

## Hawaii Pesticides Law (Chapter 149A)

### PART I. GENERAL PROVISIONS

**§149A-1 Short title.** This chapter may be cited as the "Hawaii Pesticides Law". [L 1972, c 58, pt of §1; ree L 1975, c 126, pt of §1]

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

"Active ingredient" means:

- (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 pest;
- (2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or 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; and
- (4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

"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.

"Animal" means all vertebrate and invertebrate species, including but not limited to humans and other mammals, birds, fish, and shellfish.

"Board" means board of agriculture.

"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.

"Chairperson" means chairperson of the board of agriculture.

"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.

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

"Department" means department of agriculture.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

"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 humans and other than bacteria, viruses, or other microorganisms on or living in humans or other animals); but not including equipment used for application of pesticides when sold separately therefrom.

"Environment" includes water, air, land, and all plants and humans 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.

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

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

"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 the Endangered Species Act.

"Inert ingredient" means an ingredient which is not an active ingredient.

"Ingredient statement" means:

(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

(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.

"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.

"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.

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

"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 EPA, the United States Departments of Agriculture and the Interior, the United States Department of 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.

"License" means the process of being allowed to register a pesticide product pursuant to provisions of this chapter.  
"Licensee" means a person who has been licensed to register a product pursuant to provisions of this chapter.

"Misbranded" includes any of the following:

- (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;
- (2) The pesticide is contained in a package or other container or wrapping which does not conform to the standards established by federal law;
- (3) The pesticide is an imitation or is offered for sale under the name of another pesticide;
- (4) The label does not bear the federal registration number assigned to each establishment in which it was produced;
- (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 terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (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 FIFRA are adequate to protect health and the environment;
- (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;
- (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:

(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

(B) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department;

(9) The labeling does not contain a statement of the use classification under which the product is registered;

(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:

(A) The name and address of the producer, registrant, or person for whom produced;

(B) The name, brand, or trademark under which the pesticide is sold;

(C) The net weight or measure of the content; provided that the EPA Administrator may permit reasonable variations; and

(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

(11) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label shall bear, in addition to any other matter required by this law:

(A) The skull and crossbones;

(B) The word "poison" prominently in red on a background of distinctly contrasting color; and

(C) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

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

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

"Person" means any individual, firm, corporation, association, or partnership or any organized group of persons whether incorporated or not.

"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 Administrator of the United States Environmental Protection Agency determines to be a pest pursuant to the [Federal Insecticide, Fungicide and Rodenticide Act].

"Pesticide" means:

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

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

"Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or 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.

"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.

"Producer" means any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. "Produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"Protect health and the environment" or "protection of health and the environment" means protection against unreasonable adverse effects on the environment.

"Restricted use pesticide" means:

(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

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

"Registrant" means the person registering or licensing any pesticide pursuant to this chapter.

"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.

"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 the certified applicator is not physically present at the time and place the pesticide is applied.

"Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

"Weed" means any plant which grows where not wanted. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1981, c 33, §1; am L 1985, c 131, §3; gen ch 1985; am L 1987, c 310, §1; gen ch 1993; am L 2000, c 154, §1]

#### **Revision Note**

Reference to "149A-2(28)" in definition of commercial pesticide applicator changed to "149A-2".

**§149A-3 Delegation of duties.** All authority vested in the board or chairperson by virtue of this chapter may with like force and effect be exercised by those employees of the department as the board or chairperson may from time to time designate for the purpose. [L 1972, c 58, pt of §1; ree L 1975, c 126, pt of §1; am L 1987, c 310, §2]

**§149A-4 Effect of chapter on department of health.** Nothing in this chapter shall be construed to amend or alter the functions, duties, and powers of the department of health relative to chapters 321, 322, 328, and 330. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1]

#### **PART II. PESTICIDE LICENSING AND SALE**

**§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 information pursuant to section 149A-15.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to humans, 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) 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 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 it is approved by the department to correct an improper label or labeling under section 24(c), 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 chairperson or proper officials or employees of the State or the federal government; to the courts of this State or the federal government in response to a subpoena; to physicians; or, in 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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1979, c 88, §1; am L 1980, c 232, §7; am L 1981, c 33, §2; gen ch 1985; am L 1987, c 310, §3; gen ch 1993]

**§149A-12 Exemptions.** (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 chairperson or the chairperson's duly designated officer or employee, permits 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 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 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. 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; and

(5) Any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to that pesticide and that use or possession.

