

JAN 17 2014

A BILL FOR AN ACT

RELATING TO PESTICIDES.

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

1 SECTION 1. The purpose of this Act is to require
2 disclosure of pesticide use and to provide for pesticide buffer
3 zones.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 **"§321- Mandatory disclosure of pesticides; pesticide**
8 **buffer zones; penalties; citizen suits.** (a) Beginning
9 January 1, 2015, it shall be mandatory for all commercial
10 agricultural entities that purchase or use in excess of a total
11 of five pounds or fifteen gallons of restricted use pesticides
12 in any single county in the current year or in the previous
13 year, or any amount of any experimental use pesticides, or both,
14 for application on production agricultural areas or non-
15 production agricultural areas, or both, to abide by the
16 following disclosure requirements regarding the uses of all
17 pesticides, whether restricted use, general use, or experimental
18 use pesticides, during the same calendar year:



1 (1) The commercial agricultural entities shall publicly
2 post signs in the area in which pesticides are to be
3 applied, for:~

4 (A) A minimum of seventy-two hours prior to
5 application of any pesticide; and

6 (B) Either a minimum of seventy-two hours or the
7 duration of the restricted-entry interval listed
8 on the pesticide's label, whichever is longer,
9 after the application of the pesticide;

10 (2) The public posting shall include the following
11 information:

12 (A) The pesticide's federal and state registration or
13 permit number, commercial product name, and
14 active ingredient;

15 (B) The total quantities of application; and

16 (C) A general description of the geographic location
17 and area size where the pesticides were used;

18 (3) Within twenty-four hours of receiving a written
19 request, the information disclosed pursuant to this
20 subsection shall be provided to any requesting
21 property owner, lessee, or person otherwise occupying
22 any property within 1,500 feet of the property where



1 the pesticide was applied, or anticipated to be
2 applied; and

3 (4) Annual public reports of all pesticides used during
4 each calendar year shall be provided to the department
5 of health and department of agriculture and shall be
6 posted online on each respective agencies' website.

7 Direct notification to the department of health and
8 department of agriculture documenting such disclosure
9 shall occur no later than sixty days following the end
10 of each calendar year. The report shall include, for
11 each pesticide used during the calendar year:

12 (A) The pesticide's federal and state registration or
13 permit numbers, commercial product name, and
14 active ingredient;

15 (B) The total quantities used for the reporting
16 calendar year; and

17 (C) A general description of the geographic locations
18 and area sizes where the pesticide was used.

19 (b) Starting on January 1, 2016, it shall be mandatory for
20 all commercial agricultural entities that purchase or use in
21 excess of a total of five pounds or fifteen gallons of
22 restricted use pesticides in any single county in the current



1 year or in the previous year, or any amount of any experimental
2 use pesticides, or both, on production agricultural areas or
3 non-production agricultural areas, or both, to restrict the
4 application of all pesticides, whether restricted use, general
5 use, or experimental use, in the following areas:

6 (1) No pesticide of any kind, whether restricted use,
7 general use, or experimental use, shall be used within
8 1,000 feet of any school, child care institution,
9 nursing facility, hospital, psychiatric hospital,
10 residential property, or park, or within 500 feet of
11 any state or county roads; and

12 (2) No pesticide of any kind, whether restricted use,
13 general use, or experimental use, may be used within
14 500 feet of any perennial water, wetland adjacent to
15 perennial water, tributaries of perennial water,
16 watershed, or shoreline; provided that this paragraph
17 shall not apply to any irrigation ditch or drainage
18 canal that does not flow directly to the ocean.

19 (c) If this section, or any part thereof, is determined to
20 conflict with any information contained in the labels of such
21 pesticides, whether restricted use, general use, or experimental



1 use, the more restrictive and environmentally protective
2 provisions shall apply.

3 (d) Beginning January 1, 2015, the department of health
4 shall bring an action in a court of competent jurisdiction to
5 enjoin any person or entity from violating this section.

