

ACT 154

H.B. NO. 2405

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 as follows:

1. By adding a new definition to be appropriately inserted and to read:

“‘‘Integrated pest management’’ means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.’’

2. By amending the definition of “pest” to read:

“Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or any other microorganism, except viruses, bacterium, or any other microorganisms on or in living humans or other living animals, which [the board declares to be a pest.] the administrator of the U.S. Environmental Protection Agency determines to be a pest pursuant to the Federal Insecticide Fungicide Rodenticide Act.’’

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

“[[§149A-13.5]] Pesticide use revolving fund; pesticide training workshops; training fee. (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); and
- (2) All fees collected by the department through the collection of training fees in accordance with subsection (c).

(b) Moneys in the pesticide use revolving fund shall be expended by the department 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 pesticide training workshops, educational programs, development of integrated pest management strategies, 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 all other pesticide services deemed necessary by the department. Moneys ~~from~~ from the revolving fund may be used for [the purchase of] 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 [done so] expended in a manner that appropriately addresses the needs of each category of pesticide user.

(c) The department may set fees for the educational services and training provided under this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

(e) [The balance in the revolving fund shall not exceed \$250,000. All amounts in excess of the \$250,000 shall be deposited to the credit of the state general fund.] All unobligated, unencumbered, or unexpended funds remaining in the fund in excess of \$250,000 at the close of each fiscal year shall lapse to the state general fund.

(f) The department shall submit an annual report to the legislature on all moneys deposited into, and disbursed from, the pesticide use revolving fund. The report shall be submitted to the legislature not fewer than twenty days prior to the convening of each regular session. The report shall group all moneys deposited into, and disbursed from, the revolving fund according to the categories established in subsections (a) to (e)."

SECTION 3. Section 149A-16, Hawaii Revised Statutes, is amended to read as follows:

"§149A-16 Coloration of certain pesticides. [(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 rule.

(b) The department may require, by rule, the distinct coloration of [other] certain pesticides [that it] as the EPA determines or, for a product registered pursuant to section 149A-19(a)(6), as the department determines to be necessary to protect [the] public health and the environment."

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

"(a) The board, 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 rules[:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances;

(2) To determine] to:

(1) Determine the pesticides [which] that are highly toxic to humans[; to], designate pesticides as restricted use or nonrestricted 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] (2) Determine standards of coloring for pesticides, and [to] subject pesticides to the requirements of section 149A-16;

[4) To establish] (3) Establish procedures, conditions, and fees for the issuance of licenses for sale of restricted use pesticides;

[5) To establish] (4) Establish fees for the licensing of pesticides within the limitations of section 149A-13(b);

- [(6) To establish] (5) Establish procedures for the licensing of pesticides;
- [(7) To establish] (6) Establish procedures for the registration of pesticides under provisions of section 24(c), FIFRA;
- [(8) To establish] (7) Establish procedures for the disposal of pesticides; and
- [(9) To establish] (8) Establish procedures to issue experimental use permits under provisions of section 5 of FIFRA.”

SECTION 5. Section 149A-37, Hawaii Revised Statutes, is amended to read as follows:

“**§149A-37 Exemptions.** (a) Exemption from this chapter may be granted by the department to the University of Hawaii and other state and federal agencies for experimental or research work directed toward obtaining knowledge of the characteristics and proper usage of unspecified or experimental pesticides. Research and experimental work conducted by private agencies with adequate research facilities may also be similarly exempted upon approval by the department. Approval [must] shall be in writing stating the specific exemptions and conditions.

(b) Any pesticide exempted by the Administrator of the EPA pursuant to title 7, United States Code, section 136w(b), shall be exempt from this chapter, if the pesticide product meets the terms and conditions of the EPA’s exemption, except for pesticides that the department has determined by rule may cause unreasonable adverse effects on the environment.”

SECTION 6. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Civil] Administrative 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] an administrative 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 relating to the use of pesticides while on property owned or rented by that person or the person’s employer, subsequent to receiving a written warning from the department or following a citation for a prior violation, may be assessed [a civil] an administrative penalty by the board of not more than \$1,000 for each offense. Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter relating to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed [a civil] an administrative penalty as provided in paragraph (1)[.];
- (3) No [civil] administrative penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the specific charge in the county of the residence of the person charged. The [civil] administrative penalty and any proposed action contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person or persons charged make a written request for a hearing. In determining the amount of penalty, the board shall consider the appropriateness of 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[.]; and

- (4) In case of inability to collect the [civil] administrative penalty or failure of any person to pay all or such portion of the [civil] administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. For any judicial proceeding to recover the administrative penalty imposed, the attorney general need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2000.

(Approved May 31, 2000.)