

JAN 23 2015

A BILL FOR AN ACT

RELATING TO THE HEALTH IMPACT OF PESTICIDES.

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

1 SECTION 1. The purpose of this Act is: to protect
2 sensitive public resources of the State of Hawaii from increased
3 outdoor use of pesticides resulting from large-scale, outdoor
4 commercial agricultural operations, to protect sensitive
5 populations in the State of Hawaii from the risks from exposure
6 to increased outdoor use of pesticides and from pesticide drift
7 and vapor from nearby commercial agricultural fields, to protect
8 children from exposure to pesticides from outdoor applications
9 on school grounds, and to preserve the right of Hawaii residents
10 to reject pesticide exposure because of health, moral, or other
11 concerns. This Act shall be liberally construed to fulfill
12 these purposes.

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

16 "PART . PESTICIDE DRIFT PROTECTIONS



1 §149A-A Definitions. As used in this part, unless the
2 context clearly requires otherwise:

3 "Adult residential care home" means any facility providing
4 twenty-four-hour living accommodations, for a fee, to adults
5 unrelated to the family, who require at least minimal assistance
6 in the activities of daily living, personal care services,
7 protection, and health care services, but who do not need the
8 professional health services provided in an intermediate,
9 skilled nursing, or acute care facility.

10 "Assisted living facility" means a combination of housing,
11 health care services, and personalized supportive services
12 designed to respond to individual needs, to promote choice,
13 responsibility, independence, privacy, dignity, and
14 individuality.

15 "Commercial agricultural production" means the commercial
16 production, testing, or experimental production of any seed,
17 crop, plant, timber, livestock, poultry, fish, bees, or apiary
18 products.

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



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

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

7 "Early childhood education and care facility" means any
8 property licensed by the State of Hawaii for the care and
9 instruction of children from birth to age five.

10 "Expanded adult residential care home" means any facility
11 licensed by the State of Hawaii to provide twenty-four-hour
12 living accommodations, for a fee, to adults unrelated to the
13 family, who require at least minimal assistance in the
14 activities of daily living, personal care services, protection,
15 and health care services, and who may need the professional
16 health services provided in an intermediate or skilled nursing
17 facility.

18 "Experimental use pesticide" means a pesticide whose use is
19 authorized by an experimental use permit by either the
20 Environmental Protection Agency or the department.



1 "Extended care adult residential care home" means an adult
2 residential care home providing twenty-four-hour living
3 accommodation, for a fee, for adults unrelated to the licensee.
4 The primary caregiver shall be qualified to provide care to
5 nursing facility level individuals who have been admitted to a
6 medicaid waiver program, or persons who pay for care from
7 private funds and have been certified for this type of facility.
8 There shall be two categories of extended care adult residential
9 care homes, which shall be licensed in accordance with rules
10 adopted by the department of health:

11 (1) Type I home shall consist of five or less unrelated
12 persons with no more than two extended care adult
13 residential care home residents; and

14 (2) Type II home shall consist of six or more unrelated
15 persons and one or more persons may be extended care
16 adult residential care home residents.

17 "Family child care home" means a private residence,
18 including a home, apartment, unit, or townhouse, licensed by the
19 State of Hawaii, at which care may be provided for three to no
20 more than six children who are unrelated to the caregiver by
21 blood, marriage, or adoption, at any given time.



1 "Group child care center" means a facility, other than a
2 private home, licensed by the State of Hawaii, at which care is
3 provided.

4 "Group child care home" means a facility, which may be an
5 extended or modified private home, licensed by the State of
6 Hawaii, at which care is provided for seven to twelve children.

7 "Health" means physical and mental health.

8 "Hospice home" means any facility operated by a licensed
9 hospice service agency providing twenty-four-hour living
10 accommodations to no more than five unrelated persons who are
11 admitted for hospice service.

12 "Non-agricultural production area" means any area held and
13 operated by a commercial agricultural entity in conjunction with
14 real properties and areas utilized for commercial agricultural
15 production.

16 "Outdoor application" means an application of a pesticide
17 made outside of a building or enclosed structure. The term
18 excludes indoor applications of pesticides and structural or
19 termite application of pesticides, regardless of whether such
20 applications are applied inside or outside of a building or
21 enclosed structure.



1 "Place of religious worship" means any church, synagogue,
2 mosque, temple, religious cemetery, or other religious real
3 property of any religious denomination where individuals or a
4 group of people gather to perform acts of devotion, veneration,
5 or religious study.

6 "Primary care clinic" means a clinic licensed by the State
7 of Hawaii for outpatient services providing all preventive and
8 routine health care services, management of chronic diseases,
9 consultation with specialists when necessary, and coordination
10 of care across health care settings or multiple providers or
11 both. Primary care clinic providers include:

- 12 (1) General or family practice physicians;
- 13 (2) General internal medicine physicians;
- 14 (3) Pediatricians;
- 15 (4) Obstetricians and gynecologists;
- 16 (5) Physician assistants; and
- 17 (6) Advanced practice registered nurses.