(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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; gen ch 1985; am L 1987, c 310, §4]

**§149A-13 Procedure for licensing pesticides.** (a) Any pesticide which is received, used, sold, offered for sale, or distributed within this State shall be licensed by the board. 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 \$75 for each year, or fraction thereof, that the pesticide is licensed. Licensing fees may be increased or decreased from time to time by 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 up to three years. A license shall expire on December 31 of the third year. 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.

(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.

(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 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.

(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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1981, c 33, §3; am L 1985, c 243, §1; am L 1987, c 310, §5; am L 1996, c 281, §2]

**§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 the revolving fund may be used for 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 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) 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). [L 1996, c 281, §1; am L 2000, c 154, §2]

**§149A-14 Refusal, cancellation, or suspension of the license.** (a) The department may refuse to license a pesticide when it has been determined that:

(1) The pesticide or its labeling does not comply with this chapter or the rules adopted under this chapter; or

(2) The licensee fails to comply with the licensing procedures set forth by 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. 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.

(c) If the department determines that action is necessary to prevent an imminent hazard during the time required for

cancellation proceedings, the department may suspend the license of a pesticide immediately. The suspension order shall be in effect until the department issues its final order either cancelling or denying the cancellation of the license.

(d) The licensee shall be entitled to contest under chapter 91, the determinations of the department relative to refusing, cancelling, or suspending a pesticide license. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §6]

**§149A-15 Labeling requirements.** Each container of pesticides shall bear or have attached 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 rules;
- (3) Direction for use which if complied with will adequately protect the health and environment;
- (4) Warning or caution statement as specified by rules;
- (5) Name and address of the manufacturer, registrant, or person for whom manufactured;
- (6) Weight or measure of content;
- (7) The EPA registration and establishment numbers; and
- (8) Any other labeling requirement as prescribed under FIFRA. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §7]

**§149A-16 Coloration of certain pesticides.** The department may require, by rule, the distinct coloration of certain pesticides 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 public health and the environment. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §8; am L 2000, c 154, §3]

**§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 rules adopted under this section.

All persons permitted to sell restricted use pesticides shall keep records of the individual sales of these pesticides. Records shall be kept at the principal place of business of the permittee for a period specified by the rules and shall be available to the department on request. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §9]

**§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 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 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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1986, c 339, §8; am L 1987, c 310, §10]

**§149A-19 Determination; rules; uniformity.** (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 adopt rules to:

(1) Determine the pesticides that are highly toxic to humans, designate pesticides as restricted use or nonrestricted use, and establish a system of control over the distribution and use of certain pesticides and devices purchased by the consuming public;

(2) Determine standards of coloring for pesticides, and subject pesticides to the requirements of section 149A-16;

(3) Establish procedures, conditions, and fees for the issuance of licenses for sale of restricted use pesticides;

(4) Establish fees for the licensing of pesticides within the limitations of section 149A-13(b);

(5) Establish procedures for the licensing of pesticides;

(6) Establish procedures for the registration of pesticides under provisions of section 24(c), FIFRA;

(7) Establish procedures for the disposal of pesticides; and

(8) Establish procedures to issue experimental use permits under provisions of section 5 of FIFRA.

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

(c) The board, after public hearing, shall adopt rules applicable to and in conformity with the primary standards established by this chapter or as prescribed by FIFRA with respect to pesticides. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1981, c 33, §4; am L 1987, c 310, §11; gen ch 1993; am L 2000, c 154, §4]

**§149A-20 Seizures; "stop-sale" and "removal from sale" orders.** (a) Any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this chapter, may be seized. Any pesticide product or device seized hereunder shall, after entry of decree, be disposed of by destruction or sale as the court directs and the proceeds, if the pesticide product or device is sold, less legal costs, shall be paid to the general fund of the State; provided that the pesticide product or device shall not be sold contrary to this chapter; and provided that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide product or device shall not be disposed of unlawfully, the court may direct the pesticide product or device to be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(b) The chairperson or the chairperson's authorized agent may issue and enforce a written or printed "stop-sale" or "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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; gen ch 1985; am L 1987, c 310, §12]

**§149A-21 Enforcement.** (a) If it appears that a pesticide or device fails to comply with this chapter, the department may refer the facts with a copy of the results of the analysis or the examination of the pesticide product or device to the appropriate governmental agency for prosecution. A warning notice shall be issued before prosecution proceedings are initiated.

