

JAN 22 2016

S.B. NO. 2475

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## A BILL FOR AN ACT

RELATING TO PESTICIDES.

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".

10       The legislature also finds that information pertaining to  
11 the intensive use of pesticides in large-scale commercial  
12 agriculture within the State is not readily available to the  
13 public. Thus, the public is unable to evaluate the full extent  
14 of any impacts on Hawaii's environment or its residents or  
15 decide whether the risks associated with the large-scale use of  
16 pesticides are acceptable.



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

12       The legislature finds that children, the elderly, and other  
13 sensitive residents have no choice but to live, work, and  
14 commute daily in close proximity to areas where restricted use  
15 pesticides are being sprayed. Children can be exposed to  
16 pesticides applied on school grounds, pesticides that drift onto  
17 school grounds, or pesticide residues. Of greatest concern are  
18 restricted use pesticides such as chlorpyrifos, which scientists  
19 have definitively linked to developmental delays in children,  
20 and exposure to other toxic pesticides during fetal, neonatal,  
21 and infant life that may disrupt critical development processes.



1 Life-long pesticide exposure for those living in exposed areas  
2 has been linked to long-term health effects, including cancer  
3 and other serious diseases, decreased cognitive function, and  
4 behavioral problems.

5 The purpose of this Act is to protect the State's  
6 environment and residents from the unintended impacts of large-  
7 scale pesticide use by establishing buffer zones against  
8 pesticide use around sensitive areas.

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

12 "PART . BUFFER ZONES AGAINST PESTICIDES

13 §149A-A Definitions. As used in this part:

14 "Child care facility" means a child care facility, as  
15 defined in section 346-151, that is licensed by the State.

16 "Commercial agricultural entity" means any individual,  
17 partnership, association, corporation, limited liability  
18 company, or organized group of persons, regardless of whether  
19 incorporated, that is engaged in commercial agricultural  
20 production.

21 "Commercial agricultural production" means:



(1) Commercial production of any seed, crop, plant, timber, livestock, poultry, fish, bees, or apiary products; or

(2) Testing or experimental production of any seed, crop, plant, timber, livestock, poultry, fish, bees, or apiary products.

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

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

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

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

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



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

3 "Health" includes physical and mental health.

4 "Non-agricultural production area" means any area held and  
5 operated by a commercial agricultural entity in conjunction with  
6 real properties and areas utilized for commercial agricultural  
7 production.

8 "Outdoor application" means the application of a pesticide  
9 outside of a building or enclosed structure. The term excludes:

10 (1) Indoor applications of pesticides; and

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

14 "School" means an academic institution, including early  
15 childhood education, public schools, department schools, and  
16 charter schools, as those terms are defined in section 302A-101,  
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) Land associated with any school, child care facility, early childhood education and care facility, family child care home, group child care center, or group child care home, including playgrounds, athletic fields, and agricultural fields used by students or staff of these entities; and

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

"Sensitive area" includes any:

- (1) School and school grounds;
- (2) Hospital licensed pursuant to section 321-14.5;
- (3) Adult residential care home, assisted living facility, expanded adult residential care home, and hospice home, as defined in section 321-15.1;
- (4) Child care facility, family child care home, group child care center, and group child care home;
- (5) Extended care adult residential care home and primary care clinic, as defined in section 323D-2;



(6) Health care facility; and

(7) Shoreline, watershed, and bodies of perennial waters.

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

"Surface water" shall have the same meaning as in section 174C-3.

"Watershed" means an area:

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

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

**§149A-B Pesticide buffer zones for sensitive areas. (a)**

Beginning July 1, 2017, any commercial agricultural entity that purchases or uses in excess of a total of        pounds or gallons of restricted use pesticides annually, on commercial agricultural production areas or non-agricultural production areas, or both, shall restrict the outdoor application of all



1 pesticides, including restricted use, general use, and  
2 experimental use pesticides, as follows:

3 (1) No pesticide may be used within feet of any  
4 sensitive area, excluding any surface water,  
5 watershed, or shoreline; and

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

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

13 §149A-C Identification of application site and provision  
14 of site plan; sensitive areas. (a) Any commercial agricultural  
15 entity that is subject to section 149A-B shall ensure that,  
16 prior to any outdoor application of pesticides, the application  
17 site is positively identified using a unique and verifiable  
18 method, including:

19 (1) An onboard, geo-referenced electronic mapping and  
20 navigation system;





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

(3) Other methods approved by the department.

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

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

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

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

**§149A-D Weather conditions.** (a) No school, child care facility, early childhood education and care facility, family child care home, group child care center, or group child care home that uses or purchases in excess of pounds or gallons of restricted use pesticides during the prior calendar year shall conduct any outdoor application of pesticides when the wind speed is more than per hour.



(b) No commercial agricultural entity subject to section 149A-B shall conduct any outdoor application of pesticides when the wind speed is more than            per hour.

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

**§149A-E Exemptions.** (a) Notwithstanding sections 149A-B and 149A-D to the contrary, any commercial agricultural entity may obtain from the department a single use exemption from the prohibition on outdoor applications of pesticides in pesticide buffer zones around sensitive areas, as provided in subsection (c).

(b) Notwithstanding section 149A-D or any other law to the contrary, any school, child care facility, early childhood education and care facility, family child care home, group child care center, group child care home, or commercial agricultural entity may obtain from the department a single use exemption from the prohibition on outdoor applications of pesticides under certain weather conditions, as provided in subsection (c).



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

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

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

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

Nothing in this part shall be construed to prohibit the use of structural or termite application of pesticides, regardless of whether the applications are applied in or outside of a building or enclosed structure.

**§149A-G Penalties and citizen suits. (a) The department**

may bring an action in a court of competent jurisdiction to enjoin any person or entity from violating this part.

(b) The department may assess a fine against any person or entity for any violation of this part, as follows:

(1) \$ for a first violation;

(2) \$ for a second violation; and

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



1 In assessing penalties, each day of violation shall be  
2 considered a separate violation.

3 (c) Any injured citizen of the State who acts in the  
4 public interest, at least sixty days after first giving notice  
5 of the alleged violation to the department and the alleged  
6 violator, may bring an action to enjoin violation of this part  
7 in any court of competent jurisdiction. The court may award to  
8 a prevailing plaintiff reasonable costs and attorney's fees  
9 incurred in investigating and prosecuting an action to enforce  
10 this part. An award may not include monetary damages and may  
11 only include fee and cost recovery.

12 §149A-H Rules. The department shall adopt rules pursuant  
13 to chapter 91 to implement this part; provided that the  
14 department shall not establish exemptions not expressly  
15 authorized in this part.

16 §149A-I Authority of local government. Nothing in this  
17 part shall be construed to preempt or prohibit the authority of  
18 a unit of local government in the State, including counties and  
19 any other political subdivisions within the State created under  
20 article VIII, section 1, of the Hawaii constitution, to regulate  
21 pesticide disclosure, notification, and use, including the



1 establishment of buffer zones against pesticides, in a manner  
2 that is equivalent to or more stringent than the provisions  
3 contained in this part."

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

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

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

17 SECTION 6. This Act shall take effect upon its approval.  
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# S.B. NO. 2475

**Report Title:**

Environmental Protection; Pesticides; Buffer Zones; Penalties

**Description:**

Establishes pesticide buffer zones for sensitive areas.

Establishes penalties for violations.

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

