

ACT 310

S.B. NO. 1164

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 to read as follows:

“§149A-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

[(1)] “Active ingredient” means:

[(A)] (1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any [pests;] pest;

[(B)] (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;

[(C)] (3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

[(D)] (4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

[(2)] “Adulterated” means any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

[(3)] “Animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

[(4)] “Board” means board of agriculture.

[(5)] “Certified pesticide applicator” means any individual who is certified under section 149A-33(1) as authorized to use or supervise the use of any pesticide which is classified for restricted use.

[(6)] [“Chairman”] “Chairperson” means [chairman] chairperson of the board of agriculture.

[(7)] “Commercial pesticide applicator” means any certified pesticide applicator, whether or not the applicator is a private pesticide applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by section 149A-2(28).

[(8)] "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, [with] causing or without causing abscission.

[(9)] "Department" means department of agriculture.

[(10)] "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

[(11)] "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any form of plant or animal life (other than man and other than bacteria, [virus,] viruses, or other [micro-organism] microorganisms on or [in] living in man or other animals); but not including equipment used for application of pesticides when sold separately therefrom.

[(12)] "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

[(13)] "Fungi" means all nonchlorophyll-bearing thallophytes including rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or living in man or other animals and those on or in processed foods, beverages, or pharmaceuticals.

[(14)] "General use pesticide" means a pesticide other than one designated as restricted pesticide.

[(15)] "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for a cancellation proceeding would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under [Public Law 91-135.] the Endangered Species Act.

[(16)] "Inert ingredient" means an ingredient which is not an active ingredient.

[(17)] "Ingredient statement" means:

[(A)] (1) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

[(B)] (2) In case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[(18)] "Insect" means invertebrate animals belonging to the class insecta, including beetles, bugs, bees, flies, and other allied classes of arthropods, including spiders, mites, ticks, centipedes, and wood lice.

[(19)] "Label" means the written, printed, or graphic matter[,] on or attached to the pesticide or device[,] or any of its containers or wrappers.

[(20)] "Labeling" means all labels and other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the [Environmental Protection Agency,] EPA, the United States Departments of Agriculture and the Interior, the United States Department of [Health, Education, and Welfare,] Health and Human Services, state experiment stations, state agriculture colleges, or other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

[(21)] "License" means the process of being allowed to register a pesticide product pursuant to provisions of this chapter. "Licensee" means a

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person who has been licensed to register a product pursuant to provisions of this chapter.

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

- [(A)] (1) 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)] (2) The pesticide is contained in a package or other container or wrapping which does not conform to the standards established by federal law;
- [(C)] (3) The pesticide is an imitation [of,] or is offered for sale under the name of[,] another pesticide;
- [(D)] (4) The label does not bear the federal registration number assigned to each establishment in which it was produced;
- [(E)] (5) 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)] (6) 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,] FIFRA are adequate to protect health and the environment;
- [(G)] (7) 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)] (8) 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)] (A) 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)] (B) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department;
- [(I)] (9) The labeling does not contain a statement of the use classification under which the product is registered;
- [(J)] (10) 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)] (A) The name and address of the producer, registrant, or person for whom produced;
 - [(ii)] (B) The name, brand, or trademark under which the pesticide is sold;
 - [(iii)] (C) The net weight or measure of the content; provided that the [United States Environmental Protection Agency] EPA Administrator may permit reasonable variations; and
 - [(iv)] (D) 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)] (11) 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)] (A) The skull and crossbones;
 - [(ii)] (B) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - [(iii)] (C) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

[(23)] "Nematode" means invertebrate animals of the phylum nemathelminthes and the class nematoda, including unsegmented roundworms with elongated fusiform[,] or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts.

"Non-restricted use pesticide" means a pesticide other than one designated as restricted use pesticide.

[(24)] "Person" means any individual, firm, corporation, association, or partnership[,] or any organized group of persons whether incorporated or not.

[(25)] "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, [bacteria,] bacterium, or any other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the board declares to be a pest.

[(26)] "Pesticide" means:

[(A)] (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

[(B)] (2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

[(27)] "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 plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

[(28)] "Private pesticide applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person.

