

ACT 88

H.B. NO. 1668

A Bill for an Act Relating to the Sale and Use of Pesticides.

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

SECTION 1. Section 149A-11, Hawaii Revised Statutes, is amended to read:

“Sec. 149A-11 Prohibited acts. (a) Except as otherwise exempted in section 149A-12, it shall be unlawful for any person to distribute, solicit, sell, offer for sale, hold for sale, transport, deliver for transportation, or receive and having so received, deliver or offer to deliver to any person in intrastate commerce or between points within this State through any point outside this State any of the following:

- (1) Any pesticide which is not licensed pursuant to section 149A-13, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its licensing, or if the composition of a pesticide differs from its composition as represented in connection with its licensing; provided that in the discretion of the department, a change in the labeling or formula of a pesticide may be made within a licensing period without requiring an additional licensing of the product.
 - (2) Any pesticide unless it is in the licensee’s or the manufacturer’s unbroken immediate container, and there is affixed to the container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing such information pursuant to section 149A-15.
 - (3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 149A-19, unless the label bears, in addition to any other matter required by this chapter:
 - (A) A symbol of the skull and crossbones;
 - (B) The word “POISON” prominently, in red, on a background of distinctly contrasting color; and
 - (C) A statement of emergency medical treatment or an antidote when appropriate for the pesticide.
 - (4) The pesticides containing any of the ingredients commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate, unless they have been distinctly colored or discolored or any other white powder pesticide which the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, requires to be distinctly colored or discolored, unless it has been so colored or discolored pursuant to section 149A-16.
 - (5) Any pesticide which is adulterated or misbranded[.] as defined in section 149A-2.
 - (6) Any pesticide or device that is an imitation of another pesticide or device.
 - (7) Any restricted [pesticides] pesticide unless the person has a [[permit]] license issued in accordance with section 149A-17.
 - (8) Any restricted [pesticides] pesticide to persons other than a certified pesticide applicator or any uncertified personnel under his supervision, or a licensed dealer, wholesaler, or retailer.
- (b) It shall be unlawful to:
- (1) Detach, alter, deface, or destroy, in whole or in part, any label or alter any labeling of a pesticide unless such action is taken with the approval of the department to correct an improper label or labeling under section 24(c),

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

- (2) Add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.
- (3) Use for a person's own advantage or to reveal any information relative to formulas of products acquired in the administration of this chapter, to persons other than to the chairman or proper officials or employees of the State or the federal government, or the courts of this State or the federal government in response to a subpoena, or the physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes.
- (4) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted pesticides unless the dealer, wholesaler, or retailer has applied for and has obtained an annual license from the department.
- (5) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted pesticides to any person other than a certified pesticide applicator.
- (6) For any pesticide dealer, wholesaler, or retailer to make any verbal or written claim or representation relating to any pesticide product that is inconsistent with the specific pesticide product label."

SECTION 2. Section 149A-33, Hawaii Revised Statutes, is amended to read:

"Sec. 149A-33 Rules and regulations. The department shall have the authority to carry out and effectuate the purpose of this chapter by rules and regulations, including but not limited to the following:

- (1) To establish fees, procedures, conditions, and standards to certify persons for the use of restricted pesticides under section 4 of FIFRA, as amended;
- (2) To establish limitations and conditions for the application of pesticides by aircraft, power rigs, mist blowers, and other equipment;
- (3) To establish, as necessary, specific standards and guidelines which specify those conditions which constitute unreasonable adverse effect on the environment; [and]
- (4) To establish, as necessary, record keeping requirements for restricted pesticide use by commercial applicators[.]; and
- (5) To establish, as necessary, procedures for the issuance of guidelines to specify those conditions that constitute use of a pesticide in a manner inconsistent with its label."

SECTION 3. Section 149A-41, Hawaii Revised Statutes, is amended to read:

"Sec. 149A-41 Violations, warning notice, and penalties. (a) Warning notice. Any person who violates this chapter or any rule or regulation issued hereunder may upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Civil penalties.

- (1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter may be assessed a civil penalty by the board of not more than \$5,000 for each offense.

- (2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter subsequent to receiving a written warning from the department or following a citation for a prior violation may be assessed a civil penalty by the board of not more than \$1,000 for each offense.
 - (3) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county of the residence of the person charged. In determining the amount of penalty the board shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and the gravity of the violation.
 - (4) In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover such amount by action in the appropriate court.
- (c) Criminal penalties.
- (1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$25,000, or imprisoned for not more than one year, or both.
 - (2) Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than [thirty days,] one year, or both.
 - (3) Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.

(d) Liabilities.

~~[(4)]~~ When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 1979.)