18 "School" means an academic and noncollege type regular or
19 special education institution of learning established and
20 maintained by the department of education or licensed and
21 supervised by that department.



1 "School grounds" means:

2 (1) Land associated with any school, child care facility,
3 early childhood education and care facility, family
4 child care home, group child care center, or group
5 child care home, including playgrounds, athletic
6 fields, and agricultural fields used by students or
7 staff of the entity; and

8 (2) Any other outdoor area used by students or staff that
9 is under the control or operation of any school, child
10 care facility, early childhood education and care
11 facility, family child care home, group child care
12 center, or group child care home.

13 "Sensitive area" includes:

14 (1) Any school, hospital licensed pursuant to section
15 321-14.5, adult residential care home, assisted living
16 facility, child care facility, family child care home,
17 group child care center, group child care home,
18 hospice home, extended care adult residential care
19 home, expanded adult residential care home, health
20 care facility, primary care clinic, and place of
21 worship; and



1 (2) Any shoreline, watershed, and body of perennial
2 waters.

3 "Shoreline" means the upper reaches of the wash of the
4 waves, other than storm and seismic waves, at high tide during
5 the season of the year in which the highest wash of the waves
6 occurs, usually evidenced by the edge of vegetation growth, or
7 the upper limit of debris left by the wash of the waves.

8 "Watershed" means:

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

11 (2) An area where water infiltrates into artesian or other
12 ground-water areas from which the domestic water
13 supply of any city, town, or community is or may be
14 obtained.

15 §149A-B Mandatory disclosure and notification of outdoor
16 pesticide use on school grounds. Beginning July 1, 2016, it
17 shall be mandatory for any school, child care facility, early
18 childhood education and care facility, family child care home,
19 group child care center, and group child care home that uses or
20 purchases in excess of pounds or gallons of
21 restricted use pesticides during a prior calendar year to



1 disclose the use of all pesticides, including restricted use,
2 general use, or experimental use, in compliance with the
3 following disclosure and notification requirements:

4 (1) It shall be mandatory for any school, child care
5 facility, early childhood education and care facility,
6 family child care home, group child care center, and
7 group child care home subject to this section to
8 provide public posting of warning signs to any outdoor
9 application of pesticides, including restricted use,
10 general use, or experimental use, on school grounds.
11 Warning signs shall be posted a minimum of twenty-four
12 hours prior to the outdoor application of any
13 pesticide. The warning signs shall remain posted
14 during the outdoor application of any pesticide and
15 until expiration of the applicable restricted-entry
16 interval established by the Environmental Protection
17 Agency for the particular pesticide. The posting of
18 warning signs during and after the outdoor application
19 of any pesticide shall conform to the worker
20 protection standard established by the Environmental
21 Protection Agency. The department shall adopt rules



1 pursuant to chapter 91 and this section to require
2 posting of pesticide warning signs containing but not
3 limited to the following information:

4 (A) The trade name of the pesticide to be applied;

5 (B) The name of the active ingredient or ingredients
6 of the pesticide to be applied;

7 (C) The potential hazards to humans and domestic
8 animals as listed in the precautionary statements
9 of the pesticide's label;

10 (D) Emergency telephone numbers to call in case of
11 poisoning from the pesticide; and

12 (E) Any other related information the department
13 deems helpful and appropriate for consumers.

14 (2) It shall be mandatory for any school, child care
15 facility, early childhood education and care facility,
16 family child care home, group child care center, and
17 group child care home subject to this section to
18 provide pre-application written notification to
19 parents or guardians of children attending the school,
20 child care facility, early childhood education and
21 care facility, family child care home, group child



1 care center, or group child care home a minimum of
2 twenty-four hours prior to the outdoor application of
3 any pesticide, including restricted use, general use,
4 or experimental use, on school grounds. The
5 department shall adopt rules pursuant to chapter 91
6 and this section to require pre-application written
7 notifications to include but not be limited to the
8 following information:

9 (A) The trade name of the pesticide to be applied;

10 (B) The name of the active ingredient or ingredients
11 of the pesticide to be applied;

12 (C) The potential hazards to humans and domestic
13 animals as listed in the precautionary statements
14 of the pesticide's label; and

15 (D) Emergency telephone numbers to call in case of
16 poisoning from the pesticide.