[(29)] "Producer" means any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. "Produce"

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means to manufacture, prepare, compound, propagate, or process any pesticide or device.

[(30)] "Protect health and the environment" or "protection of health and the environment" means protection against unreasonable adverse effects on the environment.

[(31)] "Restricted use pesticide" means:

[(A)] (1) A pesticide or pesticide use classified by the Administrator, EPA, for use by certified applicators or competent persons under their direct supervision and so designated on its label; or

[(B)] (2) A pesticide or pesticide use classified by the board for use by certified applicators or competent persons under their direct supervision.

[(32)] "Registrant" means the person registering or licensing any pesticide pursuant to this chapter.

[(33)] "Sell or distribute" means to distribute, solicit, sell, offer for sale, hold for sale, transport, or deliver for transportation in intrastate commerce or between points within the State through any point outside the State.

[(34)] "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though [such] the certified applicator is not physically present at the time and place the pesticide is applied.

[(35)] "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

[(36)] "Weed" means any plant which grows where not wanted."

SECTION 2. Section 149A-3, Hawaii Revised Statutes, is amended to read as follows:

"§149A-3 Delegation of duties. All authority vested in the board or [chairman] chairperson by virtue of this chapter may with like force and effect be exercised by [such] those employees of the department as the board or [chairman] chairperson may from time to time designate for the purpose."

SECTION 3. Section 149A-11, Hawaii Revised Statutes, is amended to read as follows:

"§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] 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[, after investigation of and after a public hearing on the necessity for and feasibility of coloring or discoloring the pesticide for the protection of the public health, 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 use pesticide unless the person has a permit issued in accordance with section 149A-17.
- (8) Any restricted use pesticide to persons other than a certified pesticide applicator or any uncertified personnel under the certified pesticide applicator's 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] it is approved by the department to correct an improper label or labeling under section 24(c), [Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.] FIFRA.
 - (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] chairperson or proper officials or employees of the State or the federal government[, or]; to the courts of this State or the federal government in response to a subpoena[, or]; to physicians[,]; or, in

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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 use 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 use 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 4. Section 149A-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The prohibitions of section 149A-11(a) shall not apply to:
- (1) Any carrier while lawfully engaged in transporting a pesticide within this State, if the carrier, upon request of the [chairman] chairperson or the [chairman’s] chairperson’s duly designated officer or employee, permits [such] the officer or employee to copy all records showing the transactions in and movement of the pesticide or device;
 - (2) Public officials of the State and the federal government engaged in the performance of their official duties in administering state or federal pesticide law or [regulation;] rule;
 - (3) The manufacturer or shipper of a pesticide 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 pesticides;
 - (B) If the pesticide 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;
 - (4) Any person who establishes a guaranty signed by, and containing the name and address of, the licensee or person residing in the United States from whom the person purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully licensed at the time of sale and delivery to the person and it complies with the other requirements of FIFRA[, as amended, and in such]. In this case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of FIFRA[, as amended]; and
 - (5) Any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to [such] that pesticide and [such] that use or possession.”

SECTION 5. Section 149A-13, Hawaii Revised Statutes, is amended to read as follows:

“§149A-13 Procedure for licensing pesticides. (a) Any pesticide which is received, used, sold, offered for sale, or distributed[,] 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 licensed by the board; 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 pesticide, may be licensed as a single pesticide, and additional names and labels shall be added by supplemental statements during the current period of licensing]. Any pesticide product which has been sold in this State but for which the license is not renewed can be used by the purchaser. However, the product cannot be sold, resold, or distributed within the State before its license is renewed. The licensee shall file with the department a statement including:

- (1) The name and address of the licensee and the name and address of the person whose name will appear on the label, if other than the licensee;
- (2) The name of the pesticide;
- (3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use; and
- (4) If requested by the department, a full description of the tests made and the results thereof upon which the claims are based.

(b) The licensee shall pay a minimum fee of \$10 for each year, or fraction thereof, that the pesticide is licensed, provided that the minimum annual fee for a restricted use pesticide shall be \$30. Licensing fees may be increased from time to time by [regulations] rules and may vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed. 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.