6 (e) Beginning January 1, 2015, the department of health
7 shall assess a civil monetary penalty against any person or
8 entity violating this section in the amount of:

9 (1) \$10,000 for a first violation;

10 (2) \$15,000 for a second violation; or

11 (3) \$25,000 for a third or subsequent violation.

12 In assessing penalties, each day of violation shall be
13 considered a separate violation.

14 (f) Beginning January 1, 2015, any injured citizen of the
15 State who acts in the public interest, after giving notice of
16 the alleged violation to the department of health and the
17 alleged violator and subsequently waiting at least sixty days,
18 may bring an action to enjoin violation of this section in any
19 court of competent jurisdiction.

20 (g) In a citizen suit action pursuant to subsection (f),
21 the court shall award to a prevailing plaintiff reasonable costs
22 and attorneys' fees incurred in investigating and prosecuting an



1 action to enforce this section. Such an award may not include
2 monetary damages, but only fee and cost recovery.

3 (h) In order to effectuate all provisions of this section,
4 the department of health shall adopt rules pursuant to chapter
5 91 that it deems necessary or proper, but the department shall
6 not create any new exemption not listed in this section.

7 (i) Nothing in this section shall be construed to prohibit
8 or preempt the authority of a unit of local government to
9 regulate standards for disclosure of pesticide use or buffer
10 zones restricting, limiting, or prohibiting pesticide use in a
11 manner that is equivalent to or more stringent than the
12 provisions contained in this section.

13 (j) For the purposes of this section:

14 "Active ingredient" means:

15 (1) In the case of a pesticide other than a plant
16 regulator, defoliant, desiccant, or nitrogen
17 stabilizer, an ingredient that will prevent, destroy,
18 repel, or mitigate any pest;

19 (2) In the case of a plant regulator, an ingredient that,
20 through physiological action, will accelerate or
21 retard the rate of growth or rate of maturation, or



1 otherwise alter the behavior of ornamental or crop
2 plants or the product thereof;

3 (3) In the case of a defoliant, an ingredient that will
4 cause the leaves or foliage to drop from a plant;

5 (4) In the case of a desiccant, an ingredient that will
6 artificially accelerate the drying of plant tissue;
7 and

8 (5) In the case of a nitrogen stabilizer, an ingredient
9 that will prevent or hinder the process of
10 nitrification, denitrification, ammonia
11 volatilization, or urease production through action
12 affecting soil bacteria.

13 "Agricultural production" means production of any of the
14 following for commercial sale:

15 (1) Any crop, timber, or fruit trees;

16 (2) Any farm livestock, poultry, and fish; and

17 (3) Bees and apiary products.

18 "Child care institution" means a private child care
19 institution or a public child care institution that accommodates
20 no more than twenty-five children and is licensed by the State
21 or has been approved by the department of human services as
22 meeting the standards established for such licensing. The term



1 includes detention facilities, forestry camps, training schools,
2 or any other facility operated primarily for the detention of
3 children who are determined to be delinquent.

4 "Commercial agricultural entity" means any individual,
5 partnership, association, corporation, limited liability
6 company, or any organized group of persons, whether incorporated
7 or not, that is engaged in agricultural production.

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

11 "Desiccant" means any substance or mixture of substances
12 intended for artificially accelerating the drying of plant
13 tissue.

14 "Experimental use pesticide" means a pesticide whose use is
15 authorized under an experimental use permit by either the United
16 States Environmental Protection Agency or the department of
17 agriculture.

18 "General use pesticide" means a pesticide other than one
19 designated as a restricted use pesticide or an experimental use
20 pesticide.

21 "Nitrogen stabilizer" means any substance or mixture of
22 substances intended for preventing or hindering the process of



1 nitrification, denitrification, ammonia volatilization, or
2 urease production through action upon soil bacteria, excluding:

- 3 (1) Dicyandiamide;
- 4 (2) Ammonium thiosulfate; or
- 5 (3) Any substance or mixture of substances that was not
6 registered pursuant to section 3 of the Federal
7 Insecticide, Fungicide, and Rodenticide Act prior to
8 January 1, 1992, and that was in commercial agronomic
9 use prior to January 1, 1992, with respect to which
10 after January 1, 1992, the distributor or seller of
11 the substance or mixture has made no specific claim of
12 prevention or hindering of the process of
13 nitrification, denitrification, ammonia volatilization
14 urease production regardless of the actual use or
15 purpose for, or future use or purpose for, the
16 substance of mixture.

