

JAN 27 2016

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 United States
6 Environmental Protection Agency classifies pesticides as
7 restricted use pesticides if they are determined to cause
8 "unreasonable adverse effects on the environment" when used
9 "without additional regulatory restrictions." The legislature
10 also finds that information pertaining to the intensive use of
11 pesticides in large-scale commercial agriculture within the
12 State is not readily available to the public.

13 In 2013, the department of agriculture established the
14 Kauai agricultural good neighbor program to collect and publish
15 information regarding outdoor usage of restricted use pesticides
16 by large-scale commercial agricultural operations in the county
17 of Kauai. Similar programs do not exist for the other counties



1 in the State. Moreover, the information collected is completely
2 voluntary, is neither mandatory nor verified, and is only
3 published on the department of agriculture's website months
4 after the reported pesticide applications. As a result, the
5 public is unable to evaluate the full extent of any impacts
6 accruing to Hawaii's environment or its residents and to decide
7 whether the risks associated with the large-scale commercial
8 agricultural use of the pesticides across the State are
9 acceptable.

10 The legislature further finds that the State currently does
11 not have an adequate regulatory structure in place to monitor
12 the human health impacts of pesticide drift near sensitive
13 populations. Pesticides may volatilize, or change from a solid
14 or liquid state into a vapor state, into the lower atmosphere
15 for days, weeks, or months after the application. Accordingly,
16 drift from restricted use pesticides may have lingering effects
17 on the environment long after the initial exposure. The direct,
18 indirect, and cumulative impacts on the environment and public
19 health related to long-term intensive commercial use of
20 pesticides have yet to be properly or independently evaluated.



1 The legislature further finds that children, the elderly,
2 and other sensitive residents have no choice but to live, work,
3 and commute daily in close proximity to areas where restricted
4 use pesticides are being sprayed. Children can be exposed to
5 pesticides applied on school grounds, pesticides that drift onto
6 school grounds, or pesticide residues. Of greatest concern are
7 restricted use pesticides such as chlorpyrifos, which scientists
8 have definitively linked to developmental delays in children,
9 and other toxic exposure to pesticides during fetal, neonatal,
10 and infant life that may disrupt critical development processes.
11 Lifelong pesticide exposure for those living in exposed areas
12 has been linked to long-term health effects, including cancer
13 and other serious diseases, decreased cognitive function, and
14 behavioral problems.

15 The purpose of this Act is to protect the State's
16 environment and residents from the unintended impacts of large-
17 scale pesticide use by:

18 (1) Making the reporting guidelines of the Kauai
19 agricultural good neighbor program mandatory for
20 large-scale, outdoor commercial agricultural
21 operations across the State; and



1 (2) Establishing disclosure and public notification
2 requirements for outdoor applications of pesticides in
3 and in the proximity of schools, healthcare
4 facilities, child care facilities, elder care
5 facilities, and other environmentally-sensitive areas.

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

9 "PART . PESTICIDE MANDATORY DISCLOSURE

10 §149A-A Definitions. As used in this part:

11 "Adult residential care home" means an adult residential
12 care home as defined in section 321-15.1 that is licensed by the
13 State.

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

15 "Assisted living facility" means an assisted living
16 facility, as defined in section 321-15.1 that is licensed by the
17 State.

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

20 "Commercial agricultural entity" means any individual,
21 partnership, association, corporation, limited liability



1 company, or organized group of persons, regardless of whether
2 incorporated, that is engaged in commercial agricultural
3 production.

4 "Commercial agricultural production" means:

- 5 (1) Commercial production of any seed, crop, plant,
6 timber, livestock, poultry, fish, bees, or apiary
7 products; or
8 (2) Testing or experimental production of any seed, crop,
9 plant, timber, livestock, poultry, fish, bees, or
10 apiary products.

11 "Commercial agricultural production area" means real
12 properties and areas owned, leased, or otherwise operated or
13 controlled and used by a commercial agricultural entity for
14 commercial agricultural production.

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

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



S.B. NO. 3006

1 "Experimental use pesticide" means a pesticide whose use is
2 authorized by an experimental use permit by either the EPA or
3 the department.

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

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

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

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

12 "Health" includes physical and mental health.

13 "Hospice home" shall have the same meaning as in section
14 321-15.1.

15 "Hospital" includes all hospitals licensed pursuant to
16 section 321-14.5.

17 "Outdoor application" means an application of a pesticide
18 outside a building or enclosed structure. The term excludes:

- 19 (1) Indoor applications of pesticides; and
20 (2) Structural or termite application of pesticides,



S.B. NO. 3006

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

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

5 "School" means an academic institution, including early
6 childhood education, public schools, department schools, and
7 charter schools, as those terms are defined in section 302A-101,
8 and private schools licensed by the State. The term does not
9 include institutions of higher education, as defined in section
10 346-16.

11 "School grounds" means:

12 (1) Land associated with any school, child care facility,
13 early childhood education and care facility, family
14 child care home, group child care center, or group
15 child care home, including playgrounds, athletic
16 fields, and agricultural fields used by students or
17 staff of these entities; and

18 (2) Any other outdoor area used by students or staff of a
19 school that is under the control or operation of any
20 school, child care facility, early childhood education



1 and care facility, family child care home, group child
2 care center, or group child care home.

