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## A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1           SECTION 1. The legislature finds that the number of large-  
2 scale, outdoor commercial agricultural operations in Hawaii has  
3 been increasing. Unlike the majority of Hawaii's farmers, these  
4 operations regularly apply high volumes of restricted use  
5 pesticides into the environment. The legislature also finds  
6 that information pertaining to the intensive use of pesticides  
7 in large-scale commercial agriculture within the State is not  
8 readily available to the public. Thus, the public is unable to  
9 evaluate the full extent of any impacts accruing to Hawaii's  
10 environment or its residents and to decide whether the risks  
11 associated with the large-scale use of pesticides is acceptable.

12           The legislature further finds that the State currently does  
13 not have an adequate regulatory structure in place to monitor  
14 the human health impacts of pesticide drift near sensitive  
15 populations. Moreover, the direct, indirect, and cumulative  
16 impacts on the environment and public health related to long-



1 term intensive commercial use of pesticides has yet to be  
2 properly or independently evaluated.

3       The legislature also finds that the United States  
4 Environmental Protection Agency classifies pesticides as  
5 restricted use pesticides if they are determined to cause  
6 "unreasonable adverse effects on the environment" when used  
7 "without additional regulatory restrictions." Pesticides may  
8 volatilize, or change from a solid or liquid state into a vapor  
9 state, into the lower atmosphere for days, weeks, or months  
10 after the application. Accordingly, drift from restricted use  
11 pesticides may have lingering effects on the environment long  
12 after the initial exposure.

13       The legislature finds that children, the elderly, and other  
14 sensitive residents have no choice but to live, work, and  
15 commute daily in close proximity to areas where restricted use  
16 pesticides are being sprayed. Children can be exposed to  
17 pesticides applied on school grounds, pesticides that drift onto  
18 school grounds, or pesticide residues. Of greatest concern are  
19 restricted use pesticides such as chlorpyrifos, which scientists  
20 have definitively linked to developmental delays in children,  
21 and other toxic exposure to pesticides during fetal, neonatal,



1 and infant life that may disrupt critical development processes.  
2 Life-long pesticide exposure for those living in exposed areas  
3 has been linked to long-term health effects, including cancer  
4 and other serious diseases, decreased cognitive function, and  
5 behavioral problems.

6 The purpose of this Act is to protect the State's  
7 environment and residents from the unintended impacts of large-  
8 scale pesticide use by establishing:

- 9 (1) Disclosure requirements for outdoor applications of  
10 pesticides in proximity to schools, childcare  
11 facilities, and certain commercial agricultural  
12 entities; and  
13 (2) Pesticide buffer zones for sensitive areas.

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

17 "PART . DISCLOSURE AND BUFFER ZONES

18 §149A-A Definitions. As used in this part:

19 "Adult residential care home" means an adult residential  
20 care home as defined in section 321-15.1 that is licensed by the  
21 State.



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1 "Ahupuaa" shall have the same meaning as in section 226-2.

2 "Assisted living facility" means an assisted living  
3 facility as defined in section 321-15.1 that is licensed by the  
4 State.

5 "Child care facility" means child care facility as defined  
6 in section 346-151 that is licensed by the State.

7 "Commercial agricultural entity" means any individual,  
8 partnership, association, corporation, limited liability  
9 company, or organized group of persons, regardless of whether  
10 incorporated, that is engaged in commercial agricultural  
11 production.

12 "Commercial agricultural production" means:

13 (1) Commercial production of any seed, crop, plant,  
14 timber, livestock, poultry, fish, bees, or apiary  
15 products; or

16 (2) Testing or experimental production of any seed, crop,  
17 plant, timber, livestock, poultry, fish, bees, or  
18 apiary products.

19 "Commercial agricultural production area" means real  
20 properties and areas owned, leased, or otherwise operated or



1 controlled and used by a commercial agricultural entity for  
2 commercial agricultural production.

3 "Early childhood education and care facility" means any  
4 property licensed by the State for the care and instruction of  
5 children from birth to age five.

6 "Expanded adult residential care home" means an expanded  
7 adult residential care home as defined in section 321-15.1 that  
8 is licensed by the State.

9 "Experimental use pesticide" means a pesticide whose use is  
10 authorized by an experimental use permit by either the EPA or  
11 the department.

12 "Extended care adult residential care home" shall have the  
13 same meaning as in section 323D-2.

14 "Family child care home" means a family child care home as  
15 defined in section 346-151 that is licensed by the State.

16 "Group child care center" means a group child care center  
17 as defined in section 346-151 that is licensed by the State.

