

ACT 161

**A Bill for an Act to Amend Chapter 25, Revised Laws of Hawaii 1955,
as Amended, Relative to Economic Poisons.**

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

SECTION 1. Chapter 25 of the Revised Laws of Hawaii 1955,
as amended, is hereby further amended to read as follows:

“Section 25-1. Short Title. This act may be cited as the “Hawaii Economic Poisons Law”.

“Section 25-2. Definitions. As used in this chapter:

a. The term “economic poison” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the board of agriculture shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

b. “Board” means the board of agriculture.

c. “Chairman” means the chairman of the board of agriculture.

d. The term “device” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the board, but shall not mean any equipment used for the application of economic poisons when sold separately therefrom.

e. The term “insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

f. The term “fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

g. The term “rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the board shall declare to be a pest.

h. The term “herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

i. The term “nematocide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

j. The term “plant regulator” means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

k. The term “defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

l. The term “desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

m. The term “nematode” means invertebrate animals of the phylum nemathelminthes and class nematoda, that is unsegmented round

worms with elongated fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water plants or plant parts; may also be called nemas or eelworms.

n. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

o. The term "fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

p. The term "weed" means any plant which grows where not wanted.

q. The term "ingredient statement" means either

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the economic poison; or

(3) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic; or

(4) in case the economic poison is highly toxic to man, as determined by section 25-5, a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients.

r. The term "active ingredients" means

(1) in the case of an economic poison other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

s. The term "inert ingredient" means an ingredient which is not an active ingredient.

t. The term "antidote" means the most practical immediate treatment in case of poisoning, including but not limited to first aid treatment.

u. The term "registrant" means the person registering any economic poison pursuant to the provisions of this chapter.

v. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the economic poison or device.

w. The term "labeling" means all labels and other written, printed, or graphic matter.

(1) upon the economic poison or device or any of its containers or wrappers; or

(2) accompanying the economic poison or device at any time; or

(3) to which reference is made, in any advertising media, or in literature accompanying the economic poison or device, except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, State Experiment Stations; State Agriculture Colleges, or other similar Federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

x. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for any ingredient, or if any valuable constituent of the economic poison has been wholly or in part abstracted.

y. The term "misbranded" shall apply

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison

(A) if it is an imitation of or is offered for sale under the name of another economic poison;

(B) if any advertisement by means of newspaper, leaflet, radio, or television is false or misleading in any particular;

(C) if the labeling accompanying it does not contain instructions for use which are necessary, proper, and adequate for the protection of the public;

(D) if the label does not contain warning or caution statements, which are necessary, proper, and adequate to prevent injury to living man and other vertebrate animals;

(E) if the label does not bear an ingredient statement on the immediate container; or if there is an outside container or wrapper through which the ingredient statement on the immediate container cannot be clearly read, then on the outside container or wrapper;

(F) if any word, statement, or other information required by or under the authority of this chapter to appear on the 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; or

(G) if in the case of an insecticide, nematocide, fungicide or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(H) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poisons; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

“Section 25-3. Prohibited acts.

a. It shall be unlawful for any person to distribute, solicit, sell, or offer for sale within this State, or transport or deliver for transportation in intrastate commerce or between points within this State through any point outside this state any of the following:

(1) Any economic poison which has not been registered pursuant to the provisions of section 25-4 of this chapter, or any economic poison 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 registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that, in the discretion of the chairman, a change in the labeling or formula of an economic poison may be made within a registration period without requiring an additional registration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such 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

(A) the name and address of the manufacturer, registrant, or person for whom manufactured;

(B) the name, brand, or trade-mark under which said article is sold; and

(C) the net weight or measure of the content;

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 25-5, unless the label shall bear, 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 an antidote for the economic poison.

(4) The economic poisons 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 as provided by regulations issued in accordance with this chapter, or any other white powder economic poison 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, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded, or any device which is misbranded.

b. It shall be unlawful

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder; or

(2) for any person to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this chapter; or

(3) for any person to use for his own advantage or to reveal, other than to the chairman or proper officials or employees of the State or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 25-4.