17 (3) No later than sixty days following the end of each
18 calendar year, it shall be mandatory for any school,
19 child care facility, early childhood education and
20 care facility, family child care home, group child
21 care center, and group child care home subject to this



1 section to provide annual public reports of all
2 pesticides, including restricted use, general use, or
3 experimental use, used in outdoor applications during
4 the prior calendar year to the department. The
5 department shall adopt rules pursuant to chapter 91
6 and this section to require public annual reports
7 containing but not limited to the following
8 information:

9 (A) A listing of all pesticides used in outdoor
10 applications by federal and state registrations
11 or permit numbers, commercial product names, and
12 active ingredients;

13 (B) The total quantities used for each pesticide; and

14 (C) A general description of the geographic location,
15 including at minimum the tax map key, where the
16 pesticides were used.

17 (b) Any school, child care facility, early childhood
18 education and care facility, family child care home, group child
19 care center, and group child care home subject to this section
20 shall not conduct any outdoor application of pesticides when the
21 wind speed is more than miles per hour. If a more



1 restrictive standard is set forth in the information contained
2 on the label of the pesticide, or by other regulations,
3 including county or local regulations, the more restrictive
4 standard shall apply.

5 **§149A-C Mandatory disclosure and notification of**
6 **commercial agricultural pesticide use.** (a) Beginning July 1,
7 2016, it shall be mandatory for any commercial agricultural
8 entity that annually uses or purchases in excess of pounds
9 or gallons of restricted use pesticides during a prior
10 calendar year to disclose the use of all pesticides, including
11 restricted use, general use, or experimental use, in compliance
12 with the following disclosure and notification requirements:

13 (1) It shall be mandatory for any commercial agricultural
14 entity subject to this section to provide public
15 posting of warning signs in the area in which
16 pesticides are to be applied a minimum of twenty-four
17 hours prior to the outdoor application of any
18 pesticide, including restricted use, general use, or
19 experimental use. The warning signs shall remain
20 posted during the outdoor application of any pesticide
21 and until expiration of the applicable restricted-



1 entry interval established by the Environmental
2 Protection Agency for the particular pesticide. The
3 posting of warning signs during and after the outdoor
4 application of any pesticide shall conform to the
5 worker protection standard established by the
6 Environmental Protection Agency. The department shall
7 adopt rules pursuant to chapter 91 and this section to
8 require posting of pesticide warning signs to contain
9 but not be limited to the following information:

- 10 (A) The trade name of the pesticide to be applied;
- 11 (B) The name of the active ingredient or ingredients
12 of the pesticide to be applied;
- 13 (C) The potential hazards to humans and domestic
14 animals as listed in the precautionary statements
15 of the pesticide's label;
- 16 (D) Emergency telephone numbers to call in case of
17 poisoning from the pesticide; and
- 18 (E) Any other related information the department
19 deems helpful and appropriate for consumers.

20 (2) It shall be mandatory for any commercial agricultural
21 entity subject to this section to provide



1 pre-application written notification to any sensitive
2 area and any property owner, lessee, or person
3 otherwise occupying any residential property within
4 feet of the property line of the commercial
5 agricultural entity where any pesticide is anticipated
6 to be applied outdoors a minimum of twenty-four hours
7 prior to the outdoor application of any pesticide,
8 including restricted use, general use, or experimental
9 use. The department shall adopt rules pursuant to
10 chapter 91 and this section to require pre-application
11 written notifications to contain but not be limited to
12 the following information:

- 13 (A) The trade name of the pesticide to be applied;
14 (B) The name of the active ingredient or ingredients
15 of the pesticide to be applied;
16 (C) The potential hazards to humans and domestic
17 animals as listed in the precautionary statements
18 of the pesticide's label;
19 (D) Emergency telephone numbers to call in case of
20 poisoning from the pesticide; and



1 (E) Any other related information the department
2 deems helpful and appropriate for consumers.

3 (3) No later than sixty days following the end of each
4 calendar year, it shall be mandatory for any
5 commercial agricultural entity subject to this section
6 to provide annual public reports of all pesticides,
7 including restricted use, general use, or experimental
8 use, used in outdoor applications during the prior
9 calendar year to the department. The public annual
10 reports shall be posted online on the department's
11 website. The department shall adopt rules pursuant to
12 chapter 91 and this section to require public annual
13 reports to contain but not be limited to the following
14 information:

15 (A) A listing of all pesticides used in outdoor
16 applications by federal and state registrations
17 or permit numbers, commercial product names, and
18 active ingredients;

19 (B) The total quantities used for each pesticide; and



1 (C) A general description of the geographic location,
2 including at minimum the tax map key and ahupuaa
3 where the pesticides were used.

4 (b) Any commercial agricultural entity subject to this
5 section shall not conduct any outdoor application of pesticides
6 when the wind speed is more than miles per hour. If a
7 more restrictive standard is set forth in information contained
8 on the label of the pesticide, or by other regulations,
9 including county or local regulations, the more restrictive
10 standard shall apply.

