

JAN 19 2017

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.



S.B. NO. 29

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:



S.B. NO. 29

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

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

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

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

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

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

19 "Group child care center" means a group child care center,
20 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:



S.B. NO. 29

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



S.B. NO. 29

1 (6) Health care facility; and

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

3 "Shoreline" shall have the same meaning as in section

4 205A-1.

5 "Surface water" shall have the same meaning as in section

6 174C-3.

7 "Watershed" means an area:

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

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

15 **§149A-B Pesticide buffer zones for sensitive areas. (a)**

16 Beginning July 1, 2018, any commercial agricultural entity that
17 purchases or uses in excess of a total of _____ pounds or
18 gallons of restricted use pesticides annually, on commercial
19 agricultural production areas or non-agricultural production
20 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;



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

3 (3) Other methods approved by the department.

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

9 (1) Delineates the boundaries of the application site and
10 the property lines;

11 (2) Depicts the type and location of sensitive areas
12 within feet of the application site; and

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

15 **§149A-D Weather conditions.** (a) No school, child care
16 facility, early childhood education and care facility, family
17 child care home, group child care center, or group child care
18 home that uses or purchases in excess of pounds or
19 gallons of restricted use pesticides during the prior calendar
20 year shall conduct any outdoor application of pesticides when
21 the wind speed is more than per hour.



S.B. NO. 29

1 (b) No commercial agricultural entity subject to section
2 149A-B shall conduct any outdoor application of pesticides when
3 the wind speed is more than per hour.

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

9 **§149A-E Exemptions.** (a) Notwithstanding sections 149A-B
10 and 149A-D to the contrary, any commercial agricultural entity
11 may obtain from the department a single use exemption from the
12 prohibition on outdoor applications of pesticides in pesticide
13 buffer zones around sensitive areas, as provided in subsection
14 (c).

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



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

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

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

8 **§149A-F Structural or termite application of pesticides.**

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

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

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

18 (1) \$ for a first violation;

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

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



S.B. NO. 29

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 State Constitution, to
21 regulate pesticide disclosure, notification, and use, including



S.B. NO. 29

1 the establishment of buffer zones against pesticides, in a
 2 manner that is equivalent to or more stringent than the
 3 provisions 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.
 18

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S.B. NO. 29

Report Title:

Environmental Protection; Pesticides; Buffer Zones; Penalties

Description:

Establishes pesticide buffer zones for sensitive areas beginning on July 1, 2018. Establishes penalties for violations.

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