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# A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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

1           SECTION 1. The legislature finds that little fire ants  
2 (LFA) are on the top one hundred invasive species list and have  
3 become a pervasive problem in the State. In addition to  
4 delivering a painful sting, LFAs infest agricultural fields and  
5 farms, resulting in crop damage. The purpose of this Act is to  
6 require any LFA infestations, past or present, to be included in  
7 the disclosure statement of residential real property and  
8 agricultural land prior to sale.

9           SECTION 2. Section 508D-1, Hawaii Revised Statutes, is  
10 amended by amending the definition of "material fact" to read as  
11 follows:

12           ""Material fact" means any fact, defect, or condition, past  
13 or present, that would be expected to measurably affect the  
14 value to a reasonable person of the residential real property  
15 being offered for sale[-]; including, but not limited to, any  
16 little fire ant infestations."



1 SECTION 3. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 MANDATORY DISCLOSURES IN AGRICULTURAL LAND SALE

6 § -1 Definitions. As used in this chapter, unless the  
7 context clearly requires otherwise:

8 "Agricultural land" means any land that is classified in  
9 the agricultural district pursuant to chapter 205-2(d) and the  
10 rural district pursuant to chapter 205-2(c).

11 "Disclosure statement" means a written statement prepared  
12 by the seller, or at the seller's direction, that purports to  
13 fully and accurately disclose all material facts relating to the  
14 agricultural land being offered for sale that:

- 15 (1) Are within the knowledge or control of the seller; or  
16 (2) Can be observed from visible, accessible areas.

17 "Material fact" means any fact, defect, or condition, past  
18 or present, that would be expected to measurably affect the  
19 value to a reasonable person of the agricultural land being  
20 offered for sale; including, but not limited to, any little fire  
21 ant infestations.



1 "Real estate purchase contract" means a contract, as it may  
2 be amended, by which a seller agrees to sell and a buyer agrees  
3 to buy agricultural land which shall include a deposit, receipt,  
4 offer, acceptance, or other similar agreement for the sale or  
5 lease with option to buy.

6 § -2 **Applicability.** This chapter shall apply to any  
7 sale of agricultural land. The failure of the seller or the  
8 seller's agent to comply with this chapter shall not affect the  
9 validity of the title to any agricultural land sold.

10 § -3 **Exemptions.** This chapter shall not apply to the  
11 following sales of agricultural land:

- 12 (1) Sale to a co-owner;
- 13 (2) Sale to a spouse, parent, or child of the seller;
- 14 (3) Sale by devise, descent, or court order;
- 15 (4) Sale by operation of law, including, but not limited  
16 to, any transfer by foreclosure, bankruptcy, or  
17 partition, or any transfer to a seller's creditor  
18 incident to a deed (or assignment) in lieu of  
19 foreclosure, workout, or the settlement or partial  
20 settlement of any preexisting obligation of a seller



1            owed a creditor and any later sale of agricultural  
2            land by such creditor; and  
3            (5) Sale by a lessor to a lessee resulting from conversion  
4            of leased land to fee simple.

5            **§ -4 Prohibitions on sales of agricultural land.** Except  
6 as provided in section -3, no seller may sell agricultural  
7 land unless:

8            (1) Prior to the sale of the agricultural land, a  
9            disclosure statement is:

10            (A) Signed and dated by the seller within six months  
11            before or ten calendar days after the acceptance  
12            of a real estate purchase contract by the buyer;  
13            and

14            (B) Delivered to the buyer as provided in section  
15            -5;

16            (2) The buyer acknowledges receipt of the disclosure  
17            statement on the real estate purchase contract, or in  
18            any addendum attached to the contract, or in a  
19            separate document; and

20            (3) The buyer is afforded the opportunity to examine the  
21            disclosure statement as provided in section -5.



1           §   -5   **Delivery of disclosure statement to buyer;**

2   **procedures.**   (a)   No later than ten calendar days from  
3   acceptance of a real estate purchase contract, the seller,  
4   either directly or through the seller's agent, shall provide the  
5   disclosure statement to the buyer.

6           (b)   Upon receipt of the disclosure statement, the buyer  
7   shall have fifteen calendar days to:

8           (1)   Examine the disclosure statement; and

9           (2)   Decide whether to rescind the real estate purchase  
10                contract.

11           If the buyer decides to rescind the real estate purchase  
12   contract, the buyer shall deliver, to the seller directly or  
13   through the seller's agent within the fifteen-day period,  
14   written notification of the buyer's decision to rescind the real  
15   estate purchase contract. Failure to deliver the written  
16   notification to the seller within the fifteen-day period shall  
17   be deemed an acceptance of the disclosure statement.

18           (c)   The seller and buyer may agree in writing to reduce or  
19   extend the time period provided for the delivery or examination  
20   and rescission period. The form of the receipt for the  
21   disclosure statement required by section   -4(2) shall provide



1 that the buyer has the right to examine the disclosure statement  
2 and to rescind the real estate purchase contract in accordance  
3 with this section.

