
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 soil, air, and water. Despite these risks, pesticide
8 misuse has, and continues to, occur within the State.

9 The legislature further finds that in 2016 and 2017, a west
10 Kauai agribusiness operation failed to adhere to pesticide use
11 instructions and improperly used the neurotoxin pesticide
12 chlorpyrifos, exposing farm workers to the dangerous pesticide
13 and injuring their health. Although investigation by the United
14 States Environmental Protection Agency initially proposed a
15 pesticide fine of \$4,900,000, the fine was significantly reduced
16 to around \$500,000. In 2018, a commercial pesticide applicator
17 was fined \$168,535 for misusing different restricted use



1 pesticides on Kauai. In November 2019, an agribusiness
2 operation pled guilty and agreed to pay \$10,000,000 as part of a
3 plea agreement with the United States Environmental Protection
4 Agency for illegally using the banned pesticide Penncap-M on
5 Maui and Molokai.

6 The legislature additionally finds that a study entitled
7 "Pesticide Use by Large Agribusinesses on Kaua'i", published in
8 May 2016 by the independent Joint Fact Finding Study Group,
9 points out the need for more timely pesticide inspections and
10 compliance investigations, as well as better reporting on the
11 results of pesticide inspections and investigations. According
12 to the same study, the use of drift-prone pesticides should be
13 more strictly monitored through inspections, and proven
14 violators should be fined.

15 The legislature also finds that Act 45, Session Laws of
16 Hawaii 2018, established additional requirements intended to
17 address pesticide abuse in Hawaii, including requiring all users
18 of restricted use pesticides to report on their use of
19 restricted use pesticides to the department of agriculture,
20 prohibiting the use of a restricted use pesticide on or within
21 one hundred feet of a school property during normal school



1 hours, and prohibiting the use of pesticides containing
2 chlorpyrifos as an active ingredient. However, under existing
3 state law, commercial and private pesticide applicators who
4 violate pesticide regulations may receive a written warning upon
5 their first offense, regardless of whether the offense resulted
6 in injury or illness. Enforcement of Hawaii's pesticide law, as
7 well as timely and routine inspections and compliance
8 investigations of potential misuse of pesticides, are crucial to
9 protecting public health and ensuring public confidence in the
10 State's oversight of pesticide use.

11 Accordingly, the purpose of this Act is to protect the
12 State's residents and environment and ensure more stringent
13 enforcement of Hawaii's pesticide law by:

- 14 (1) Requiring the department of agriculture to submit an
15 annual report on pesticide inspections and compliance
16 investigations;
- 17 (2) For the first violation of the pesticide law by
18 commercial and private pesticide applicators,
19 eliminating the written warning penalty prior to
20 imposition of stricter penalties; and
- 21 (3) Increasing monetary fines for pesticide violations.



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

4 "§149A- Annual report. (a) The department shall
5 submit an annual report to the legislature on the scope of
6 pesticide inspections and compliance investigations conducted
7 during the prior year no later than twenty days prior to the
8 convening of each regular session, beginning with the regular
9 session of 2022. The report shall be organized by county and
10 shall include, at a minimum, the following information:

11 (1) The number of complaints received during the prior
12 year, including a brief description of the nature and
13 location of each complaint;

14 (2) The number of compliance investigations conducted
15 during the prior year, including the time it took from
16 receipt of the complaint to the completion of the
17 investigation, the department's conclusion, and the
18 type of enforcement action taken;

19 (3) The number of pesticide inspections conducted during
20 the prior year, including a brief description of the
21 nature and location of each inspection;



1 (4) The outcomes of pesticide inspections conducted during
2 the prior year, including any enforcement actions
3 taken; and

4 (5) The number and types of violations found during the
5 prior year, including the location of each pesticide
6 use violation and the pesticide active ingredient or
7 product name involved in each pesticide use violation.

8 (b) The report shall be made available to the public on
9 the department's website."

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

12 "(a) Warning notice. Any person who violates this chapter
13 or any rule issued under this chapter may upon the first
14 violation be issued a written warning notice citing the specific
15 violation and necessary corrective action~~[-]~~; provided that any
16 person who violates this chapter in a manner that causes bodily
17 injury, as defined in section 707-700, to another person shall
18 be subject to the penalties under this section without first
19 being issued a warning notice.

