

JAN 23 2020

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# A BILL FOR AN ACT

RELATING TO PESTICIDES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that there are  
2 significant risks to public health and the environment when  
3 pesticide use instructions are not followed properly, including:  
4 injury to non-target sensitive plants and species; drift harms  
5 to nearby farms and gardens; health injuries to farmworkers and  
6 nearby residents; and short- and long-term contamination of the  
7 State's soils, air, and waters. Despite these known risks,  
8 pesticide misuse continues to occur within the State.

9           The legislature notes that there have been numerous recent  
10 instances of improper use of pesticides in the State. For  
11 example, in 2016 and 2017, a west Kauai agribusiness operation  
12 failed to adhere to pesticide use instruction by improperly  
13 using the neurotoxin pesticide chlorpyrifos, thereby exposing  
14 farm workers to the dangerous pesticide and potentially injuring  
15 their health. Although investigation by the United States  
16 Environmental Protection Agency initially proposed a pesticide  
17 fine of \$4,900,000, the fine was significantly reduced to



1 slightly over \$500,000. In 2018, a commercial pesticide  
2 applicator was fined \$168,535 for misusing different restricted-  
3 use pesticides on Kauai. Also, in November 2019, an  
4 agribusiness operation pled guilty and paid \$10,000,000 as part  
5 of a plea agreement with the United States Environmental  
6 Protection Agency for illegal use of the banned pesticide  
7 Penncap-M on Maui and Molokai.

8 The legislature also finds that "Pesticide Use by Large  
9 Agribusinesses on Kauai", a 2016 report published by the  
10 independent joint fact-finding study group convened for purposes  
11 of this report, found that more timely and better reported  
12 pesticide inspections and compliance investigations are needed.  
13 The study further found that the use of drift-prone pesticides  
14 should be more strictly monitored and proven violators should be  
15 fined.

16 The legislature further finds that enforcement of the  
17 Hawaii pesticides law, as well as timely and routine pesticide  
18 inspections and compliance investigations, are crucial to  
19 protecting public health and ensuring public confidence in the  
20 State's oversight of pesticide use.



1           Accordingly, the purpose of this Act is to protect the  
2 State's residents and environment and ensure more stringent  
3 enforcement of the Hawaii pesticides law by:

4           (1) Requiring the department of agriculture to provide  
5           annual reporting on pesticide inspection and  
6           compliance investigations; and

7           (2) Increasing monetary fines for pesticide violations.

8           SECTION 2. Chapter 149A, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11           "§149A-       Annual report. (a) The department shall  
12 submit an annual report to the legislature detailing each  
13 pesticide inspection and compliance investigation conducted  
14 during the prior fiscal year, organized by county. This report  
15 shall include the:

16           (1) Number of pesticide use complaints received during the  
17 prior fiscal year, including a brief description of  
18 the nature and location of each complaint;

19           (2) Number of compliance investigations conducted during  
20 the prior fiscal year, including the:



- 1           (A) Duration, in calendar days, from receipt of  
2           complaint to completion of investigation;
- 3           (B) Department's conclusion; and
- 4           (C) Type of enforcement action taken by the  
5           department;
- 6           (3) Number of pesticide inspections conducted during the  
7           prior fiscal year, including a brief description of  
8           the nature and location of each inspection;
- 9           (4) Outcomes of pesticide inspections conducted during the  
10           prior fiscal year, including any enforcement actions  
11           taken by the department; and
- 12           (5) Number and types of pesticide violations found in the  
13           prior fiscal year, including the:
- 14           (A) Location of each pesticide use violation; and
- 15           (B) Active ingredient or product name for any  
16           pesticide involved in each pesticide violation.
- 17           (b) The report shall be submitted to the legislature and  
18           posted to the department's website no later than June 30 of each  
19           year."



1 SECTION 3. Section 149A-41, Hawaii Revised Statutes, is  
2 amended by amending subsections (a), (b), and (c) to read as  
3 follows:

4 "(a) Warning notice. Any person who violates this chapter  
5 or any rule issued under this chapter [~~may~~], upon the first  
6 violation, may be issued a written warning notice citing the  
7 specific violation and necessary corrective action.

8 (b) Administrative penalties.