(c) When a licensee discontinues the distribution of a pesticide which has been licensed in this State, the licensee will be required to continue licensing of this pesticide until no more remains on the retailer's shelves, or for three years after written notice to the department of the date of discontinuance; provided that the continued sale is not specifically prohibited by the department or the EPA.

[[c)] (d) The department, whenever it deems necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the department that the composition of the pesticide is [such] complete as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of section 149A-15, the department shall license the pesticide.

[(d)] (e) Notwithstanding any other provision of this chapter, licensing of a pesticide is not required in the case of a pesticide shipped from one plant within this State to another plant within this State when both plants are operated by the same person."

SECTION 6. Section 149A-14, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department may refuse to license a pesticide when it has been determined that:

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- (1) The pesticide or its labeling does not comply with this chapter or the [regulations promulgated thereunder;] rules adopted under this chapter; or
- (2) The licensee fails to comply with the licensing procedures set forth by [regulations] rules; or
- (3) The claims, representations, or other statements on the label are false or misleading; or
- (4) The proposed use would result in unreasonable adverse effect on the environment.

(b) To protect the health and environment, the department may, after hearing, cancel the license of a pesticide. [Such] This cancellation shall be made after the department has determined that the continued use of the pesticide would result in unreasonable adverse effects on the environment.”

SECTION 7. Section 149A-15, Hawaii Revised Statutes, is amended to read as follows:

“**§149A-15 Labeling requirements.** Each container of pesticides shall bear [thereon] or have attached [thereto] in a conspicuous place, a plainly written or printed label in the English language providing the following information:

- (1) Name, brand, or trademark under which the pesticide is sold or distributed;
- (2) Ingredient statement as specified by [regulations;] rules;
- (3) Direction for use which if complied with will adequately protect the health and environment;
- (4) Warning or caution statement as specified by [regulations;] rules;
- (5) Name and address of the manufacturer, registrant, or person for whom manufactured;
- (6) Weight or measure of content;
- (7) The [United States Environmental Protection Agency] EPA registration and establishment numbers; and
- (8) Any other labeling requirement as prescribed under FIFRA[, as amended].”

SECTION 8. Section 149A-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Pesticides known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate shall be distinctly colored as specified by [regulation.] rule.”

SECTION 9. Section 149A-17, Hawaii Revised Statutes, is amended to read as follows:

“**§149A-17 Sales, permit, and record.** In addition to licensing requirements applicable to pesticides, every person who sells or distributes restricted use pesticides shall obtain an annual permit from the department. Conditions, procedures, and fees for the permit shall conform to the [regulations promulgated hereunder.] rules adopted under this section.

All persons permitted to sell restricted use pesticides shall keep records of the individual sales of [such] these pesticides. Records shall be kept at the principal place of business of the permittee for a period specified by [rules and regulations] the rules and shall be available to the department on request.”

SECTION 10. Section 149A-18, Hawaii Revised Statutes, is amended to read as follows:

“§149A-18 Denial, suspension, or revocation of permit. The department may deny issuance of a permit to sell a restricted use pesticide for reasonable cause. Any permit issued pursuant to [regulations] rules adopted under section 149A-17 may be suspended or revoked by the department, after due hearing, for violation of any condition of the permit or of any law or [regulation] rule pertaining to the sale of pesticides.

Any order made by the department for the suspension or revocation of a permit shall be in writing and shall set forth the reasons for the suspension or revocation.

The action of the department in suspending or in revoking a permit may be reviewed in the manner provided by chapter 91.”

SECTION 11. Section 149A-19, Hawaii Revised Statutes, is amended to read as follows:

“§149A-19 Determination; rules [and regulations]; uniformity. (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, shall make and adopt [regulations:] rules:

- (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 use or [general] non-restricted 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 use 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].

(b) The board [shall], after public hearing, shall make and adopt appropriate rules [and regulations] for carrying out this chapter, including rules [and regulations] providing for the collection and examination of samples of pesticides or devices.