11 **§149A-D Pesticide buffer zones for sensitive areas.** (a)
12 Beginning July 1, 2016, it shall be mandatory for any commercial
13 agricultural entity that uses or purchases in excess of
14 pounds or gallons of restricted use pesticides annually on
15 commercial agricultural production areas or non-agricultural
16 production areas, or both, to restrict the outdoor application
17 of all pesticides, including restricted use, general use, or
18 experimental use, within feet of any sensitive area.

19 (b) If a more restrictive standard is set forth in the
20 information contained on the label of the pesticide, or by other



1 regulations, including county or local regulations, the more
2 restrictive standard shall apply.

3 (c) Any commercial agricultural entity that is subject to
4 section 149A-C, shall ensure that prior to any outdoor
5 application of pesticides, the application site is positively
6 identified using a unique and verifiable method, including:

- 7 (1) An onboard, geo-referenced electronic mapping and
8 navigation system, such as Global Positioning System;
- 9 (2) Effective site markings visible to the pesticide
10 applicator; or
- 11 (3) Other methods approved by the department.

12 (d) Any commercial agricultural entity that is subject to
13 section 149A-C, prior to any application of pesticides, shall
14 provide the certified pesticide applicator, commercial pesticide
15 applicator, or pest control operator with a site plan that
16 includes a site map that:

- 17 (1) Delineates the boundaries of the application area and
18 the property lines;
- 19 (2) Depicts the type and location of sensitive areas
20 within feet of the application areas; and



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

3 **§149A-E Exemptions.** Notwithstanding the provisions of
4 this chapter, any school, child care facility, early childhood
5 education and care facility, family child care home, group child
6 care center, and group child care home subject to section
7 149A-B, or commercial agricultural entity subject to section
8 149A-C, may obtain from the department a single use exemption
9 from the prohibition on outdoor applications of pesticides in
10 pesticide buffer zones around sensitive areas. The department
11 shall issue a single use exemption if it determines that:

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

14 (2) That there is no viable alternative to the use of the
15 proposed pesticide.

16 **§149A-F Penalties and civil suits.** (a) The department
17 may bring an action in any court of competent jurisdiction to
18 enjoin any person or entity from violating this part.

19 (b) Any person or entity who knowingly violates this part
20 shall be liable to the department for a civil penalty in the
21 amount of:



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

4 In assessing penalties, each day of violation shall be
5 considered a separate violation.

6 (c) Any injured citizen in the State who acts in the
7 public interest, after giving notice of the alleged violation to
8 the department and waiting at least sixty days, may bring an
9 action to enjoin the violation in any court of competent
10 jurisdiction.

11 (d) In a civil suit, the court may award to a prevailing
12 plaintiff reasonable costs and attorneys' fees incurred in
13 investigating and prosecuting an action to enforce this part.
14 An award may not include monetary damages, but only fee and cost
15 recovery."

16 SECTION 3. The department shall adopt rules, pursuant to
17 chapter 91, Hawaii Revised Statutes, necessary for the purposes
18 of this Act.

19 SECTION 4. Nothing in this Act shall be construed to
20 prohibit or preempt the authority of an unit of local government
21 in the State of Hawaii, including counties and any other



S.B. NO. 793


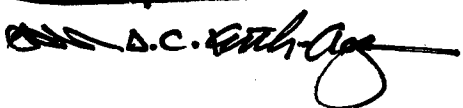
1 political subdivisions created under article VIII, section 1, of
 2 the Hawaii State Constitution, to regulate pesticide disclosure,
 3 notification, and use in a manner that is equivalent to or more
 4 restrictive than the provisions contained in this Act.



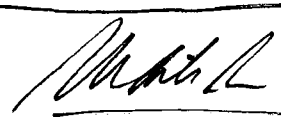
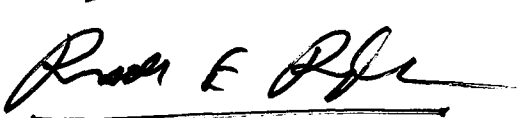
5 SECTION 5. If any provision of this Act, or the
 6 application thereof to any person or circumstance, is held
 7 invalid, the invalidity does not affect other provisions or
 8 applications of the Act that can be given effect without the
 9 invalid provision or application, and to this end the provisions
 10 of this Act are severable.

11 SECTION 6. In codifying the new sections added by section
 12 2 of this Act, the revisor of statutes shall substitute
 13 appropriate section numbers for the letters used in designating
 14 the new sections in this Act.

15 SECTION 7. This Act shall take effect upon its approval.
 16

INTRODUCED BY:



S.B. NO. 193

Report Title:

Pesticide Drift; Sensitive Areas; Health

Description:

Establishes mandatory notice, reporting, and use requirements when pesticides are applied outdoors near 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.