4       **§ -6 Later discovered inaccurate information.** Prior to  
5 closing the real estate purchase contract, a buyer who receives  
6 a disclosure statement that fails to disclose a material fact or  
7 contains an inaccurate assertion that directly, substantially,  
8 and adversely affects the value of the agricultural land, and  
9 who was not aware of the foregoing failure or inaccuracy, may  
10 elect in writing to rescind the real estate purchase contract  
11 within fifteen calendar days of the earlier to occur of:

12       (1) The discovery of the failure or inaccuracy; or

13       (2) The receipt of an amended disclosure statement  
14 correcting the failure or inaccuracy, in the manner provided by  
15 section section -5(b) or (c).

16 The buyer's right to rescind the real estate purchase contract  
17 under this section shall not apply if the sale of the  
18 agricultural land has been recorded; provided that the buyer may  
19 pursue all additional remedies provided by law.

20       **§ -7 Seller's agent's duties and responsibilities for**  
21 **disclosure.** (a) Any person or entity acting in the capacity of



1 an escrow agent for the sale of the agricultural land subject to  
2 this chapter, shall not be deemed the agent of the seller or  
3 buyer for purposes of the disclosure requirements of this  
4 chapter unless the seller or buyer and the escrow agent agree in  
5 writing to the establishment of the agency for such purpose.

6 (b) When a seller's agent cannot obtain the disclosure  
7 statement and does not have written assurances from the buyer  
8 that the disclosure statement was received, the seller's agent  
9 shall notify the buyer in writing of the buyer's rights to the  
10 disclosure statement and rights of rescission provided by this  
11 chapter. However, the seller's agent shall not be required to  
12 prepare the disclosure statement. The seller's agent  
13 responsible for delivering the disclosure statement, or the  
14 aforesaid written notification of the buyer's rights if  
15 applicable, shall maintain a record of the action taken by that  
16 agent to effect compliance.

17 (c) If the seller's agent is or becomes aware of any  
18 material facts inconsistent with or contradictory to the  
19 disclosure statement or the inspection report of a third party  
20 provided by the seller, the seller's agent shall disclose these  
21 facts to the seller, the buyer, and the buyer's agent. Nothing



1 in this chapter precludes all other obligations of the seller's  
2 or the buyer's agent under Hawaii law.

3 § -8 Good faith and due care in preparing the disclosure

4 statement. (a) A seller or the seller's agent shall prepare  
5 the disclosure statement in good faith and with due care. A  
6 buyer shall have no cause of action against a seller or seller's  
7 agent for, arising out of, or relating to the providing of a  
8 disclosure statement when the disclosure statement is prepared  
9 in good faith and with due care. For purposes of this section,  
10 "in good faith and with due care" includes honesty in fact in  
11 the investigation, research, and preparation of the disclosure  
12 statement and may include information on the following:

- 13 (1) Facts based on only the seller's personal knowledge;  
14 (2) Facts provided to the seller by governmental agencies  
15 and departments;  
16 (3) Existing reports prepared for the seller by third-  
17 party consultants, including without limitation a:  
18 (A) Licensed engineer;  
19 (B) Land surveyor;  
20 (C) Geologist;





- 1 (D) Pest and wood-destroying insect control expert;  
2 or  
3 (E) Contractor, or other home inspection expert;  
4 dealing with matters within the scope of the  
5 professional's license or expertise for the purpose of  
6 the disclosure statement; and  
7 (4) Facts provided to the seller by a managing agent of a  
8 cooperative or community association.

9 Notwithstanding this subsection, a seller or seller's agent  
10 shall be under no obligation to engage the services of any  
11 person in the investigation, research, or preparation of the  
12 disclosure statement. The failure to engage the services of any  
13 such person for this purpose shall not be deemed an absence of  
14 good faith or due care by the seller or the seller's agent in  
15 the investigation, research, or preparation of the disclosure  
16 statement. The delivery to the buyer of reports or facts within  
17 the scope of paragraph (2), (3), or (4) after the date of the  
18 initial disclosure statement shall be considered an amendment of  
19 the disclosure statement.

20 (b) The representations contained in the disclosure  
21 statement shall be construed to be made only to, and for the



1 benefit of, the buyer and shall be deemed accurate only as to  
2 the time when made, except as otherwise provided in section -  
3 11.

4       **§ -9 Disclosure form.** In addition to the other  
5 information required by this chapter, the form for the  
6 disclosure statement shall include the following:

- 7       (1) A notice to the buyer that the buyer may wish to  
8             obtain professional advice and inspections of the  
9             agricultural land;
- 10       (2) A notice to the buyer that the information contained  
11            in the disclosure statement is the representation of  
12            the seller and not the representation of the seller's  
13            agent (except as to those representations, if any,  
14            specifically identified as being made by the seller's  
15            agent and not by the seller); and
- 16       (3) A notice of the buyer's rescission rights pursuant to  
17            this chapter.