(c) The board [shall], after public hearing, shall adopt [such regulations,] rules applicable to and in conformity with the primary standards established by this chapter[,] or as prescribed by FIFRA[, as amended,] with respect to pesticides.”

SECTION 12. Section 149A-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The [chairman] chairperson or the [chairman’s] chairperson’s authorized agent may issue and enforce a written or printed “stop-sale” or

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“removal from sale” order to withhold from sale any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this chapter.”

SECTION 13. Section 149A-22, Hawaii Revised Statutes, is amended to read as follows:

“§149A-22 Authority. The board shall have authority to adopt [such rules and regulations] rules, as necessary, consistent with section 5(f) and section 24(c) of [the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended,] FIFRA, to develop and implement state programs for registration of pesticides for special local needs and issuance of experimental use permits.”

SECTION 14. Section 149A-23, Hawaii Revised Statutes, is amended to read as follows:

“§149A-23 Cooperation. The department may cooperate [with, and] or enter into agreements with[,] any other agency of the State [or the federal government,] or any agency [thereof] of the federal government for the purpose of carrying out this chapter and securing uniformity of [regulations.] rules.”

SECTION 15. Section 149A-31, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Use any [licensed] 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 that, when a pesticide is applied by a commercial applicator, the deviation from the label recommendations must 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 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 [the containers of such] pesticide container in any manner which would have unreasonable adverse [effect] 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 [regulations] rules adopted under section 149A-33(1);
- (4) Use or apply pesticides in any manner that has been suspended, canceled, or restricted pursuant to section 149A-32.5; or
- (5) Falsify any record or report required to be made or maintained by [regulations] rules adopted pursuant to this chapter.”

SECTION 16. Section 149A-32.5, Hawaii Revised Statutes, is amended to read as follows:

“[§149A-32.5] Cancellation or suspension of pesticide uses. Notwithstanding any law, rule, [regulation,] or executive order to the contrary, the chairperson of the board of agriculture, in consultation with the advisory committee on pesticides and also with the approval of the director of health, shall suspend, cancel, or restrict the use of certain pesticides or specific uses of certain pesticides when [such] the usage is [deemed] determined to have unreasonable adverse effects on the environment. In addition to other circumstances which may require a determination as to whether unreasonable adverse effects exist, a determination shall be made:

- (1) When residues of the pesticides are detected in drinking water; or
- (2) When a use under special local needs registration involves a pesticide for which any use has been suspended or canceled by the [United States Environmental Protection Agency.] EPA.”

SECTION 17. Section 149A-33, Hawaii Revised Statutes, is amended to read as follows:

“§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 use 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] effects on the environment;
- (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 18. Section 149A-34, Hawaii Revised Statutes, is amended to read as follows:

“§149A-34 Denial, suspension, or revocation of certificate. The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to [regulations] rules adopted under section 149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or [regulation] rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. The action of the department in suspending[,] or [in] revoking a certificate may be reviewed in the manner provided by chapter 91.”

SECTION 19. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Warning notice. Any person who violates this chapter or any rule [or regulation] issued [hereunder] under this section may upon the first

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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] the specific 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] the 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] the civil penalty or failure of any person to pay all[,] or such portion of [such] the civil penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover [such] the amount by action in the appropriate court."

SECTION 20. Section 149A-51, Hawaii Revised Statutes, is amended to read as follows:

"**§149A-51 Advisory committee.** There shall be an advisory committee on pesticides composed of but not limited to the [chairman,] chairperson, or the [chairman's] chairperson's designated representative, who shall head the committee and one representative each from the department of health, department of land and natural resources, University of Hawaii college of tropical agriculture and human resources, sugar industry, pineapple industry, Hawaii [farm bureau federation,] Farm Bureau Federation, pesticide industry, structural pest control industry, an environmental organization, a citizen group, and one at-large public member. Members of the advisory committee shall be appointed by the governor from a list of persons recommended by the respective agencies and industries in accordance with section 26-34. The committee shall advise and assist the department in developing or revising laws and rules to carry out and effectuate the purposes of this chapter and in advising the department in pesticide problems."

SECTION 21. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 22. This Act shall take effect upon its approval.

(Approved June 25, 1987.)