18 "Group child care home" means a group child care home as  
19 defined in section 346-151 that is licensed by the State.

20 "Health" includes physical and mental health.



1 "Hospice home" shall have the same meaning as in section  
2 321-15.1.

3 "Hospital" includes all hospitals licensed pursuant to  
4 section 321-14.5.

5 "Non-agricultural production area" means any area held and  
6 operated by a commercial agricultural entity in conjunction with  
7 real properties and areas utilized for commercial agricultural  
8 production.

9 "Outdoor application" means an application of a pesticide  
10 made outside of a building or enclosed structure. The term  
11 excludes:

12 (1) Indoor applications of pesticides; and

13 (2) Structural or termite application of pesticides,  
14 whether the applications are applied in or outside of a building  
15 or enclosed structure.

16 "Primary care clinic" means a primary care clinic as  
17 defined in section 323D-2 that is licensed by the State.

18 "School" means an academic institution, including early  
19 education, public schools, department schools, and charter  
20 schools, as those terms are defined in section 302A-101, and  
21 private schools licensed by the State. The term does not



1 include institutions of higher education, as defined in section  
2 346-16.

3 "School grounds" means:

- 4 (1) Land associated with any school, child care facility,  
5 early childhood education and care facility, family  
6 child care home, group child care center, or group  
7 child care home, including playgrounds, athletic  
8 fields, and agricultural fields used by students or  
9 staff of these entities, and
- 10 (2) Any other outdoor area used by students or staff of a  
11 school that is under the control or operation of any  
12 school, child care facility, early childhood education  
13 and care facility, family child care home, group child  
14 care center, or group child care home.

15 "Sensitive area" includes any:

- 16 (1) School, hospital, adult residential care home,  
17 assisted living facility, child care facility, family  
18 child care home, group child care center, group child  
19 care home, hospice home, extended care adult  
20 residential care home, expanded adult residential care



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1 home, health care facility, and primary care clinic;  
2 and

3 (2) Shoreline, watershed, and bodies of perennial waters.

4 "Shoreline" shall have the same meaning as in section 205A-  
5 1.

6 "Surface water" shall have the same meaning as in section  
7 174C-3.

8 "Watershed" means an area:

9 (1) From which the domestic water supply of any city,  
10 town, or community is or may be obtained; or

11 (2) Where water infiltrates into artesian or other ground-  
12 water areas from which the domestic water supply of  
13 any city, town, or community is or may be obtained,  
14 as determined by the department of land and natural resources  
15 pursuant to section 183-31.

16 **§149A-B Mandatory disclosure and notification of outdoor**  
17 **pesticide use on affected grounds.** Effective one year following  
18 the effective date of this Act, any school, child care facility,  
19 early childhood education and care facility, family child care  
20 home, group child care center, and group child care home that  
21 uses or purchases in excess of pounds or gallons





1 of restricted use pesticides during the prior calendar year  
2 shall disclose the use of all pesticides, including restricted  
3 use, general use, and experimental use pesticides, as follows:

4 (1) Public posting of pesticide outdoor application. At a  
5 minimum of twenty-four hours prior to the outdoor  
6 application of any pesticide on affected grounds, each  
7 entity subject to this section shall post public  
8 warning signs in the area in which pesticides are to  
9 be applied, in the manner prescribed by section 149A-  
10 D.

11 (2) Notification to parents and guardians. At a minimum  
12 of twenty-four hours prior to the outdoor application  
13 of any pesticide on affected grounds, each entity  
14 subject to this section shall provide written  
15 notification to the parents or guardians of children  
16 attending the school, child care facility, early  
17 childhood education and care facility, family child  
18 care home, group child care center, or group child  
19 care home, as the case may be, in the manner  
20 prescribed by section 149A-D.



1           (3) Recordkeeping and annual public disclosure. No later  
2           than sixty days following the end of each calendar  
3           year, each entity subject to this section shall  
4           provide to the department annual public reports of all  
5           pesticides used in outdoor applications during the  
6           preceding calendar year. The annual reports shall  
7           comply with the requirements of section 149A-E.

8           **§149A-C Mandatory disclosure and notification of**  
9           **commercial agricultural pesticide use.** Effective one year  
10          following the enactment of this Act, any commercial agricultural  
11          entity that annually purchases or uses in excess of           pounds  
12          or           gallons of restricted use pesticides during the prior  
13          calendar year shall disclose the use of all pesticides,  
14          including restricted use, general use, and experimental use  
15          pesticides, as follows:

16          (1) Public posting of pesticide outdoor application. At a  
17          minimum of twenty-four hours prior to the outdoor  
18          application of any pesticide, any commercial  
19          agricultural entity subject to this section shall post  
20          public warning signs in the area in which pesticides



1 are to be applied, in the manner prescribed by section  
2 149A-D.