20 (b) Administrative penalties.



- 1 (1) In general, any registrant, commercial applicator,
2 wholesaler, dealer, retailer, or other distributor who
3 violates any provision of this chapter may be assessed
4 an administrative penalty by the board of not more
5 than [~~\$5,000~~] \$10,000 for each offense;
- 6 (2) Any private applicator or other person not included in
7 paragraph (1) who violates any provision of this
8 chapter relating to the use of pesticides while on
9 property owned or rented by that person or the
10 person's employer [~~, subsequent to receiving a written~~
11 ~~warning from the department or following a citation~~
12 ~~for a prior violation, may~~] shall be assessed an
13 administrative penalty by the board of not more than
14 [~~\$1,000~~] \$5,000 for each offense. Any private
15 applicator or other person not included in paragraph
16 (1) who violates any provision of this chapter
17 relating to licensing, transport, sale, distribution,
18 or application of a pesticide for commercial purposes
19 may be assessed an administrative penalty as provided
20 in paragraph (1);



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1 (3) No administrative penalty shall be assessed unless the
2 person charged shall have been given notice and an
3 opportunity for a hearing on the specific charge in
4 the county of the residence of the person charged.
5 The administrative penalty and any proposed action
6 contained in the notice of finding of violation shall
7 become a final order unless, within twenty days of
8 receipt of the notice, the person or persons charged
9 make a written request for a hearing. In determining
10 the amount of penalty, the board shall consider the
11 appropriateness of the penalty to the size of the
12 business of the person charged, the effect on the
13 person's ability to continue business, and the gravity
14 of the violation; and
15 (4) In case of inability to collect the administrative
16 penalty or failure of any person to pay all or such
17 portion of the administrative penalty as the board may
18 determine, the board shall refer the matter to the
19 attorney general, who shall recover the amount by
20 action in the appropriate court. For any judicial
21 proceeding to recover the administrative penalty



1 imposed, the attorney general need only show that
2 notice was given, a hearing was held or the time
3 granted for requesting a hearing has expired without
4 such a request, the administrative penalty was
5 imposed, and that the penalty remains unpaid.

6 (c) Criminal penalties.

7 (1) In general, any registrant, commercial applicator,
8 wholesaler, dealer, retailer, or other distributor who
9 knowingly violates any provision of this chapter shall
10 be guilty of a misdemeanor and shall on conviction be
11 fined not more than [~~\$25,000,~~] \$50,000 or imprisoned
12 for not more than one year, or both.

13 (2) Any private applicator or other person not included in
14 paragraph (1) who knowingly violates any provision of
15 this chapter shall be guilty of a misdemeanor and
16 shall on conviction be fined not more than [~~\$1,000,~~]
17 \$5,000 or imprisoned for not more than one year, or
18 both.

19 (3) Any person, who, with intent to defraud, uses or
20 reveals information relative to formulas of products
21 acquired under the authority of section 3, Federal



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1 Insecticide, Fungicide, and Rodenticide Act (FIFRA),
2 as amended, shall be fined not more than [~~\$10,000,~~
3 \$25,000 or imprisoned for not more than three years,
4 or both."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

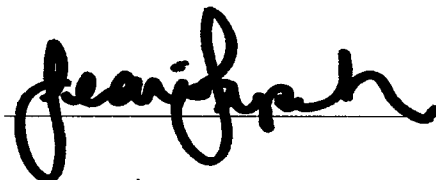
8 SECTION 5. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2022.

17

INTRODUCED BY:



JAN 25 2022



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Report Title:

Pesticides; Department of Agriculture; Report; Fines; Written Warning

Description:

Requires the department of agriculture to submit an annual report to the legislature on pesticide inspections and compliance investigations, including location, type, and enforcement action taken, conducted in the preceding year. For the first violation of the pesticide law by commercial and private pesticide applicators, eliminates the written warning penalty prior to imposition of stricter penalties. 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.

