
A BILL FOR AN ACT

RELATING TO THE HEALTH IMPACT OF PESTICIDES.

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

1 SECTION 1. The purpose of this Act is: to protect
2 sensitive public resources of the State of Hawaii from increased
3 outdoor use of pesticides resulting from large-scale, outdoor
4 commercial agricultural operations, to protect sensitive
5 populations in the State of Hawaii from the risks from exposure
6 to increased outdoor use of pesticides and from pesticide drift
7 and vapor from nearby commercial agricultural fields, to protect
8 children from exposure to pesticides from outdoor applications
9 on school grounds, and to preserve the right of Hawaii residents
10 to reject pesticide exposure because of health, moral, or other
11 concerns. This Act shall be liberally construed to fulfill
12 these purposes.

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

16 "PART . PESTICIDE DRIFT PROTECTIONS

17 §149A-A Definitions. As used in this part, unless the
18 context clearly requires otherwise:



1 "Adult residential care home" means any facility providing
2 twenty-four-hour living accommodations, for a fee, to adults
3 unrelated to the family, who require at least minimal assistance
4 in the activities of daily living, personal care services,
5 protection, and health care services, but who do not need the
6 professional health services provided in an intermediate,
7 skilled nursing, or acute care facility.

8 "Assisted living facility" means a combination of housing,
9 health care services, and personalized supportive services
10 designed to respond to individual needs and to promote choice,
11 responsibility, independence, privacy, dignity, and
12 individuality.

13 "Commercial agricultural production" means the commercial
14 production, testing, or experimental production of any seed,
15 crop, plant, timber, livestock, poultry, fish, bees, or apiary
16 products.

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



1 "Commercial agriculture entity" means any individual,
2 partnership, association, corporation, limited liability
3 company, or any organized group of persons, whether incorporated
4 or not, that is engaged in commercial agricultural production.

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

8 "Expanded adult residential care home" means any facility
9 licensed by the State of Hawaii to provide twenty-four-hour
10 living accommodations, for a fee, to adults unrelated to the
11 family, who require at least minimal assistance in the
12 activities of daily living, personal care services, protection,
13 and health care services, and who may need the professional
14 health services provided in an intermediate or skilled nursing
15 facility.

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

19 "Extended care adult residential care home" means an adult
20 residential care home providing twenty-four-hour living
21 accommodation, for a fee, for adults unrelated to the licensee.



1 The primary caregiver shall be qualified to provide care to
2 nursing facility level individuals who have been admitted to a
3 medicaid waiver program, or persons who pay for care from
4 private funds and have been certified for this type of facility.
5 There shall be two categories of extended care adult residential
6 care homes, which shall be licensed in accordance with rules
7 adopted by the department of health:

8 (1) Type I home shall consist of five or fewer unrelated
9 persons with no more than two extended care adult
10 residential care home residents; and

11 (2) Type II home shall consist of six or more unrelated
12 persons and one or more persons may be extended care
13 adult residential care home residents.

14 "Family child care home" means a private residence,
15 including a home, apartment, unit, or townhouse, licensed by the
16 State of Hawaii, at which care may be provided for three to no
17 more than six children who are unrelated to the caregiver by
18 blood, marriage, or adoption, at any given time.

19 "Group child care center" means a facility, other than a
20 private home, licensed by the State of Hawaii, at which care is
21 provided.



1 "Group child care home" means a facility, which may be an
2 extended or modified private home, licensed by the State of
3 Hawaii, at which care is provided for seven to twelve children.

4 "Health" means physical and mental health.

5 "Hospice home" means any facility operated by a licensed
6 hospice service agency providing twenty-four-hour living
7 accommodations to no more than five unrelated persons who are
8 admitted for hospice service.

9 "Non-agricultural production area" means any area held and
10 operated by a commercial agricultural entity in conjunction with
11 real properties and areas utilized for commercial agricultural
12 production.

13 "Outdoor application" means an application of a pesticide
14 made outside of a building or enclosed structure. The term
15 excludes indoor applications of pesticides and structural or
16 termite application of pesticides, regardless of whether such
17 applications are applied inside or outside of a building or
18 enclosed structure.

19 "Place of religious worship" means any church, synagogue,
20 mosque, temple, religious cemetery, or other religious real
21 property of any religious denomination where individuals or a



1 group of people gather to perform acts of devotion, veneration,
2 or religious study.

