

JAN 23 2015

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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. Chapter 149A, Hawaii Revised Statutes, is  
2 amended by amending the title of part IV to read as follows:  
3           **"PART IV. VIOLATIONS [~~WARNING NOTICE~~] AND PENALTIES"**  
4           SECTION 2. Section 149A-21, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:  
6           "(a) If it appears that a pesticide or device fails to  
7 comply with this chapter, the department may refer the facts  
8 with a copy of the results of the analysis or the examination of  
9 the pesticide product or device to the appropriate governmental  
10 agency for prosecution. [~~A warning notice shall be issued~~  
11 ~~before prosecution proceedings are initiated.~~]"  
12           SECTION 3. Section 149A-41, Hawaii Revised Statutes, is  
13 amended to read as follows:  
14           **"§149A-41 Violations [~~WARNING NOTICE~~] and penalties.**  
15 [~~(a) Warning notice. Any person who violates this chapter or~~  
16 ~~any rule issued under this chapter may upon the first violation~~



1 ~~be issued a written warning notice citing the specific violation~~  
2 ~~and necessary corrective action.~~

3 ~~(b)]~~ (a) Administrative penalties.

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

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



1            [~~may~~] shall be assessed an administrative penalty as  
2            provided in paragraph (1);

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

17           (4) In case of inability to collect the administrative  
18           penalty or failure of any person to pay all or such  
19           portion of the administrative penalty as the board may  
20           determine, the board shall refer the matter to the  
21           attorney general, who shall recover the amount by



1           action in the appropriate court. For any judicial  
2           proceeding to recover the administrative penalty  
3           imposed, the attorney general need only show that  
4           notice was given, a hearing was held or the time  
5           granted for requesting a hearing has expired without  
6           such a request, the administrative penalty was  
7           imposed, and that the penalty remains unpaid.

8       ~~[(e)]~~ (b) Criminal penalties.

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

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



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1        (3) Any person who causes the death of another person  
2        through the knowing use of a restricted use pesticide  
3        shall be guilty of a class B felony;

4        (4) Any person who causes bodily injury to another person  
5        through the knowing use of a restricted use pesticide  
6        shall be guilty of a class C felony;

7        (5) Any person who causes the death of another person  
8        through the negligent use of a restricted use  
9        pesticide shall be guilty of a class C felony;

10       (6) Any person who causes bodily injury to another person  
11       through the negligent use of a restricted use  
12       pesticide shall be guilty of a misdemeanor; and

13       [~~3~~] (7) Any person, who, with intent to defraud, uses or  
14       reveals information relative to formulas of products  
15       acquired under the authority of section 3, Federal  
16       Insecticide, Fungicide, and Rodenticide Act (FIFRA),  
17       as amended, shall be [~~fined not more than \$10,000, or~~  
18       ~~imprisoned for not more than three years, or both.]~~  
19       guilty of a class C felony.

20       [~~d~~] (c) Liabilities. When construing and enforcing the  
21 provisions of this chapter, the act, omission, or failure of any



1 officer, agent, or other person acting for or employed by any  
2 person shall in every case be also deemed to be the act,  
3 omission, or failure of such person as well as that of the  
4 person employed.

5 (d) The department may refer the facts and related  
6 evidence of a violation of this section to the appropriate  
7 government agency for prosecution.

8 (e) The department may contract with any county police  
9 department for the purposes of implementing and enforcing this  
10 section.

11 (f) For purposes of this section, "bodily injury" has the  
12 same meaning as in section 707-700."

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

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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# S.B. NO. 323

**Report Title:**

Agriculture; Pesticides; Penalties

**Description:**

Repeals warning notice for any person who violates the State's pesticide laws under chapter 149A, Hawaii Revised Statutes, amends criminal penalties related to pesticide use, and establishes that the department of agriculture may contract with any county police department for the purposes of implementing and enforcing section 149A-41, Hawaii Revised Statutes.

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