3 (2) Notification to occupants and residents of sensitive  
4 areas. At a minimum of twenty-four hours prior to the  
5 outdoor application of any pesticide, any commercial  
6 agricultural entity subject to this section shall  
7 provide written notification to any sensitive area and  
8 any property owner, lessee, or person otherwise  
9 occupying any residential property within feet  
10 of the property line of the commercial agricultural  
11 entity where any pesticide is anticipated to be  
12 applied outdoors, in the manner prescribed by section  
13 149A-D.

14 (3) Recordkeeping and annual public disclosure. No later  
15 than sixty days following the end of each calendar  
16 year, each commercial agricultural entity subject to  
17 this section shall provide to the department annual  
18 reports of all pesticides used in outdoor applications  
19 during the preceding calendar year. The annual  
20 reports shall comply with section 149A-E and shall be



1 public records and posted online on the department's  
2 website.

3 §149A-D Public warning signs; written notifications;  
4 contents. (a) Any public warning sign required to be posted  
5 under section 149A-B or 149A-C shall remain posted during the  
6 outdoor application of any pesticide and until expiration of the  
7 applicable restricted-entry interval established by the EPA for  
8 the particular pesticide. The posting of a warning sign during  
9 and after the outdoor application of any pesticide shall conform  
10 to the worker protection standard established by the EPA.

11 (b) The department shall adopt rules pursuant to chapter  
12 91 requiring that all warning signs posted, and written  
13 notifications provided, under section 149A-B or 149A-C include  
14 the following information:

- 15 (1) The trade name of the pesticides to be applied;
- 16 (2) The name of the active ingredients of the pesticides  
17 to be applied;
- 18 (3) The potential hazards to humans and domestic animals,  
19 as listed in the precautionary statements of the  
20 pesticide's label;



- 1           (4) Emergency telephone numbers to call in case of
- 2                    poisoning from the pesticides; and
- 3           (5) Any other related information the department deems
- 4                    appropriate.

5           **§149A-E Public reports; contents.** The department shall

6 adopt rules, pursuant to chapter 91, requiring that public

7 annual reports required under sections 149A-B and 149A-C include

8 the following information:

- 9           (1) A listing of all pesticides used in outdoor
- 10                    applications by federal and state registrations or
- 11                    permit numbers, commercial product names, and active
- 12                    ingredients;
- 13           (2) The total quantities used for each pesticide; and
- 14           (3) A general description of the geographic location,
- 15                    including at minimum the tax map key number and
- 16                    ahupuaa, where the pesticides were used.

17           **§149A-F Pesticide buffer zones for sensitive areas.** (a)

18 Effective one year following the enactment of this Act, any

19 commercial agricultural entity that purchases or uses in excess

20 of a total of            pounds or            gallons of restricted use

21 pesticides annually on commercial agricultural production areas



1 or non-agricultural production areas, or both, shall restrict  
2 the outdoor application of all pesticides, including restricted  
3 use, general use, and experimental use pesticides, as follows:

4 (1) No pesticide may be used within                feet of any  
5 sensitive area, excluding any surface water,  
6 watershed, or shoreline; and

7 (2) No pesticide may be used within                feet of any  
8 surface water, watershed, or shoreline.

9 (b) The restrictions in subsection (a) shall be minimum  
10 standards. If this section, or any part thereof, is determined  
11 to conflict with any information contained in the labels of the  
12 pesticide or other regulation, including county regulations, the  
13 more restrictive standard on pesticide application shall apply.

14 **§149A-G Sensitive areas; identification of application**

15 **site and provision of site plan.** (a) Any commercial  
16 agricultural entity that is subject to section 149A-F shall  
17 ensure that, prior to any outdoor application of pesticides, the  
18 application site is positively identified using a unique and  
19 verifiable method, including:

20 (1) An onboard, geo-referenced electronic mapping and  
21 navigation system;



1           (2) Effective site markings visible to the pesticide  
2           applicator; or

3           (3) Other methods approved by the department.

