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# 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 (JFF)



1 Study Group and issued in May 2016, confirms that the State  
 2 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  
21 the 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,  
8 that 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 EPA or  
11 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 a public  
15 school, department school, and charter school, as those terms  
16 are defined in section 302A-101, early education institution, or  
17 private school licensed by the State. The term does not include  
18 institutions of higher education, as defined in section 346-16.

19 "School grounds" means:

- 20 (1) Land associated with any school, child care facility,  
21 early childhood education and care facility, family



1 child care home, group child care center, or group  
2 child care home, including playgrounds, athletic  
3 fields, and agricultural fields used by students or  
4 staff of these entities; and

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

10 "Sensitive area" includes any:

11 (1) School, hospital, adult residential care home,  
12 assisted living facility, child care facility, early  
13 childhood education and care facility, family child  
14 care home, group child care center, group child care  
15 home, hospice home, extended care adult residential  
16 care home, expanded adult residential care home,  
17 health care facility, and primary care clinic; and

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

19 "Shoreline" shall have the same meaning as in section  
20 205A-1.

21 "Watershed" means an area:



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

8 **§149A-B Mandatory disclosure and notification of outdoor**  
 9 **pesticide use on affected grounds.** Effective one year following  
 10 the effective date of Act , Session Laws of Hawaii 2017, any  
 11 school, child care facility, early childhood education and care  
 12 facility, family child care home, group child care center, and  
 13 group child care home that uses or purchases in excess of ten  
 14 pounds or ten gallons of restricted use pesticides during the  
 15 prior calendar year shall disclose the use of all pesticides,  
 16 including restricted use, general use, and experimental use  
 17 pesticides, as follows:

- 18 (1) Public posting of pesticide outdoor application. At a
- 19 minimum of twenty-four hours prior to the outdoor
- 20 application of any pesticide on affected grounds, each
- 21 entity subject to this section shall post public



1 warning signs in the area in which pesticides are to  
2 be applied, in the manner prescribed by section  
3 149A-D;

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

14 (3) Recordkeeping and annual public disclosure. No later  
15 than sixty days following the end of each calendar  
16 year, each entity subject to this section shall  
17 provide to the department annual public reports of all  
18 pesticides used in outdoor applications during the  
19 preceding calendar year. The annual reports shall  
20 comply with the requirements of section 149A-E.



1           §149A-C 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 2017, any commercial agricultural entity that annually purchases  
5 or uses in excess of ten pounds or ten gallons of restricted use  
6 pesticides during the prior calendar year shall disclose the use  
7 of all pesticides, including restricted use, general use, and  
8 experimental use pesticides, as follows:

9           (1) Public posting of pesticide outdoor application. At a  
10 minimum of twenty-four hours prior to the outdoor  
11 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-D;

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



1 occupying any residential property within feet  
2 of the property line of the commercial agricultural  
3 entity where any pesticide is anticipated to be  
4 applied outdoors, in the manner prescribed by section  
5 149A-D; and  
6 (3) Recordkeeping and annual public disclosure. No later  
7 than sixty days following the end of each calendar  
8 year, each commercial agricultural entity subject to  
9 this section shall provide to the department annual  
10 reports of all pesticides used in outdoor applications  
11 during the preceding calendar year. The annual  
12 reports shall comply with section 149A-E and shall be  
13 public records and posted online on the department's  
14 website.

15 **§149A-D Public warning signs; written notifications;**  
16 **contents.** (a) Any public warning sign required to be posted  
17 under section 149A-B or 149A-C shall remain posted during the  
18 outdoor 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 department shall adopt rules pursuant to chapter  
4 91 requiring that all warning signs posted, and written  
5 notifications provided, pursuant to section 149A-B or 149A-C  
6 include the following information:

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

17 **§149A-E Public reports; contents.** The department shall  
18 adopt rules, pursuant to chapter 91, requiring that public  
19 annual reports required under sections 149A-B and 149A-C include  
20 the following information:



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

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

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

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

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

14 (1) \$ for a first violation;

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

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

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

18 (c) Any injured citizen of the State who acts in the  
19 public interest, at least sixty days after first giving notice  
20 of the alleged violation to the department and the alleged  
21 violator, may bring an action to enjoin violation of this part



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

6 **§149A-G Authority of local government.** Nothing in this  
7 part shall be construed to preempt or prohibit the authority of  
8 a unit of local government in the State, including counties and  
9 any other political subdivisions of the State, to regulate  
10 pesticide disclosure, notification, and use, including the  
11 establishment of buffer zones against pesticides, in a manner  
12 that is equivalent to, or more stringent than, the provisions  
13 contained in this part.

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

18 SECTION 3. 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 4. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 5. In codifying the new sections added by section  
8 2 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 the new sections in this Act.

11 SECTION 6. This Act shall take effect on January 28, 2081.



**Report Title:**

Reporting of Pesticide Use; Large-scale Agricultural Operations

**Description:**

Establishes disclosure and public notification requirements for outdoor application of restricted use pesticides in various sensitive areas or by large-scale, outdoor commercial agricultural operations. (HB790 HD1)

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