17 "Non-production agricultural area" means areas including
18 but not limited to woodland, wasteland, watersheds, landscaped
19 areas, and pastured lands that are held and operated in
20 conjunction with real properties utilized for the production of
21 agricultural products.

1 "Nursing facility" means as an institution or a distinct
2 part of an institution that is primarily engaged in providing
3 skilled nursing care and related services for residents who
4 require medical or nursing care, rehabilitation services for the
5 rehabilitation of injured, disabled, or sick persons, or on a
6 regular basis, health-related care and services to individuals
7 who because of their mental or physical condition require care
8 and services above the level of room and board that can be made
9 available to them only through institutional facilities. The
10 term "nursing facility" includes an institution that is
11 primarily engaged in the care and treatment of mental diseases.

12 "Perennial water" means a natural body of water or waterway
13 that has continuous ebb and flow in parts of its bed year round
14 during years of normal rainfall, including lakes, rivers,
15 streams, and ponds.

16 "Pest" means:

- 17 (1) Any insect, rodent, nematode, fungus, weed; or
18 (2) Any other form of terrestrial or aquatic plant or
19 animal life or virus, bacteria, or other micro-
20 organism, except viruses, bacteria, or other micro-
21 organisms on or in living humans or other living



1 animals, that has been declared a pest under the
2 Federal Insecticide, Fungicide, and Rodenticide Act.

3 "Pesticide" means:

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

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

9 (3) Any nitrogen stabilizer that has been declared a
10 pesticide under the Federal Insecticide, Fungicide,
11 and Rodenticide Act.

12 "Plant regulator" means any substance or mixture of
13 substances intended, through physiological action, for
14 accelerating or retarding the rate of growth or rate of
15 maturation, or for otherwise altering the behavior of plants or
16 the produce thereof, but shall not include substances to the
17 extent that they are intended as plant nutrients, trace
18 elements, nutritional chemicals, plant inoculants, and soil
19 amendments. The term "plant regulator" shall not include any
20 nutrient mixtures or soil amendments commonly known as vitamin-
21 hormone horticultural products that are intended for
22 improvement, maintenance, survival, health, and propagation of



1 plants, are not intended for pest destruction, and are nontoxic
2 and nonpoisonous in the undiluted packaged concentration.

3 "Production agricultural area" means real properties
4 involved in the production of an agricultural product.

5 "Restricted-entry interval" means the time after the end of
6 a pesticide application during which entry into the treated area
7 is restricted, as contained within the Worker Protection
8 Standard for Agricultural Pesticides regulation established by
9 the United States Environmental Protection Agency, and specified
10 on all agricultural plant pesticide product labels.

11 "Watershed" means an area of land where all of the water
12 that is under it or drains off of it goes into the same place."

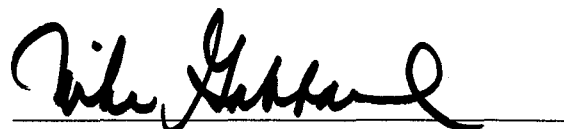
13 SECTION 3. If any provision of this Act, or the
14 application thereof to any person, commercial agricultural
15 entity, or circumstance, is held invalid, the invalidity does
16 not affect other provisions or applications of the Act that can
17 be given effect without the invalid provision or application,
18 and to this end the provisions of this Act are severable.

19 SECTION 4. New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval.

21

INTRODUCED BY:





S.B. NO. 2649

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S.B. NO. 2649

Report Title:

Pesticide Disclosure; Pesticide Buffer Zones

Description:

Requires any agricultural entity that uses more than five pounds or fifteen gallons of restricted pesticide per county per year to disclose pesticide use beginning 1/1/2015. Creates pesticide buffer zones that restrict the use of pesticides near certain structures and institutions beginning 1/1/2016.

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