
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 began the Kauai
14 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 or political subdivisions in the State. Moreover, the
2 information collected is completely voluntary, is unverified,
3 and is only published on the department's website months after
4 the reported pesticide applications. As a result, the public is
5 unable to evaluate the full extent of any impacts accruing to
6 Hawaii's environment or its residents and to decide whether the
7 risks associated with the large-scale agricultural use of such
8 pesticides across the State is acceptable.

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

20 The study entitled, "Pesticide Use by Large Agribusinesses
21 on Kaua'i," published by the independent Joint Fact Finding



1 (JFF) Study Group and issued in May 2016, confirms that the
2 State lacks sufficient data on pesticide use and human and
3 environmental exposure. The JFF Study Group recommended the
4 good neighbor program be made mandatory, and that its
5 implementation be expanded statewide.

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

20 The purpose of this Act is to protect the State's
21 environment and residents from the unintended impacts of large-



1 scale pesticide use by implementing the recommendation of the
2 JFF Study Group's report that the good neighbor program be
3 revised and expanded. Specifically, this Act implements the JFF
4 Study Group's recommendation by:

5 (1) Making the reporting guidelines of the Kauai
6 agricultural good neighbor program mandatory for
7 large-scale, outdoor commercial agricultural
8 operations across the State, and

9 (2) Establishing disclosure and public notification
10 requirements for outdoor applications of pesticides
11 in, as well as in proximity to, schools, healthcare
12 facilities, childcare and eldercare facilities, and
13 other environmentally 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 . PESTICIDE MANDATORY DISCLOSURE**

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 a child care facility as
6 defined 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 United
11 States 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 "Outdoor application" means an application of a pesticide
6 made outside of a building or enclosed structure. The term
7 excludes:

8 (1) Indoor applications of pesticides; and

9 (2) Structural or termite application of pesticides,
10 whether the applications are applied in or outside of
11 a building or enclosed structure.

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

14 "School" means an academic institution, including public
15 schools, department schools, and charter schools, as those terms
16 are defined in section 302A-101, early education institutions,
17 and private schools licensed by the State. The term does not
18 include institutions of higher education, as defined in section
19 346-16.

20 "School grounds" means:



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

12 "Sensitive area" includes any:

- 13 (1) School, hospital, adult residential care home,
14 assisted living facility, child care facility, family
15 child care home, group child care center, group child
16 care home, hospice home, extended care adult
17 residential care home, expanded adult residential care
18 home, health care facility, and primary care clinic;
19 and
- 20 (2) Shoreline, watershed, and bodies of perennial waters.



1 "Shoreline" shall have the same meaning as in section
2 205A-1.

3 "Watershed" means an area:

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

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

11 **§149A-B Mandatory disclosure and notification of outdoor**
12 **pesticide use on affected grounds.** Effective one year following
13 the effective date of this Act, any school, child care facility,
14 early childhood education and care facility, family child care
15 home, group child care center, and group child care home that
16 uses or purchases in excess of pounds or gallons of
17 restricted use pesticides during the prior calendar year shall
18 disclose the use of all pesticides, including restricted use,
19 general use, and experimental use pesticides, as follows:

20 (1) Public posting of pesticide outdoor application. At a
21 minimum of twenty-four hours prior to the outdoor



1 application of any pesticide on affected grounds, each
2 entity subject to this section shall post public
3 warning signs in the area in which pesticides are to
4 be applied, in the manner prescribed by section
5 149A-D;

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

16 (3) Recordkeeping and annual public disclosure. No later
17 than sixty days following the end of each calendar
18 year, each entity subject to this section shall
19 provide to the department annual public reports of all
20 pesticides used in outdoor applications during the



1 preceding calendar year. The annual reports shall
2 comply with the requirements of section 149A-E.

3 **§149A-C Mandatory disclosure and notification of**
4 **commercial agricultural pesticide use.** Effective one year
5 following the effective date of this Act, any commercial
6 agricultural entity that annually purchases or uses in excess of
7 pounds or gallons of restricted use pesticides during
8 the prior calendar year shall disclose the use of all
9 pesticides, including restricted use, general use, and
10 experimental use pesticides, as follows:

11 (1) Public posting of pesticide outdoor application. At a
12 minimum of twenty-four hours prior to the outdoor
13 application of any pesticide, any commercial
14 agricultural entity subject to this section shall post
15 public warning signs in the area in which pesticides
16 are to be applied, in the manner prescribed by section
17 149A-D;

18 (2) Notification to occupants and residents of sensitive
19 areas. At a minimum of twenty-four hours prior to the
20 outdoor application of any pesticide, any commercial
21 agricultural entity subject to this section shall



1 provide written notification to any sensitive area and
 2 any property owner, lessee, or person otherwise
 3 occupying any residential property within feet
 4 of the property line of the commercial agricultural
 5 entity where any pesticide is anticipated to be
 6 applied outdoors, in the manner prescribed by section
 7 149A-D; and

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

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



1 States Environmental Protection Agency for the particular
2 pesticide. The posting of a warning sign during and after the
3 outdoor application of any pesticide shall conform to the worker
4 protection standard established by the Environmental Protection
5 Agency.

6 (b) The department shall adopt rules pursuant to chapter
7 91 requiring that all warning signs posted, and written
8 notifications provided, pursuant to section 149A-B or 149A-C
9 include the following information:

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

20 **§149A-E Public reports; contents.** The department shall
21 adopt rules, pursuant to chapter 91, requiring that public



1 annual reports required under sections 149A-B and 149A-C include
2 the following information:

3 (1) A listing of all pesticides used in outdoor
4 applications by federal and state registrations or
5 permit numbers, commercial product names, and active
6 ingredients;

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

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

11 **§149A-F Penalties and citizen suits.** (a) The department
12 may bring an action in a court of competent jurisdiction to
13 enjoin any person or entity from violating this part.

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

16 (1) \$ for a first violation;

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

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

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

20 (c) Any injured citizen of the State who acts in the
21 public interest, at least sixty days after first giving notice



1 of the alleged violation to the department and the alleged
2 violator, may bring an action to enjoin violation of this part
3 in any court of competent jurisdiction. The court may award to
4 a prevailing plaintiff reasonable costs and attorney's fees
5 incurred in investigating and prosecuting an action to enforce
6 this part. An award may not include monetary damages, but only
7 fee and cost recovery.

8 **§149A-G Authority of local government.** Nothing in this
9 part shall be construed to preempt or prohibit the authority of
10 a unit of local government in the State, including counties and
11 any other political subdivisions of the State, to regulate
12 pesticide disclosure, notification, and use, including the
13 establishment of buffer zones against pesticides, in a manner
14 that is equivalent to, or more stringent than, the provisions
15 contained in this part.

16 **§149A-H Rules.** The department shall adopt rules pursuant
17 to chapter 91 to implement this part; provided that the
18 department may not establish exemptions not expressly authorized
19 in this part."



H.B. NO. 790

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

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

10 SECTION 5. In codifying the new sections added by section
 11 2 of this Act, the revisor of statutes shall substitute
 12 appropriate section numbers for the letters used in designating
 13 the new sections in this Act.

14 SECTION 6. This Act shall take effect upon its approval.
 15

INTRODUCED BY:

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H.B. NO. 790

RCM

JAN 21 2017



H.B. NO. 190

Report Title:

Reporting of Pesticide Use; Large-scale Agricultural Operations

Description:

Establishes disclosure and public notification requirements for outdoor application of pesticides in various sensitive areas or by large-scale, outdoor commercial agricultural operations.

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

