A BILL FOR AN ACT

RELATING TO PESTICIDES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that when used properly, pesticides can protect plants and homes from damage. However, improper use of pesticides may result in plants becoming injured; pests not being controlled; human health becoming impaired; and soil, air, and water becoming polluted.

The legislature further finds that enforcement of chapter 149A, Hawaii Revised Statutes, as well as timely and routine inspections and compliance investigations of potential pesticide misuse are crucial to protecting public health and ensuring public confidence in the State's oversight of pesticide use. In its 2016 study, entitled "Pesticide Use by Large Agribusinesses on Kauai", the Joint Fact Finding Study Group found indications of possible pesticide misuse on Kauai. The study stressed the need for more timely pesticide inspections and compliance investigations, as well as improved reporting on the results of these inspections and investigations. According to the study, the use of drift-prone pesticides should be more strictly
monitored through inspections, and proven violators should be fined.

Accordingly, the purpose of this Act is to:

(1) Require the department of agriculture to submit an annual report to the legislature detailing the scope of its pesticide inspections and compliance investigations;

(2) Require the issuance of a warning notice for first time pesticide violators; and

(3) Increase the penalties for pesticide violations.

SECTION 2. Chapter 149A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§149A- Annual report. The department shall submit an annual report to the legislature on the scope of any pesticide inspections and investigations conducted to ensure compliance with this chapter during the previous year. The report shall be organized by county and shall include, at a minimum, the following information:
(1) The number of complaints received during the previous year, including a brief description of the nature and location of each complaint;

(2) The number of compliance investigations conducted during the previous year and, for each complaint:
   (A) The department's findings and conclusions; and
   (B) The type of enforcement action taken, if any;

(3) The number of pesticide inspections conducted during the previous year and, for each inspection:
   (A) A brief description of the nature and location of the inspection; and
   (B) The outcome of the inspection, including the type of enforcement action taken, if any; and

(4) The total number and the types of violations found during the previous year, including the location of each pesticide use violation, and the active pesticide ingredient or product name involved in each pesticide use violation."

SECTION 3. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:
"(a) Warning notice. Any person who violates this chapter
or any rule issued under this chapter [may], upon the first
violation, shall be issued a written warning notice citing the
specific violation and necessary corrective action.

(b) 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 an administrative penalty by the board of not
more than [$5,000] $10,000 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 an
administrative penalty by the board of not more than
[$1,000] $5,000 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 an administrative penalty as provided in paragraph (1);

(3) No administrative penalty shall be assessed unless the person charged has been given notice and an opportunity for a hearing on the specific charge in the county of the residence of the person charged. The 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 administrative penalty or failure of any person to pay all or a portion of the 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.

(c) Criminal penalties.

(1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates [any provision of] this chapter shall be guilty of a misdemeanor and [shall on], upon conviction, shall be fined not more than [$25,000,] $35,000, or imprisoned for not more than one year, or both[―].

(2) Any private applicator or other person not included in paragraph (1) who knowingly violates [any provision of] this chapter shall be guilty of a misdemeanor and [shall on], upon conviction, shall be fined not more
than [$1,000,] $5,000, or imprisoned for not more than one year, or both[—]\

(3) Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, shall be fined not more than $10,000, or imprisoned for not more than three years, or both."

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

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

SECTION 6. This Act shall take effect on July 1, 2019.

INTRODUCED BY: __________________________

JAN 22 2019
Report Title:
HDOA; Pesticides; Inspection; Monitoring; Reporting; Fines

Description:
Requires Department of Agriculture to provide annual reports on pesticide inspection and compliance investigations. Increases fines for pesticide use violations.

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