"Section 25-4. Registration.

a. Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the board, and such registration shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison, may be registered as a single economic poison; and additional names and labels shall be added by supplemental statements during the current period of registration. To be acceptable for registration, any economic poison, subject to the provisions of any Federal Act providing for registration of economic poisons, must have been duly registered under the provisions of said Act. The registrant shall file with the chairman a statement including

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic

poison and a statement of all claims to be made for it, including directions for use; and

(4) if requested by the chairman a full description of the tests made and the results thereof upon which the claims are based.

b. The registrant shall pay an annual fee of \$10 for each economic poison registered. Such registration shall expire on June 30 and shall be renewed annually. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last reregistered. All fees collected shall be deposited in the general fund of the State.

c. The chairman, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any economic poison. If it appears to the chairman that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 25-3, he shall register the article.

d. If it does not appear to the chairman that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the chapter so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the article be registered, the registrant shall be entitled to contest the determination of the chairman under the provisions of the Hawaii Administrative Procedure Act.

e. In order to protect the public, the chairman on his own motion, after hearing, may at any time cancel the registration of an economic poison. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 25-3.

f. Notwithstanding any other provision of this chapter, registration is not required in the case of an economic poison shipped from one plant within this State to another plant within this State when both such plants are operated by the same person.

"Section 25-5. Determinations: rules and regulations: uniformity.

a. The board is authorized, 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 to 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 economic poisons which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 25-3a (4).

b. The board is also authorized, after public hearing, to make and adopt appropriate rules and regulations for carrying out provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons or devices.

c. The board is authorized, after public hearing, to adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States Department of Agriculture with respect to economic poisons.

“Section 25-6. Enforcement.

a. If it shall appear that an economic poison or device fails to comply with the provisions of this chapter, the chairman shall refer the facts to the department of the attorney general with a copy of the results of the analysis or the examination of such articles; provided, however, that nothing herein shall be construed as requiring the chairman to report every violation for prosecution whenever he believes that the public interests will be best served by a suitable notice of warning in writing.

b. It shall be the duty of the department of the attorney general to whom any such violation is reported to cause appropriate proceedings to be instituted in the appropriate court without delay.

c. The chairman shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

“Section 25-7. Exemptions.

a. The penalties provided for violations of Section 25-3 a. of this chapter shall not apply to

(1) any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the chairman or his designated agent to copy all records showing the transactions in and movement of the articles;

(2) public officials of the state and the federal government engaged in the performance of their official duties;

(3) the manufacturer or shipper of an economic poison intended only for experimental use

(A) by or under the supervision of an agency of the state or of the federal government authorized by law to conduct research in the field of economic poisons, or

(B) if the economic poison is not sold and if the container thereof is plainly and conspicuously marked “For experimental use only—Not to be sold,” together with the manufacturer’s name and address;

(C) if a written permit has been obtained from the chairman, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

b. No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

“Section 25-8. Penalties.

a. Any person violating any provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000, or imprisoned for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically.

“Section 25-9. Seizures and stop sale and removal from sale Orders.

a. Any economic poison or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this chapter, may be seized. Any article seized hereunder shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the general fund of the State; provided, that the article shall not be sold contrary to the provision of this chapter; and provided, further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

b. The chairman, or his duly authorized agent, may issue and enforce a written or printed “stop-sale” or “removal from sale” order to withhold from sale any economic poison or device that is distributed, sold, offered for sale, transported or delivered for transportation in violation of this chapter.

“Section 25-10. Delegation of duties. All authority vested in the board or chairman by virtue of the provisions of this chapter may with like force and effect be exercised by such employees of the department of agriculture as the board or chairman may from time to time designate for said purpose.

“Section 25-11. Cooperation. The board is authorized and empowered to cooperate with, and enter into agreements with, any other agency of the State, the United States Department of Agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

“Section 25-12. Separability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

“Section 25-13. Repeals. All laws and parts of laws contrary to or inconsistent with the provisions of this chapter are hereby repealed; provided, however, that nothing herein shall be construed to amend or alter the function, duties and powers of the department of

health relative to the provisions of chapters 46 and 53, Revised Laws of Hawaii 1955, as amended.

SECTION 2. This Act shall take effect on July 1, 1965.
(Approved June 22, 1965.) S.B. 357.