

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PESTICIDES.

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

1 SECTION 1. The legislature finds that the extensive use of
2 pesticides in Hawaii threatens the stability and growth of
3 Hawaii's agricultural economy, the health of its citizens, and
4 the overall environment. The people of Hawaii have the right to
5 know what pesticides are being used on a significant scale
6 within Hawaii. For multiple economic, environmental, health,
7 and cultural reasons, residents of Hawaii find that information
8 regarding the use of pesticides should be disclosed to the
9 public.

10 The legislature further finds that agriculture is a vital
11 component of Hawaii's economy. Nonetheless, Hawaii has become a
12 location of increasing commercial agricultural operations that
13 use extremely high volumes of pesticides on their fields.
14 Residents of Hawaii have no choice but to live, work, and
15 commute in close proximity to areas where pesticides are being
16 sprayed. Residents of Hawaii are growing increasingly concerned
17 about the direct and long-term impacts of the large-scale use of



1 pesticides on the land, on the natural environment, and on their
2 health.

3 Many pesticides used in Hawaii are known to be toxic to
4 humans, animals, bees, and other insects. Many of these
5 pesticides are known to contaminate groundwater or persist in
6 the environment. Some of the pesticides used in Hawaii are
7 banned in other states across the nation and in many countries.
8 Pesticide-laden dust and drift from restricted use pesticides
9 and general use pesticides are inevitable and result in long-
10 term exposure to toxic chemicals that are harmful to Hawaii's
11 residents, wildlife, and endangered species, and are sources of
12 pollution to the natural environment of Hawaii. Currently,
13 information pertaining to the intensive use of pesticides within
14 Hawaii is not readily disclosed, and the public is unable to
15 evaluate the full extent of negative impacts accruing to the
16 residents and environment.

17 The purpose of this Act is to:

- 18 (1) Inform the residents of Hawaii of pesticides used
19 within their community;
- 20 (2) Protect Hawaii from pesticide use; and



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(3) Preserve the right of Hawaii residents to avoid pesticide exposure because of health or other concerns.

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

"§149A- Mandatory disclosure of pesticides. Any commercial agricultural entity that purchases or uses more than five pounds or fifteen gallons of restricted use pesticides annually, or any amount of experimental pesticides, shall abide by the following disclosure requirements regarding the uses of all pesticides:

- (1) Publicly post signs in the area in which pesticides are to be applied at least seventy-two hours prior to application of any pesticide. The signs shall remain posted for at least seventy-two hours or the duration of the restricted-entry interval listed on the pesticide's label, whichever is longer, after the application of the pesticide. The signs shall include the following information:

- 1 (A) The pesticide's federal and state registration or
- 2 permit numbers, commercial product name, and
- 3 active ingredients;
- 4 (B) The total quantities to be applied; and
- 5 (C) A general description of the geographic location
- 6 and area size where the pesticides will be used;
- 7 (2) Within twenty-four hours of receiving a written
- 8 request, provide the information disclosed in
- 9 subsection (a) to any requesting property owner,
- 10 lessee, or person otherwise occupying any property
- 11 within five miles of the property where the pesticide
- 12 was applied, or is anticipated to be applied; and
- 13 (3) Provide annual public reports of all pesticides used
- 14 during each calendar year to the department to be
- 15 posted online on the department's website. Direct
- 16 notification to the department documenting such
- 17 disclosure shall occur no later than sixty days
- 18 following the end of each calendar year. The report
- 19 shall include, for each pesticide used during the
- 20 calendar year:



- 1 (A) The pesticide's federal and state registration or
2 permit numbers, commercial product name, and
3 active ingredients;
- 4 (B) The total quantities used for the reporting
5 calendar year; and
- 6 (C) A general description of the geographic locations
7 and area sizes where the pesticide was used."

8 SECTION 3. Chapter 149A, Hawaii Revised Statutes, is
9 amended by adding a new section to part III to be appropriately
10 designated and to read as follows:

11 "§149A- Pesticide buffer zones; commercial agricultural
12 entities. Beginning July 1, 2015, no commercial agricultural
13 entity that purchases or uses more than five pounds or fifteen
14 gallons of restricted use pesticides annually, or any amount of
15 experimental pesticides, shall use pesticides of any kind within
16 five hundred feet of any school, child care institution, nursing
17 facility, hospital, psychiatric hospital, residential property,
18 public roadway, perennial water, wetland adjacent to perennial
19 water, tributaries of perennial water, watershed, or shoreline."