(b) The governmental agency to which any violation is reported may cause appropriate proceedings to be instituted in the appropriate court without delay if so warranted.

(c) The department shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under this chapter. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1]

**§149A-22 Authority.** The board shall have authority to adopt rules, as necessary, consistent with section 5(f) and section 24(c) of FIFRA, to develop and implement state programs for registration of pesticides for special local needs and issuance of experimental use permits. [L 1975, c 126, pt of §1; am L 1987, c 310, §13]

**§149A-23 Cooperation.** The department may cooperate or enter into agreements with any other agency of the State or any agency of the federal government for the purpose of carrying out this chapter and securing uniformity of rules. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §14]

### PART III. PESTICIDE USE

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

(1) Use any 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 pesticide container in any manner which would have unreasonable adverse 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 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;

(5) Falsify any record or report required to be made or maintained by rules adopted pursuant to this chapter; or

(6) Fill with water, through a hose, pipe or other similar transmission system, any tank, implement, apparatus, or equipment used to disperse pesticides, unless the tank, implement, apparatus, equipment, hose, pipe or other similar transmission system is equipped with an air gap or a reduced-pressure principle backflow device meeting the requirements under section 340E-2 and the rules adopted

thereunder. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1986, c 339, §9; am L 1987, c 167, §1 and c 310, §15]

**§149A-32 REPEALED.** L 1985, c 131, §2.

**§149A-32.5 Cancellation or suspension of pesticide uses.**

Notwithstanding any law, rule, 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 the usage is 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 EPA. [L 1985, c 131, §1; am L 1987, c 310, §16]

**§149A-33 Rules.** The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, 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;

(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 effects on the environment;

(4) To establish, as necessary, record keeping requirements for pesticide use by 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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1979, c 88, §2; am L 1987, c 310, §17]

**§149A-34 Denial, suspension, or revocation of certificate.**

The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to 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 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 revoking a certificate may be reviewed in the manner provided by chapter 91. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 1987, c 310, §18]

**§149A-35 Cooperation.** The department is authorized and empowered to cooperate with and enter into agreements with any agency of the State, the federal government, or any other agency for the purpose of carrying out this chapter. The University of Hawaii cooperative extension service and other educational agencies shall provide educational programs aimed at assisting users and prospective users of pesticides and shall solicit the aid of the department in providing technical assistance and advice on the authorized use of pesticides. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1]

**§149A-36 Authority to inspect.** The department or any authorized representative or employee of the department may enter upon any public or private property, according to law at any reasonable time to examine and inspect application methods and equipment, to examine and collect samples of plants, soil, and other materials, and to perform any other duty for the purpose of carrying out and effectuating the purposes of this chapter. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1]

**§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 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. [L 1972, c 58, pt of §1; am L 1975, c 126, pt of §1; am L 2000, c 154, §5]

#### **PART IV. VIOLATIONS, WARNING NOTICE, AND PENALTIES**

**§149A-41 Violations, warning notice, and penalties.** (a) Warning notice. Any person who violates this chapter or any rule issued under this chapter may 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 \$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 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 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, 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, 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.

(d) Liabilities. When construing and enforcing the provisions of this chapter, the act, omission, or failure

of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed. [L 1972, c 58, pt of §1; HRS §149A-22; ren L 1975, c 126, pt of §1; am L 1977, c 104, pt of §1; am L 1979, c 88, §3; am L 1987, c 310, §19; am L 1996, c 281, §3; am L 2000, c 154, §6]

#### **PART V. ADVISORY COMMITTEE**

**§149A-51 Advisory committee.** There shall be an advisory committee on pesticides composed of but not limited to the chairperson, or the 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, 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. [L 1972, c 58, pt of §1; HRS §149A-41; ren L 1975, c 126, pt of §1; gen ch 1985; am L 1986, c 282, §1; am L 1987, c 310, §20]

#### **Note**

Part heading amended by L 1975, c 126, pt of §1.

**§149A-52 Severability.** 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 applicability thereof to other persons and circumstances shall not be affected. [L 1972, c 58, pt of §1; HRS §149A-42; ren L 1975, c 126, pt of §1]

**§149A-53 Applicability of chapter 91.** The board shall, in the administration of this chapter, conform to the provisions of chapter 91. [L 1972, c 58, pt of §1; HRS §149A-43; ren L 1975, c 126, pt of §1]

