
A BILL FOR AN ACT

RELATING TO CESSPOOLS.

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

1 SECTION 1. The legislature finds that public health and
2 the quality of Hawaii's drinking water, streams, ground waters,
3 and ocean are being harmed by water pollution from cesspools.
4 Hawaii has eighty-eight thousand cesspools that deposit
5 approximately fifty-three million gallons of raw sewage directly
6 into the groundwater every day. Drinking water, public
7 recreation, and the precious coral reefs, on which Hawaii's
8 economy, shoreline, recreation, fisheries, and native species
9 depend, are or may be harmed by such pollution.

10 Upgrading cesspools can be expensive for homeowners,
11 averaging \$20,000, which presents a financial barrier to
12 improving water quality. The legislature finds that when a
13 property with a cesspool or cesspools is being sold, the
14 presence of a cesspool should be disclosed so that buyers and
15 sellers can negotiate the payment of the upgrade costs as part
16 of the sale, including through the use of any sales proceeds
17 that may be available.



1 The purpose of this Act is to improve the State's ability
2 to control and reduce water pollution from cesspools by
3 requiring property owners to upgrade cesspools by connecting to
4 a sewer system or installing an individual wastewater system
5 that complies with department of health rules, within a given
6 period of time after the sale of the property, a time when
7 homeowners generally have an ability to pay for the upgrades, as
8 well as to require home sellers to disclose the presence of a
9 known cesspool on the property.

10 SECTION 2. Chapter 342D, Hawaii Revised Statutes, is
11 amended by adding two new sections to part IV to be
12 appropriately designated and to read as follows:

13 "§342D-A Cesspool upgrades after sale of property. (a)
14 Any owner of property containing a cesspool or cesspools located
15 within a priority upgrade area and identified as priority level
16 1, 2, or 3, as determined by the department, shall, within
17 days after the sale of the property, upgrade the cesspool or
18 cesspools by connecting to a sewer system or installing an
19 individual wastewater system or systems that comply with
20 department rules.



1 (b) The director may grant exemptions from the
2 requirements of subsection (a) to property owners of cesspools
3 that apply for an exemption and present documentation showing a
4 legitimate reason that makes it infeasible to upgrade the
5 cesspool. For the purposes of this subsection, a legitimate
6 reason shall include but not be limited to:

- 7 (1) Small lot size;
8 (2) Steep topography;
9 (3) Poor soils; or
10 (4) Accessibility issues.

11 (c) Any property containing a cesspool located in
12 additional priority upgrade areas and identified as priority
13 level 4, as determined by the department, shall be subject to
14 subsection (a) upon determination by the director.

15 (d) Any realtor engaged in the purchase or sale of any
16 property containing a cesspool shall advise the realtor's client
17 as to the client's rights and responsibilities under this
18 section and under any rulemaking conducted pursuant to this
19 section.

20 §342D-B Cesspool outreach and assistance. (a) The
21 director shall establish an outreach program to provide cesspool



1 owners with information on cesspool upgrades, including
2 connections to sewer systems and installation of individual
3 wastewater systems, and on opportunities for financial
4 assistance for cesspool upgrades.

5 (b) The outreach program does not relieve realtors of
6 their duties under section 342D-A(d)."

7 SECTION 3. Section 508D-1, Hawaii Revised Statutes, is
8 amended by amending the definition of "material fact" to read as
9 follows:

10 "Material fact" means any fact, defect, or condition, past
11 or present, that would be expected to measurably affect the
12 value to a reasonable person of the residential real property
13 being offered for sale. The disclosure statement shall not be
14 construed as a substitute for any expert inspection,
15 professional advice, or warranty that the buyer may wish to
16 obtain. "Material fact" includes the fact that the residential
17 real property contains a cesspool."

18 SECTION 4. 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.



1 SECTION 5. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 6. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on December 31,
7 2050.

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Report Title:

Cesspool Upgrades; Sale of Property; Material Fact; Seller's Disclosure; Realtors

Description:

Requires cesspools located in priority upgrade areas and identified as priority level 1, 2, or 3 to be upgraded within an unspecified number of days after the sale of the property on which the cesspool is located. Allows the Director of Health to issue exemptions. Allows cesspools located in additional priority upgrade areas and identified as priority level 4 to be required to be upgraded within an unspecified number of days after the sale of the property on which the cesspool is located, upon determination of the Director of Health. Designates the presence of a cesspool as a material fact for the purposes of a residential real property seller's mandatory disclosure. Requires realtors to advise their clients with respect to the requirements of this Act. Takes effect on 12/31/2050. (SD2)

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