9 (1) In general, any registrant, commercial applicator,  
10 wholesaler, dealer, retailer, or other distributor who  
11 violates any provision of this chapter may be assessed  
12 an administrative penalty by the board of not more  
13 than [~~\$5,000~~] \$10,000 for each offense;

14 (2) Any private applicator or other person not included in  
15 paragraph (1) who violates any provision of this  
16 chapter relating to the use of pesticides while on  
17 property owned or rented by that person or the  
18 person's employer, subsequent to receiving a written  
19 warning from the department or following a citation  
20 for a prior violation, may be assessed an  
21 administrative penalty by the board of not more than



1            [~~\$1,000~~] \$5,000 for each offense. Any private  
2 applicator or other person not included in paragraph  
3 (1) who violates any provision of this chapter  
4 relating to licensing, transport, sale, distribution,  
5 or application of a pesticide for commercial purposes  
6 may be assessed an administrative penalty as provided  
7 in paragraph (1);

- 8        (3) No administrative penalty shall be assessed unless the  
9 person charged shall have been given notice and an  
10 opportunity for a hearing on the specific charge in  
11 the county of the residence of the person charged.  
12 The administrative penalty and any proposed action  
13 contained in the notice of finding of violation shall  
14 become a final order unless, within twenty days of  
15 receipt of the notice, the person or persons charged  
16 make a written request for a hearing. In determining  
17 the amount of penalty, the board shall consider the  
18 appropriateness of the penalty to the size of the  
19 business of the person charged, the effect on the  
20 person's ability to continue business, and the gravity  
21 of the violation; and



- 1           (4) In case of inability to collect the administrative  
2           penalty or failure of any person to pay all or [~~such~~]  
3           the portion of the administrative penalty as the board  
4           may determine, the board shall refer the matter to the  
5           attorney general, who shall recover the amount by  
6           action in the appropriate court. For any judicial  
7           proceeding to recover the administrative penalty  
8           imposed, the attorney general need only show that  
9           notice was given, a hearing was held or the time  
10          granted for requesting a hearing has expired without  
11          such a request, the administrative penalty was  
12          imposed, and that the penalty remains unpaid.
- 13          (c) Criminal penalties.
- 14          (1) In general, any registrant, commercial applicator,  
15          wholesaler, dealer, retailer, or other distributor who  
16          knowingly violates any provision of this chapter shall  
17          be guilty of a misdemeanor and shall on conviction be  
18          fined not more than [~~\$25,000,~~] \$35,000, or imprisoned  
19          for not more than one year, or both.
- 20          (2) Any private applicator or other person not included in  
21          paragraph (1) who knowingly violates any provision of



1           this chapter shall be guilty of a misdemeanor and  
2           ~~[shall on]~~, upon conviction, shall be fined not more  
3           than ~~[\$1,000,]~~ \$5,000, or imprisoned for not more than  
4           one year, or both.

5           (3) Any person, who, with intent to defraud, uses or  
6           reveals information relative to formulas of products  
7           acquired under the authority of section 3, Federal  
8           Insecticide, Fungicide, and Rodenticide Act (FIFRA),  
9           as amended, shall be fined not more than \$10,000, or  
10          imprisoned for not more than three years, or both."

11          SECTION 4. This Act does not affect rights and duties that  
12          matured, penalties that were incurred, and proceedings that were  
13          begun before its effective date.

14          SECTION 5. If any provision of this Act, or the  
15          application thereof to any person or circumstance, is held  
16          invalid, the invalidity does not affect other provisions or  
17          applications of the Act that can be given effect without the  
18          invalid provision or application, and to this end the provisions  
19          of this Act are severable.

20          SECTION 6. Statutory material to be repealed is bracketed  
21          and stricken. New statutory material is underscored.



# S.B. NO. 3040

1 SECTION 7. This Act shall take effect on July 1, 2020.

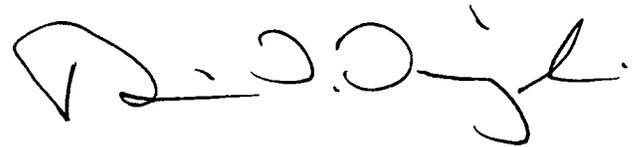
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INTRODUCED BY:



  
Breene Hunt







# S.B. NO. 3040

**Report Title:**

HDOA; Hawaii Pesticides Law; Violations

**Description:**

Requires the Department of Agriculture to provide annual reporting on pesticide inspection and compliance investigations. Increases monetary fines for pesticide violations.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

