

ACT 33

S.B. NO. 440

A Bill for an Act Relating to Pesticides.

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

SECTION 1. Section 149A-2, Hawaii Revised Statutes, is amended by amending the definition of "misbranded" to read:

"(22) "Misbranded" includes any of the following:

- (A) The labeling of the pesticide or device bears any statement, design or graphic representation relative thereto or to its ingredients or functions which is false or misleading in any particular;
- (B) The pesticide is contained in a package or other container or wrapping which does not conform to the standards established by federal law;
- (C) The pesticide is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) The label does not bear the federal registration number assigned to

- each establishment in which it was produced;
- (E) Any word, statement, or other information required by or under authority of the federal law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (F) The labeling accompanying the pesticide does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, are adequate to protect health and the environment;
 - (G) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under federal law, is adequate to protect health and the environment;
 - (H) The label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this section if:
 - (i) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
 - (ii) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department;
 - (I) The labeling does not contain a statement of the use classification under which the product is registered;
 - (J) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (i) The name and address of the producer, registrant or person for whom produced;
 - (ii) The name, brand, or trademark under which the pesticide is sold;
 - (iii) The net weight or measure of the content; provided that the United States Environmental Protection Agency Administrator may permit reasonable variations; and
 - (iv) When required by federal regulations to effectuate the purposes of this law, the registration number assigned to the

- pesticide under federal law, and the use classification; and
- (K) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this law:
- (i) The skull and crossbones;
 - (ii) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (iii) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide."

SECTION 2. Section 149A-11, Hawaii Revised Statutes, is amended to read:
 "§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 of 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 or device 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 pesticide unless the person has a license[†] issued in accordance with section 149A-17.
 - (8) Any restricted 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 to 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 a 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 3. Section 149A-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

"(b) The licensee shall pay a minimum fee of \$10 for each year, or fraction thereof, that the pesticide is licensed. Licensing fee may be increased from time to time by regulations but such increase shall not be in excess of \$5 for any one year. The term of the license shall be for a period of three years, beginning January 1, 1982, expiring on December 31, 1984, and on December 31 of each third year thereafter. In case of renewal of license, a statement shall be required only with respect to information which is different from that furnished when the pesticide was licensed or last relicensed. All fees collected shall be deposited in the general fund of the State."

SECTION 4. Section 149A-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

[†]In section prior to amendment, here appeared the word "permit" instead of "license".

“(a) The board shall after having afforded interested and affected parties an opportunity to be heard and, in instances in which human health is affected, after consultation with the director of health, make and adopt regulations:

- (1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;
- (2) To determine the pesticides which are highly toxic to man; to designate pesticides as restricted or general use; and to establish a system of control over the distribution and use of certain pesticides and devices purchased by the consuming public;
- (3) To determine standards of coloring for pesticides, and to subject pesticides to the requirements of section 149A-16;
- (4) To establish procedures, conditions, and fees for the issuance of licenses for sale of restricted pesticides;
- (5) To establish fees for the licensing of pesticides within the limitations of section 149A-13(b);
- (6) To establish procedures for the licensing of pesticides;
- (7) To establish procedures for the registration of pesticides under provisions of section 24(c), FIFRA, as amended;
- (8) To establish procedures for the disposal of pesticides; and
- (9) To establish procedures to issue experimental use permits under provisions of section 5 of FIFRA, as amended.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 6. This Act shall take effect upon its approval.

(Approved April 29, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.