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 there are significant risks to public health and the environment when pesticide use instructions are not followed properly, including injury to non-target sensitive plants and species; drift harms to nearby farms and gardens; health injuries to farmworkers and nearby residents; and short- and long-term contamination of the State's soils, air, and waters. Despite these risks, pesticide misuse has, and continues to, occur within the State.

In 2016 and 2017, a west Kauai agribusiness operation failed to adhere to pesticide use instructions and improperly used the neurotoxin pesticide chlorpyrifos, exposing the dangerous pesticide to farm workers and injuring their health. Although investigation by the United States Environmental Protection Agency initially proposed a pesticide fine of $4,900,000, the fine was significantly reduced to just over $500,000.
In 2018, a commercial pesticide applicator was fined $168,535 for misusing different restricted-use pesticides on Kauai. In November 2019, an agribusiness operation pled guilty and paid $10,000,000 as part of a plea agreement with the United States Environmental Protection Agency for illegally using the banned pesticide Penncap-M on Maui and Molokai.

The legislature also finds that a study entitled "Pesticide Use by Large Agribusinesses on Kaua'i", published in May 2016 by the independent Joint Fact Finding Study Group, points out the need for more timely pesticide inspections and compliance investigations, as well as better reporting on the results of pesticide inspections and investigations. According to the same study, the use of drift-prone pesticides should be more strictly monitored through inspections and proven violators should be fined.

The legislature further finds that enforcement of Hawaii's pesticide law, as well as timely and routine inspections and compliance investigations of potential misuse of pesticides, are crucial to protecting public health and ensuring public confidence in the State's oversight of pesticide use.
Therefore, it is the purpose of this Act to protect the State's residents and environment and ensure more stringent enforcement of Hawaii's pesticide law by:

(1) Requiring the department of agriculture to prepare and submit an annual report on pesticide inspection and compliance investigations; and

(2) Increasing monetary fines 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. (a) The department shall prepare and submit an annual report to the legislature no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2021, regarding the scope of pesticide inspections and compliance investigations conducted during the prior 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 prior year, including a brief description of the nature and location of each complaint;
(2) The number of compliance investigations conducted during the prior year, including the time it took from receipt of the complaint to completion of the investigation, the department's conclusion, and the type of enforcement action taken;

(3) The number of pesticide inspections conducted during the prior year, including a brief description of the nature and location of each inspection;

(4) The outcomes of pesticide inspections conducted during the prior year, including any enforcement actions taken; and

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

(b) The report shall also be made available to the public on the department's website."

SECTION 3. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

"(a) Warning notice. Any person who violates this chapter or any rule issued under this chapter [may] shall upon the first
violation 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 $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 $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 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 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 such 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 conviction 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 conviction be fined not more than [$1,000] $5,000, or imprisoned for not more than one year, or both.
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. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 7. This Act shall take effect on July 1, 2020.

INTRODUCED BY:

JAN 17 2020

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Report Title:
Pesticides; Annual Report; Fines

Description:
Requires the Department of Agriculture to prepare and submit an annual report concerning pesticide use. Increases fines for pesticide use violations.

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