each distributor shall file with the director, Federal Form FEO-1000 or an equivalent state form to be prescribed, prepared, and furnished by the director, 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.

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

(d) The department may request additional information as and when it deems necessary to perform its responsibilities under this chapter.

**§ -4 Informational reports.** (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the department, in such form as the director shall prescribe, information which 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 department 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 department shall prescribe by rule when the first report shall be submitted.

(b) The department may request additional information as and when it deems it necessary to perform its responsibilities under this chapter.

**§ -5 Analysis of information; audits and inspections; summary reports.** (a) The department may, with its own staff and other support staff with expertise and experience in, or with, the petroleum industry, gather, analyze, and interpret the information submitted to it pursuant to sections -3 and -4 and other information relating to the supply and price 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 or condition affecting supply;
- (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) The prices, with particular emphasis on retail motor 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 changes;
- (5) The income, expenses, and profits, 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;
- (6) 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 department may 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 department may solicit assistance of the department of taxation in any such audit. The department shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the department is not duplicative of the data received by any of their audits or inspections which is available to the department.

(c) The department may analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

(d) The department shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislative session a summary, including any analysis and interpretation, of the information submitted to it pursuant to this chapter. 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.

**§ -6 Confidential information.** (a) Confidential commercial information presented to the department pursuant to this chapter shall be held in confidence by the department or aggregated to the extent necessary to assure confidentiality as governed by chapter 92F, including its penalty provisions.

(b) No data or information submitted to the department 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 provided pursuant to sections -3 and -4, neither the director, nor any employee of the department, may do any of the following:

- (1) Use the information furnished under sections -3 and -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 -3 and -4 can be identified; or
- (3) Permit anyone to examine the individual reports provided under sections -3 and -4 other than the public utilities commission, the attorney general, and the consumer advocate, and the authorized representatives and employees of each.

**§ -7 Confidential information obtained by another state agency.** Any confidential information pertinent to the responsibilities of the department 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 to the attorney general, the attorney general's authorized representatives, and the department and shall be treated in a confidential manner.

**§ -8 Sharing of information obtained by the department.** The department shall make all information obtained by the department under this chapter, including confidential information, available to the attorney general, the department of taxation, the public utilities commission, the consumer advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

**§ -9 Failure to timely provide information; failure to make and file statements; false statements; penalties.** (a) The department shall notify those persons who have failed to timely provide the information specified in section -3 or -4 or requested by the department under section -3 or -4. If, within five 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 \$500 per day nor more than \$2,000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the department regarding the information and the department has held a hearing and, following a ruling by the department, the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the department shall be subject to a civil penalty not to exceed \$20,000.

(c) For the purposes of this section, the term "person" means, in addition to the definition contained in section -1, any responsible corporate officer.

**§ -10 Ethanol content requirement.** (a) The department 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 director may deem appropriate. The director may authorize the sale of gasoline that does not meet these requirements as provided in subsection (d).

(b) Gasoline blended with an ethanol-based product, such as ethyl tertiary butyl ether, shall be considered to be in conformance with this section if the quantity of ethanol used in the manufacture of the ethanol-based product represents ten per cent, by volume, of the finished motor fuel.

(c) Ethanol used in the manufacture of ethanol-based gasoline additives, such as ethyl tertiary butyl ether, may be considered to contribute to the distributor's conformance with this section; provided that the total quantity of ethanol used by the distributor is an amount equal to or greater than the amount of ethanol required under this section.

(d) The department 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 department determines compliance with this section would cause undue hardship.

(e) Each distributor, at such reporting dates as the director may establish, shall file with the director, on forms prescribed, prepared, and furnished by the 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 department 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 -7.

(g) Any distributor or any other person violating the requirements of this section shall be subject to a fine of not less than \$2 per gallon of nonconforming fuel, up to a maximum of \$10,000 per infraction.

(h) The department, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section.

**§ -11 Powers of the public utilities commission.** The public utilities commission shall have the authority and power to take any action or make any determination under this chapter, including but not limited to actions or determinations that affect persons not regulated under chapters 269, 271, and 271G, as the commission deems necessary to carry out its responsibilities or otherwise effectuate chapter 269, 271, or 271G.

**§ -12 Rules.** The department shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter.

## PART II. PETROLEUM ADVISORY COUNCIL

**§ -21 Petroleum advisory council; establishment.** (a) There is established within the department for administrative purposes a voluntary petroleum advisory council, which shall be convened at the director's discretion and shall consist of the following eleven members:

- (1) Two lessee retail service station dealers;
- (2) Two independent retail service station dealers;
- (3) Two representatives of petroleum jobbers;
- (4) Two representatives of petroleum refiners;
- (5) One representative from the department of commerce and consumer affairs;

- (6) One representative from the department of business, economic development, and tourism; and
  - (7) One representative from the department of the attorney general.
- (b) The members of the council shall elect a chairperson from among their number.
- (c) The members of the council shall serve without compensation.

§ -22 **Duties of the council.** The council shall:

- (1) Advise the department of trends and activities in the retail petroleum industry that may require statutory consideration; and
- (2) Take such other action as may be necessary to ensure that the department is informed of all relevant developments in the retail petroleum industry affecting the health, safety, and welfare of the people of this State.”

SECTION 3. Chapter 486H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§486H- Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions.** (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer operated retail service station to a company operated retail service station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service stations as company operated retail service stations constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer operated retail service station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company operated retail service station shall be located within one-eighth mile of a dealer operated retail service station in an urban area, and within one-quarter mile in other areas. For purposes of this subsection, “urban” means the first congressional district of the State, and “other areas” means the second congressional district of the State.

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H- plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, “gross amount” means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.

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The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner.

(e) For the purposes of this section:

“Company operated retail service station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that 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 under a franchise.

“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.

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.”

SECTION 4. Chapter 486E, Hawaii Revised Statutes, is repealed.

SECTION 5. Chapter 486I, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 486H-10, Hawaii Revised Statutes, is repealed.

SECTION 7. 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 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on August 1, 1997.

(Approved June 21, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.