3 "Sensitive area" includes any:

4 (1) School, hospital, adult residential care home,
5 assisted living facility, child care facility, family
6 child care home, group child care center, group child
7 care home, hospice home, extended care adult
8 residential care home, expanded adult residential care
9 home, healthcare facility, and primary care clinic;
10 and

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

12 "Shoreline" shall have the same meaning as in section 205A-

13 1.

14 "Watershed" means an area:

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

17 (2) Where water infiltrates into artesian or other ground-
18 water areas from which the domestic water supply of
19 any city, town, or community is or may be obtained,

20 as determined by the department of land and natural resources
21 pursuant to section 183-31.

1 §149A-B Mandatory disclosure and notification of
2 commercial agricultural pesticide use. Effective one year
3 following the effective date of Act , Session Laws of Hawaii
4 2016, any entity that meets the requirements of the existing
5 good neighbor program established and administered by the
6 department and uses or purchases in excess of five pounds or
7 fifteen gallons of restricted use pesticides during the prior
8 calendar year shall:

9 (1) Post public warning signs of pesticide outdoor
10 application. At least twenty-four hours prior to the
11 outdoor application of any pesticide, any commercial
12 agricultural entity subject to this section shall post
13 public warning signs in the area in which pesticides
14 are to be applied, in the manner prescribed by section
15 149A-C;

16 (2) Provide written notification to occupants and
17 residents of sensitive areas. At least twenty-four
18 hours prior to the outdoor application of any
19 pesticide, any commercial agricultural entity subject
20 to this section shall provide written notification to
21 any sensitive area and any property owner, lessee, or



1 person otherwise occupying any residential property
2 within feet of the property line of the commercial
3 agricultural production area where any pesticide is
4 anticipated to be applied outdoors, in the manner
5 prescribed by section 149A-C; and

6 (3) Provide recordkeeping and annual public disclosure.
7 No later than sixty days following the end of each
8 calendar year, each commercial agricultural entity
9 subject to this section shall provide to the
10 department annual reports of all pesticides used in
11 outdoor applications during the preceding calendar
12 year. The annual reports shall comply with section
13 149A-D and shall be public records and posted online
14 on the department's website.

15 §149A-C Public warning signs; written notifications;
16 contents. (a) Any public warning sign required to be posted
17 under section 149A-B shall remain posted during the outdoor
18 application of any pesticide and until expiration of the
19 applicable restricted-entry interval established by the EPA for
20 the particular pesticide. The posting of a warning sign during



1 and after the outdoor application of any pesticide shall conform
2 to the worker protection standard established by the EPA.

3 (b) The posted warning signs and written notifications
4 required under section 149A-B shall include the following
5 information:

- 6 (1) The trade name of the pesticides to be applied;
7 (2) The names of the active ingredients of the pesticides
8 to be applied;
9 (3) The potential hazards to humans and domestic animals,
10 as listed in the precautionary statements of the
11 pesticide's label;
12 (4) Emergency telephone numbers to call in case of
13 poisoning from the pesticides; and
14 (5) Any other related information the department deems
15 appropriate.

16 §149A-D Public reports; contents. The public annual
17 reports required under sections 149A-B shall include the
18 following information:

- 19 (1) A listing of all pesticides used in outdoor
20 applications by federal and state registrations or



1 permit numbers, commercial product names, and active
2 ingredients;

3 (2) The total quantities used for each pesticide; and

4 (3) A general description of the geographic location,
5 including at minimum the tax map key number and
6 ahupuaa, where the pesticides were used.

7 §149A-E Penalties and citizen suits. (a) The department
8 may bring an action in a court of competent jurisdiction to
9 enjoin any person or entity from violating this part.

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

12 (1) \$ for a first violation;

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

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

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

16 (c) Any injured citizen of the State who acts in the
17 public interest, at least sixty days after first giving notice
18 of the alleged violation to the department and the alleged
19 violator, may bring an action to enjoin violation of this part
20 in any court of competent jurisdiction. The court may award to
21 a prevailing plaintiff reasonable costs and attorneys' fees



1 incurred in investigating and prosecuting an action to enforce
2 this part. An award may not include monetary damages, but only
3 fee and cost recovery.

4 §149A-F Rules. The department shall adopt rules pursuant
5 to chapter 91 to implement this part; provided that the
6 department may not establish exemptions not expressly authorized
7 in this part."

8 SECTION 3. In codifying the new sections added by section
9 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

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

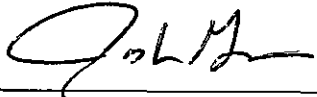


18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



S.B. NO. 3006

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

2

INTRODUCED BY: 





S.B. NO. 3006

Report Title:

Reporting of Pesticide Use; Large-scale Agricultural Operations

Description:

Requires reporting guidelines for large-scale, outdoor commercial agricultural operations across the State.
Establishes disclosure and public notification requirements for outdoor application of pesticides in various environmentally sensitive areas.

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

