

JAN 19 2018

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:



S.B. NO. 2439

(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, 2020, any commercial agricultural entity that purchases or uses in excess of a total amount determined by rule pursuant to section 149A-H of restricted use pesticides annually, on commercial agricultural production areas or non-agricultural production areas, or both, shall restrict the



1 outdoor application of all pesticides, including restricted use,
2 general use, and experimental use pesticides, as follows:

3 (1) No pesticide may be used within the distance
4 determined by rule pursuant to section 149A-H of any
5 sensitive area, excluding any surface water,
6 watershed, or shoreline; and

7 (2) No pesticide may be used within the distance
8 determined by rule pursuant to section 149A-H of any
9 surface water, watershed, or shoreline.

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

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



(1) An onboard, geo-referenced electronic mapping and 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 site and the property lines;

(2) Depicts the type and location of sensitive areas within the distance determined by rule pursuant to section 149A-H of the application site; 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 an amount determined by



1 rule pursuant to section 149A-H of restricted use pesticides
2 during the prior calendar year shall conduct any outdoor
3 application of pesticides when the wind speed is more than the
4 speed determined by rule pursuant to section 149A-H.

5 (b) No commercial agricultural entity subject to section
6 149A-B shall conduct any outdoor application of pesticides when
7 the wind speed is more than the speed determined by rule
8 pursuant to section 149A-H.

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

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

20 (b) Notwithstanding section 149A-D or any other law to the
21 contrary, any school, child care facility, early childhood



1 education and care facility, family child care home, group child
2 care center, group child care home, or commercial agricultural
3 entity may obtain from the department a single use exemption
4 from the prohibition on outdoor applications of pesticides under
5 certain weather conditions, as provided in subsection (c).

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

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

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

13 **§149A-F Structural or termite application of pesticides.**

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

18 **§149A-G Penalties and citizen suits.** (a) The department

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



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

3 (1) \$ for a first violation;

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

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

6 In assessing penalties, each day of violation shall be
7 considered a separate violation.

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

17 **§149A-H Rules.** The department shall adopt rules pursuant
18 to chapter 91 to implement this part; provided that the
19 department shall not establish exemptions not expressly
20 authorized in this part. Within eighteen months of the
21 effective date of this section, the department shall adopt rules



1 based on input from the advisory committee on pesticides to
2 determine amounts, distances, and wind speeds relating to
3 pesticide use and buffer zones.

4 **§149A-I Authority of local government.** Nothing in this
5 part shall be construed to preempt or prohibit the authority of
6 a unit of local government in the State, including counties and
7 any other political subdivisions within the State created under
8 article VIII, section 1, of the Hawaii State Constitution, to
9 regulate pesticide disclosure, notification, and use, including
10 the establishment of buffer zones against pesticides, in a
11 manner that is equivalent to or more stringent than the
12 provisions contained in this part."

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

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

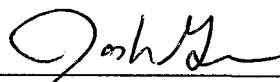





S.B. NO. 2439

1 SECTION 5. In codifying the new sections added by
2 section 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. This Act shall take effect upon its approval.
6

INTRODUCED BY:



S.B. NO. 2439

Report Title:

Environmental Protection; Pesticides; Buffer Zones; Penalties

Description:

Establishes pesticide buffer zones for sensitive areas beginning on July 1, 2020. Establishes penalties for violations.

Requires the Department of Agriculture, based on input from the Advisory Committee on Pesticides, to adopt rules that determine amounts, distances, and wind speeds relating to pesticide buffer zones, within 18 months of the effective date.

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