4           (b) Any commercial agricultural entity that is subject to  
5 section 149A-F, prior to any application of pesticides, shall  
6 provide the certified pesticide applicator, commercial pesticide  
7 applicator, private pesticide applicator, or pest control  
8 operator with a site plan that includes a site map that:

9           (1) Delineates the boundaries of the application area and  
10           the property lines;

11           (2) Depicts the type and location of sensitive areas  
12           within           feet of the application area; and

13           (3) Depicts the pesticide buffer zones for sensitive areas  
14           where no pesticide application is allowed.

15           **§149A-H Weather conditions.** (a) No school, child care  
16 facility, early childhood education and care facility, family  
17 child care home, group child care center, or group child care  
18 home subject to section 149A-B shall conduct any outdoor  
19 application of pesticides when the wind speed is more than  
20           per hour.



1 (b) No commercial agricultural entity subject to sections  
2 149A-C and 149A-F shall conduct any outdoor application of  
3 pesticides when the wind speed is more than per hour.

4 (c) The restrictions in subsections (a) and (b) shall be  
5 minimum standards. If this section, or any part thereof, is  
6 determined to conflict with any information contained in the  
7 labels of the pesticide or other regulation, including county  
8 regulations, the more restrictive standard on pesticide  
9 application shall apply.

10 **§149A-I Exemptions.** (a) Notwithstanding the provisions  
11 of sections 149A-F and 149A-G, any commercial agricultural  
12 entity may obtain from the department a single use exemption  
13 from the prohibition on outdoor applications of pesticides in  
14 pesticide buffer zones around sensitive areas, as provided in  
15 subsection (c).

16 (b) Notwithstanding section 149A-H or any other law to the  
17 contrary, any school, child care facility, early childhood  
18 education and care facility, family child care home, group child  
19 care center, group child care home, or commercial agricultural  
20 entity may obtain from the department a single use exemption





1 from the prohibition on outdoor applications of pesticides under  
2 certain weather conditions, as provided in subsection (c).

3 (c) In accordance with rules adopted by the department,  
4 the department shall issue a single use exemption under this  
5 section if it determines that:

6 (1) The pest situation poses an immediate threat to human  
7 health and the environment; and

8 (2) There is no viable alternative to the use of the  
9 proposed pesticide.

10 (d) The department may adopt rules to reduce the buffer  
11 zone distance, by up to fifty per cent, for sensitive areas  
12 under section 149A-F; provided that the commercial agricultural  
13 entity makes an application to the department that demonstrates  
14 that pesticides used by the entity cannot drift onto the  
15 property of a sensitive area when the wind speed is equal to or  
16 less than the limit established by section 149A-H(b).

17 **§149A-J Penalties and citizen suits.** (a) The department  
18 may bring an action in a court of competent jurisdiction to  
19 enjoin any person or entity from violating this part.

20 (b) The department may assess a fine for any violation of  
21 this part, as follows:



- 1           (1)   \$       for a first violation;
- 2           (2)   \$       for a second violation; and
- 3           (3)   \$       for a third or subsequent violation.

4 Each day of violation shall be considered a separate violation.

5           (c) Any injured citizen of the State who acts in the  
6 public interest, at least sixty days after first giving notice  
7 of the alleged violation to the department and the alleged  
8 violator, may bring an action to enjoin violation of this part  
9 in any court of competent jurisdiction. The court may award to  
10 a prevailing plaintiff reasonable costs and attorneys' fees  
11 incurred in investigating and prosecuting an action to enforce  
12 this part. An award may not include monetary damages, but only  
13 fee and cost recovery.

14           **§149A-K Authority of counties and political subdivisions.**

15 Nothing in this part shall be construed to prohibit any county  
16 or other political subdivision from regulating pesticide  
17 disclosure, notification, and use in a manner that is equivalent  
18 to, or more stringent than, the provisions contained in this  
19 part.

20           **§149A-L Rules.** The department shall adopt rules pursuant  
21 to chapter 91 to implement this part; provided that the



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1 department may not establish exemptions not expressly authorized  
2 in this part."

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. If any provision of this Act, or the  
7 application thereof to any person or circumstance, is held  
8 invalid, the invalidity does not affect other provisions or  
9 applications of the Act that can be given effect without the  
10 invalid provision or application, and to this end the provisions  
11 of this Act are severable.

12 SECTION 5. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 6. This Act shall take effect upon its approval.

17

INTRODUCED BY:



JAN 29 2015



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**Report Title:**

Environmental Protection; Pesticides; Disclosure; Buffer Zones; Penalties

**Description:**

Establishes disclosure requirements for outdoor applications of pesticides in proximity to schools, childcare facilities, and certain commercial agricultural entities. Establishes reasonable pesticide buffer zones for sensitive areas. Establishes penalties.

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