20 SECTION 4. Section 149A-2, Hawaii Revised Statutes, is
21 amended by adding a new definition to be appropriately inserted
22 and to read as follows:



1 "Commercial agricultural entity" means any individual,
2 partnership, association, corporation, limited liability
3 company, or organized group of persons, whether incorporated or
4 not, that is engaged in the business of producing any crop,
5 timber, fruit trees, farm livestock, poultry, fish, bees, or
6 apiary products for commercial sale."

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

9 **"§149A-41 Violations, warning notice, and penalties. (a)**

10 Warning notice. Any person who violates this chapter or any
11 rule issued under this chapter may upon the first violation be
12 issued a written warning notice citing the specific violation
13 and necessary corrective action.

14 (b) Administrative penalties.

15 (1) In general, any registrant, commercial applicator,
16 wholesaler, dealer, retailer, or other distributor who
17 violates any provision of this chapter may be assessed
18 an administrative penalty by the board of not more
19 than \$5,000 for each offense;

20 (2) Any private applicator or other person not included in
21 paragraph (1) who violates any provision of this
22 chapter relating to the use of pesticides while on



1 property owned or rented by that person or the
2 person's employer, subsequent to receiving a written
3 warning from the department or following a citation
4 for a prior violation, may be assessed an
5 administrative penalty by the board of not more than
6 \$1,000 for each offense. Any private applicator or
7 other person not included in paragraph (1) who
8 violates any provision of this chapter relating to
9 licensing, transport, sale, distribution, or
10 application of a pesticide for commercial purposes may
11 be assessed an administrative penalty as provided in
12 paragraph (1);

13 (3) No administrative penalty shall be assessed unless the
14 person charged shall have been given notice and an
15 opportunity for a hearing on the specific charge in
16 the county of the residence of the person charged.
17 The administrative penalty and any proposed action
18 contained in the notice of finding of violation shall
19 become a final order unless, within twenty days of
20 receipt of the notice, the person or persons charged
21 make a written request for a hearing. In determining
22 the amount of penalty, the board shall consider the

1 appropriateness of the penalty to the size of the
2 business of the person charged, the effect on the
3 person's ability to continue business, and the gravity
4 of the violation; and

5 (4) In case of inability to collect the administrative
6 penalty or failure of any person to pay all or such
7 portion of the administrative penalty as the board may
8 determine, the board shall refer the matter to the
9 attorney general, who shall recover the amount by
10 action in the appropriate court. For any judicial
11 proceeding to recover the administrative penalty
12 imposed, the attorney general need only show that
13 notice was given, a hearing was held or the time
14 granted for requesting a hearing has expired without
15 such a request, the administrative penalty was
16 imposed, and that the penalty remains unpaid.

17 (c) Criminal penalties.

18 (1) In general, any registrant, commercial applicator,
19 wholesaler, dealer, retailer, or other distributor who
20 knowingly violates any provision of this chapter shall
21 be guilty of a misdemeanor and shall on conviction be



1 fined not more than \$25,000, or imprisoned for not
2 more than one year, or both.

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

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

14 (d) Private right of action. Any injured individual who
15 acts in the public interest may, after giving notice of the
16 alleged violation to the department and the alleged violators
17 and waiting sixty days, bring an action to enjoin any violation
18 of this chapter in any court of competent jurisdiction. The
19 court may award to the prevailing party reasonable costs and
20 attorneys' fees.

21 [~~d~~] (e) Liabilities. When construing and enforcing the
22 provisions of this chapter, the act, omission, or failure of any



1 officer, agent, or other person acting for or employed by any
2 person shall in every case be also deemed to be the act,
3 omission, or failure of such person as well as that of the
4 person employed."

5 SECTION 6. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect on July 1, 2014.

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S.B. NO. 3068

Report Title:

Pesticides; Buffer Zones; Disclosure Requirements

Description:

Requires commercial agricultural entities to publicly post signs in areas where pesticides are to be applied; disclose pesticide information upon request of any individual who occupies a property within five miles of the property to be treated; and provide annual reports to the department of agriculture that shall be posted on the department's website. Prohibits a commercial agricultural entity from using pesticides within five hundred feet of any school, child care institution, nursing facility, hospital, psychiatric hospital, residential property, public roadway, perennial water, wetland adjacent to perennial water, tributaries of perennial water, watershed, or shoreline. Creates a private right of action for violations of state pesticide law.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

