

ACT 45

S.B. NO. 3095

A Bill for an Act Relating to Environmental Protection.

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

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

“PART . Pesticide Reporting and Regulation Program

§149A-A Definitions. As used in this part:

“Normal school hours” means Monday through Friday from 7:00 a.m. until 4:00 p.m., excluding days when classes are not in session.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

§149A-B Post-application reporting of pesticide use. (a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section.

(b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar year.

(c) The department shall adopt rules pursuant to chapter 91 requiring that the annual reports include the following information:

- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
- (2) The total quantities used for each restricted use pesticide;
- (3) A general description of the geographic location, including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
- (4) The date on which the restricted use pesticide application occurred.

§149A-C Public reports; contents. The department shall produce a summary, for public disclosure, by county, that includes:

- (1) The total quantities used, by federal and state registrations or permit numbers, commercial product names, and active ingredients, for each restricted use pesticide used; and
- (2) The amount of area in the county in which the restricted use application occurred.

§149A-D Buffer zones. Beginning January 1, 2019, no person shall apply a restricted use pesticide on or within one hundred feet of a school property during normal school hours; provided that this section shall not apply to whole structure fumigation; provided further that if this section is determined to conflict with any pesticide application information listed on the pesticide label, the more restrictive provision shall apply.

§149A-E Rules. The department shall adopt rules pursuant to chapter 91 to implement this part.”

SECTION 2. Section 149A-13.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) There is established within the treasury of the State, a pesticide use revolving fund. The fund shall be administered by the department for the purposes of this section. The fund shall consist of:

- (1) Licensing and registration fees and charges collected by the department under section 149A-13(b);
- (2) All fees collected by the department through the collection of training fees in accordance with subsection (c); ~~and~~
- (3) Funds appropriated for the pesticide subsidy program established under Act 105, Session Laws of Hawaii 2014~~[-]; and~~
- (4) All penalties and fines collected by the department under section 149A-41.

(b) Moneys in the pesticide use revolving fund shall be expended by the department ~~to~~:

- (1) ~~To support the pesticide program’s registration and licensing, certification and education, and compliance monitoring activities[-]. The department shall also expend revolving fund moneys on the establishment of];~~
- (2) ~~To establish~~ pesticide training workshops~~[-]~~ and educational programs~~[-, development of];~~
- (3) ~~To develop~~ integrated pest management strategies, the pesticide subsidy program created under Act 105, Session Laws of Hawaii 2014, and other services for pesticide users such as the agricultural pest

control industry, the structural pest control industry, and consumer users of pesticides, which provide pesticide instruction in areas including but not limited to the collection, disposal, and recycling of pesticide containers; and

- (4) For all other pesticide services deemed necessary by the department.

Moneys from the revolving fund may be used for personnel, services, materials, and equipment for the purposes of this section[; provided that the use of moneys from the revolving fund for personnel costs shall be limited to those employees under the registration and education section of the department's pesticides branch].

Moneys expended by the department from the pesticide use revolving fund for training workshops, educational programs, and other services for the agricultural pest control industry, the structural pest control industry, and consumer groups shall be expended in a manner that appropriately addresses the needs of each category of pesticide user."

2. By amending subsection (e) to read:

"(e) All unobligated, unencumbered, or unexpended funds remaining in the fund in excess of [~~\$250,000~~] \$1,000,000 at the close of each fiscal year shall lapse to the state general fund."

SECTION 3. Section 149A-31, Hawaii Revised Statutes, is amended to read as follows:

"§149A-31 Prohibited acts. No person shall:

- (1) Use any pesticide in a manner inconsistent with its label, except that it shall not be unlawful to:
 - (A) Apply a pesticide at any dosage, concentration, or frequency less than that specified on the label or labeling; provided that the efficacy of the pesticide is maintained [~~and further~~]; provided further that[;] when a pesticide is applied by a commercial applicator, the deviation from the label recommendations [~~must~~] shall be with the consent of the purchaser of the pesticide application services;
 - (B) Apply a pesticide against any target pest not specified in the labeling if the application is to a crop, animal, or site specified on the label or labeling; provided that the label or labeling does not specifically prohibit the use on pests other than those listed on the label or labeling;
 - (C) Employ any method of application not prohibited by the labeling;
 - (D) Mix a pesticide or pesticides with a fertilizer when [~~such~~] the mixture is not prohibited by the label or labeling; or
 - (E) Use in a manner determined by rule not to be an unlawful act;
- (2) Use, store, transport, or discard any pesticide or pesticide container in any manner [~~which~~] that would have unreasonable adverse effects on the environment;
- (3) Use or apply restricted use pesticides unless the person is a certified pesticide applicator or under the direct supervision of a certified pesticide applicator with a valid certificate issued pursuant to rules adopted under section 149A-33(1); provided that it shall be prohibited to use or apply a restricted use pesticide for structural pest control uses for a fee or trading of services, unless the user or applicator is a pest control operator or is employed by a pest control operator licensed under chapter 460J;

- (4) Use or apply pesticides in any manner that has been suspended, canceled, or restricted pursuant to section 149A-32.5;
- (5) Falsify any record or report required to be made or maintained by rules adopted pursuant to this chapter; [or]
- (6) Fill with water, through a hose, pipe, or other similar transmission system, any tank, implement, apparatus, or equipment used to disperse pesticides, unless the tank, implement, apparatus, equipment, hose, pipe, or other similar transmission system is equipped with an air gap or a reduced-pressure principle backflow device meeting the requirements under section 340E-2 and the rules adopted thereunder[.]; or
- (7) Beginning January 1, 2019, use or apply any pesticide containing chlorpyrifos as an active ingredient; provided that:
 - (A) The department shall grant to any person, upon request, a temporary permit authorizing the person, until December 31, 2022, to use or apply a pesticide containing chlorpyrifos as an active ingredient; and
 - (B) Any person who violates this paragraph shall be subject to a penalty pursuant to section 149A-41."

SECTION 4. No later than July 1, 2019, the department of agriculture shall develop a pesticide drift monitoring study to evaluate pesticide drift at three schools within the State. The department of agriculture shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2020.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2018-2019 for the pesticide drift monitoring study to be developed pursuant to section 4 of this Act.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$105,648 or so much thereof as may be necessary for fiscal year 2018-2019 to be expended for the purposes of this Act, including for the establishment of two full-time equivalent (2.0 FTE) positions in the department of agriculture.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2018-2019 for outreach and education to effectuate this Act.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other

ACT 45

provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2018.

(Approved June 13, 2018.)