18       **§ -10 Indication of receipt of disclosure statement.**

19       (a) The buyer shall indicate receipt of the seller's disclosure  
20       statement on the real estate purchase contract, or in any  
21       addendum attached to the contract, or in a separate document.



1 (b) Receipts taken for the disclosure statement shall be  
2 kept on file in possession of the seller or seller's agent for a  
3 period of three years from the date the receipt was taken.

4 § -11 **Later material facts.** Information in a disclosure  
5 statement that has not been disclosed or becomes inaccurate  
6 regarding a material fact as a result of an act, agreement, or  
7 occurrence (or otherwise becomes known to seller) after the  
8 statement is provided to the buyer does not violate this  
9 chapter. However, if such information directly, substantially,  
10 and adversely affects the value of the agricultural land, the  
11 seller shall provide an amended disclosure statement to the  
12 buyer disclosing the material fact within ten calendar days  
13 after the seller's discovery of such information if the seller  
14 discovers such information prior to the recorded sale of the  
15 agricultural land, and in any event, no later than twelve noon  
16 of the last business day prior to the recorded sale of the  
17 agricultural land. The buyer shall have fifteen calendar days  
18 to examine the amended disclosure statement and, if the buyer  
19 was not already aware of such information, to rescind the real  
20 estate purchase contract in accordance with section -5(b) or  
21 c. The buyer's right to rescind the real estate purchase



1 contract under this section shall not apply if the sale of  
2 agricultural land has been recorded; provided that the buyer may  
3 pursue all additional remedies provided by law.

4       **§ -12 Additional disclosure requirements.** The  
5 requirements of this chapter are in addition to all other  
6 disclosure obligations of the seller required by law relating to  
7 the sale of agricultural land.

8       **§ -13 Remedies; voidable contracts.** (a) A buyer may  
9 elect to complete the purchase of agricultural land even if the  
10 seller fails to comply with the requirements of this chapter.  
11 After recordation of the sale of agricultural land, a buyer  
12 shall have no right under this chapter to rescind the real  
13 estate purchase contract despite the seller's failure to comply  
14 with the requirements of this chapter.

15       (b) If the buyer is provided a disclosure statement  
16 prepared and delivered in accordance with this chapter and the  
17 buyer decides to rescind the real estate purchase contract, the  
18 buyer shall not be entitled to any damages but shall be entitled  
19 to the immediate return of all deposits.

20       (c) In addition to the rights of rescission granted to the  
21 buyer under this chapter, if the seller negligently fails to



1 provide the disclosure statement required by this chapter, the  
2 seller shall be liable to the buyer for the amount of the actual  
3 damages, if any, suffered as a result of the seller's  
4 negligence.

5 (d) In addition to the remedies allowed under subsection  
6 (b) or (c), a court may also award the prevailing party  
7 attorney's fees, court costs, and administrative fees.

8 § -14 **Rescission.** Notwithstanding anything to the  
9 contrary in this chapter, any action for rescission brought  
10 under this chapter shall commence prior to the recorded sale of  
11 agricultural land.

12 § -15 **Limitation of actions.** (a) Any action brought  
13 under this chapter shall commence within two years from the date  
14 the buyer received the disclosure statement; provided that if no  
15 disclosure statement was delivered to the buyer, then the action  
16 shall commence within two years of the recorded sale of the  
17 agricultural land.

18 (b) This chapter supersedes all other laws relating to the  
19 time for commencement of actions for failure to make the  
20 disclosures required by this chapter.



1           §   -16   **Alternative dispute resolution.**  If the  
2 agricultural land purchase contract provides for alternative  
3 dispute resolution, then prior to filing an action in any court  
4 to enforce this chapter, a seller or buyer shall first submit  
5 the claim to alternative dispute resolution as required in the  
6 agricultural land purchase contract.

7           §   -17   **Other disclosures.**  The provisions of this chapter  
8 shall not relieve or release a seller or a seller's agent of any  
9 other requirements of disclosure with regard to a sale of  
10 agricultural land, including but not limited to the provisions  
11 contained in this chapter.

12          §   -18   **Severability.**  If any provision of this chapter,  
13 or the application thereof to any person or circumstance is held  
14 invalid, the invalidity shall not affect other provisions or  
15 applications that can be given effect without the invalid  
16 provision or application, and to this end the provisions of this  
17 chapter are severable."

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.

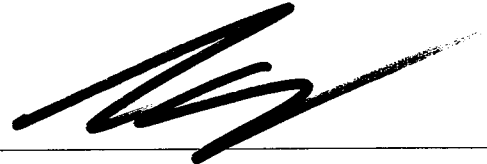


1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 6. This Act shall take effect upon its approval.

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"INTRODUCED BY: \_\_\_\_\_



JAN 24 2024



# H.B. NO. 2792

**Report Title:**

Real Property; Disclosure; Invasive Species; Little Fire Ant

**Description:**

Requires seller or seller's agent to provide buyer with disclosure of any little fire ant infestations on residential real property and agricultural land prior to sale.

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

