RELATING TO INSECTICIDES.

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

SECTION 1. Pollination by honeybees, beneficial insects, bats, and birds provide a vital role in agricultural production. One-third of food produced in North America and nearly ninety-five varieties of fruits depend on pollination by animals. Over the past several years, however, bee colony collapses and excessive bee mortality have reached record highs, with some beekeepers losing large portions of their operations and suffering reduced production of honey.

Scientists have linked the use of systemic neonicotinoid insecticides to the rapid decline of honeybees and other pollinators and to the deterioration of pollinator health. Neonicotinoid insecticides damages the central nervous system of insects, causing tremors, paralysis, and death.

Neonicotinoid insecticides also cause sub-lethal effects, including impaired foraging and feeding behavior, disorientation, weakened immunity, delayed larval development, and increased susceptibility to viruses, diseases, and
parasites. Neonicotinoid insecticides are systemic, meaning they are absorbed into treated plants and distributed throughout their vascular systems. As a result, treating a plant or coating a seed with a neonicotinoid insecticide can render many parts of the plant toxic to insects, including the roots, leaves, stems, flowers, nectar, pollen, and guttation fluid. Neonicotinoid insecticides are also persistent in soil and are easily transported through air, dust, and water.

Neonicotinoids have also been found to kill or weaken beneficial invertebrates, birds, and other wildlife, through direct and indirect effects. Scientists have also found that seed coatings containing neonicotinoid insecticide are harmful to birds. Recent scientific study has demonstrated that consumption of a single corn kernel coated with neonicotinoid insecticide is toxic enough to kill a medium-sized songbird. Environmental contaminations by neonicotinoid insecticides harm honeybees, beneficial insects, birds, bats, and other pollinators.

In 2013, the European Union voted to suspend use of three major neonicotinoid insecticides, imidacloprid, clothianidin, and thiamethoxam, on certain agricultural crops pending a review
of their safety. Other states, including New York, have restricted the use of some neonicotinoid insecticides because of their risks. In 2014, the United States Fish and Wildlife Service announced that it would phase out uses of neonicotinoid insecticides on all national wildlife refuges, including those in Hawaii, by January 2016, due to their harmful effects on wildlife.

The purposes of this Act are to protect Hawaii's honeybees, insects, bats, birds, and other pollinators from exposure to neonicotinoid insecticides and to defend and protect Hawaii's agricultural economy and natural ecosystems.

This Act shall be liberally construed to fulfill these purposes.

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

"§149A- County authority. Any county may adopt a rule or ordinance that places stricter limitations on the use of neonicotinoid insecticides than those placed by this chapter or rules adopted under it. In the case of a conflict between the requirements or limitations of this chapter and any county rule..."
or ordinance regarding the use of neonicotinoid insecticides, the more restrictive requirements shall apply."

SECTION 3. Section 149A-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Neonicotinoid insecticide" means any systemic pesticide with a common mode of action that affects the central nervous system of insects containing any of the following active ingredients: acetamiprid, clothianidin, dinotefuran, imidacloprid, thiacloprid, thiamethoxam and other new ingredients as may be identified by rule adopted by the department pursuant to chapter 91."

SECTION 4. Section 149A-31, Hawaii Revised Statutes, is amended to read as follows:

§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); provided that it shall be prohibited to use or apply a restricted use pesticide for structural pest control uses for a fee or trading of services, unless the user or applicator is a pest control operator or is employed by a pest control operator licensed under chapter 460J;

(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;

(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; or

(7) After June 30, 2017, apply any neonicotinoid insecticide without a license issued by the State or any agency of the federal government to conduct neonicotinoid insecticide research:

(A) On any public land owned or maintained by the State;

(B) In any outdoor agricultural production, including planting any seeds coated with neonicotinoid insecticides; or

(C) In any outdoor setting, including landscaping, ornamental, or other outdoor applications.

SECTION 5. Section 149A-41, Hawaii Revised Statutes, is amended to read as follows:

"§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) Any injured person may, after giving notice of the alleged violation to the attorney general and the alleged violator, may bring a civil action no sooner than sixty days after the notice to enjoin a violation of section 149A-31(7) by any person in any court of competent jurisdiction. The court may award to a prevailing plaintiff reasonable attorneys' fees and costs incurred, provided that the court may not award other monetary damages.

(e) 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."

SECTION 6. By July 1, 2017, the chairperson shall issue a preliminary report evaluating whether clear, peer-reviewed, published scientific evidence exists that outdoor application of
neonicotinoid insecticides is safe for honeybees, other
pollinators, other beneficial insects, the broader environment,
and human health.

The public, including all interested entities, shall then
be allowed to comment on the preliminary report.

No later than twenty days prior to the regular legislative
session of 2018, and after considering the public comments and
any other relevant information, the chairperson shall submit a
final report to the legislature.

SECTION 7. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 8. 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 9. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.
SECTION 10. This Act shall take effect on July 1, 2016; provided that the department of agriculture may extend the effective date of sections 2 to 5 for up to one year by rule adopted pursuant to chapter 91, Hawaii Revised Statutes.

INTRODUCED BY: [Signature]

JAN 21 2016
Report Title:
Neonicotinoid Insecticide; Pesticides; Agriculture

Description:
Prohibits application of neonicotinoid insecticides to protect honeybees and other pollinating animals.

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