
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.



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
11 Environmental Protection Agency or 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

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 Act , Session Laws of Hawaii 2015, any
19 school, child care facility, early childhood education and care
20 facility, family child care home, group child care center, and
21 group child care home that uses or purchases in excess of



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

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

12 (2) Notification to parents and guardians. At a minimum
13 of twenty-four hours prior to the outdoor application
14 of any pesticide on affected grounds, each entity
15 subject to this section shall provide written
16 notification to the parents or guardians of children
17 attending the school, child care facility, early
18 childhood education and care facility, family child
19 care home, group child care center, or group child
20 care home, as the case may be, in the manner
21 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 effective date of Act , Session Laws of Hawaii
 11 2015, any commercial agricultural entity that annually purchases
 12 or uses in excess of pounds or gallons of restricted
 13 use pesticides during the prior calendar year shall disclose the
 14 use of all pesticides, including restricted use, general use,
 15 and experimental use 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
8 Environmental Protection Agency for the particular pesticide.
9 The posting of a warning sign during and after the outdoor
10 application of any pesticide shall conform to the worker
11 protection standard established by the Environmental Protection
12 Agency.

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

- 17 (1) The trade name of the pesticides to be applied;
18 (2) The name of the active ingredients of the pesticides
19 to be applied;



- 1 (3) The potential hazards to humans and domestic animals,
- 2 as listed in the precautionary statements of the
- 3 pesticide's label;
- 4 (4) Emergency telephone numbers to call in case of
- 5 poisoning from the pesticides; and
- 6 (5) Any other related information the department deems
- 7 appropriate.

8 **§149A-E Public reports; contents.** The department shall
 9 adopt rules, pursuant to chapter 91, requiring that public
 10 annual reports required under sections 149A-B and 149A-C include
 11 the following information:

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

20 **§149A-F Pesticide buffer zones for sensitive areas.** (a)
 21 Effective one year following the effective date of Act ,



1 Session Laws of Hawaii 2015, any commercial agricultural entity
2 that purchases or uses in excess of a total of pounds or
3 gallons of restricted use pesticides annually on
4 commercial agricultural production areas or non-agricultural
5 production areas, or both, shall restrict the outdoor
6 application of all pesticides, including restricted use, general
7 use, and experimental use pesticides, as follows:

8 (1) No pesticide may be used within feet of any
9 sensitive area, excluding any surface water,
10 watershed, or shoreline; and

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

13 (b) The restrictions in subsection (a) shall be minimum
14 standards. If this section, or any part thereof, is determined
15 to conflict with any information contained in the labels of the
16 pesticide or other regulation, the more restrictive standard on
17 pesticide application shall apply.

18 **§149A-G Sensitive areas; identification of application**
19 **site and provision of site plan.** (a) Any commercial
20 agricultural entity that is subject to section 149A-F shall
21 ensure that, prior to any outdoor application of pesticides, the



1 application site is positively identified using a unique and
2 verifiable method, including:

3 (1) An onboard, geo-referenced electronic mapping and
4 navigation system;

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

7 (3) Other methods approved by the department.

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

13 (1) Delineates the boundaries of the application area and
14 the property lines;

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

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

19 **§149A-H Weather conditions.** (a) No school, child care
20 facility, early childhood education and care facility, family
21 child care home, group child care center, or group child care



1 home subject to section 149A-B shall conduct any outdoor
2 application of pesticides when the wind speed is more than
3 per hour.

4 (b) No commercial agricultural entity subject to sections
5 149A-C and 149A-F shall conduct any outdoor application of
6 pesticides when the wind speed is more than per hour.

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

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

18 (b) Notwithstanding section 149A-H or any other law to the
19 contrary, any school, child care facility, early childhood
20 education and care facility, family child care home, group child
21 care center, group child care home, or commercial agricultural



1 entity may obtain from the department a single use exemption
2 from the prohibition on outdoor applications of pesticides under
3 certain weather conditions, as provided in subsection (c).

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

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

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

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

18 **§149A-J Structural or termite application of pesticides.**

19 Nothing in this part shall be construed to prohibit the use of
20 structural or termite application of pesticides, regardless of



1 whether the applications are applied in or outside of a building
2 or enclosed structure.

3 **§149A-K Penalties and citizen suits.** (a) The department
4 may bring an action in a court of competent jurisdiction to
5 enjoin any person or entity from violating this part.

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

8 (1) \$ for a first violation;

9 (2) \$ for a second violation; and

10 (3) \$ for a third or subsequent violation.

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

12 (c) Any injured citizen of the State who acts in the
13 public interest, at least sixty days after first giving notice
14 of the alleged violation to the department and the alleged
15 violator, may bring an action to enjoin violation of this part
16 in any court of competent jurisdiction. The court may award to
17 a prevailing plaintiff reasonable costs and attorney's fees
18 incurred in investigating and prosecuting an action to enforce
19 this part. An award may not include monetary damages, but only
20 fee and cost recovery.



1 **§149A-L Rules.** The department shall adopt rules pursuant
2 to chapter 91 to implement this part; provided that the
3 department may not establish exemptions not expressly authorized
4 in this part."

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

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

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

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



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. (HB1514 HD1)

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