3 "Primary care clinic" means a clinic licensed by the State
4 of Hawaii for outpatient services providing all preventive and
5 routine health care services, management of chronic diseases,
6 consultation with specialists when necessary, and coordination
7 of care across health care settings or multiple providers or
8 both. Primary care clinic providers include:

- 9 (1) General or family practice physicians;
- 10 (2) General internal medicine physicians;
- 11 (3) Pediatricians;
- 12 (4) Obstetricians and gynecologists;
- 13 (5) Physician assistants; and
- 14 (6) Advanced practice registered nurses.

15 "School" means an academic and noncollege type regular or
16 special education institution of learning established and
17 maintained by the department of education or licensed and
18 supervised by that department.

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 the entity; and

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

10 "Sensitive area" includes:

11 (1) Any school, hospital licensed pursuant to section
12 321-14.5, adult residential care home, assisted living
13 facility, child care facility, family child care home,
14 group child care center, group child care home,
15 hospice home, extended care adult residential care
16 home, expanded adult residential care home, health
17 care facility, primary care clinic, and place of
18 religious worship; and

19 (2) Any shoreline, watershed, and body of perennial
20 waters.



1 "Shoreline" means the upper reaches of the wash of the
2 waves, other than storm and seismic waves, at high tide during
3 the season of the year in which the highest wash of the waves
4 occurs, usually evidenced by the edge of vegetation growth, or
5 the upper limit of debris left by the wash of the waves.

6 "Watershed" means:

7 (1) An area from which the domestic water supply of any
8 city, town, or community is or may be obtained; or

9 (2) An area where water infiltrates into artesian or other
10 ground-water areas from which the domestic water
11 supply of any city, town, or community is or may be
12 obtained.

13 **§149A-B Mandatory disclosure and notification of outdoor**
14 **pesticide use on school grounds.** Beginning July 1, 2016, it
15 shall be mandatory for any school, child care facility, early
16 childhood education and care facility, family child care home,
17 group child care center, and group child care home that uses or
18 purchases in excess of pounds or gallons of
19 restricted use pesticides during a prior calendar year to
20 disclose the use of all pesticides, including restricted use,



1 general use, or experimental use, in compliance with the
2 following disclosure and notification requirements:

3 (1) It shall be mandatory for any school, child care
4 facility, early childhood education and care facility,
5 family child care home, group child care center, and
6 group child care home subject to this section to
7 provide public posting of warning signs to any outdoor
8 application of pesticides, including restricted use,
9 general use, or experimental use, on the grounds.

10 Warning signs shall be posted a minimum of twenty-four
11 hours prior to the outdoor application of any
12 pesticide. The warning signs shall remain posted
13 during the outdoor application of any pesticide and
14 until expiration of the applicable restricted-entry
15 interval established by the Environmental Protection
16 Agency for the particular pesticide. The posting of
17 warning signs during and after the outdoor application
18 of any pesticide shall conform to the worker
19 protection standard established by the Environmental
20 Protection Agency. The department shall adopt rules
21 pursuant to chapter 91 and this section to require



1 posting of pesticide warning signs containing but not
2 limited to the following information:

3 (A) The trade name of the pesticide to be applied;

4 (B) The name of the active ingredient or ingredients
5 of the pesticide to be applied;

6 (C) The potential hazards to humans and domestic
7 animals as listed in the precautionary statements
8 of the pesticide's label;

9 (D) Emergency telephone numbers to call in case of
10 poisoning from the pesticide; and

11 (E) Any other related information the department
12 deems helpful and appropriate for consumers;

13 (2) It shall be mandatory for any school, child care
14 facility, early childhood education and care facility,
15 family child care home, group child care center, and
16 group child care home subject to this section to
17 provide pre-application written notification to
18 parents or guardians of children attending the school,
19 child care facility, early childhood education and
20 care facility, family child care home, group child
21 care center, or group child care home a minimum of



1 twenty-four hours prior to the outdoor application of
2 any pesticide, including restricted use, general use,
3 or experimental use, on the grounds. The department
4 shall adopt rules pursuant to chapter 91 and this
5 section to require pre-application written
6 notifications to include but not be limited to the
7 following information:

- 8 (A) The trade name of the pesticide to be applied;
9 (B) The name of the active ingredient or ingredients
10 of the pesticide to be applied;
11 (C) The potential hazards to humans and domestic
12 animals as listed in the precautionary statements
13 of the pesticide's label; and
14 (D) Emergency telephone numbers to call in case of
15 poisoning from the pesticide; and

- 16 (3) No later than sixty days following the end of each
17 calendar year, it shall be mandatory for any school,
18 child care facility, early childhood education and
19 care facility, family child care home, group child
20 care center, and group child care home subject to this
21 section to provide annual public reports of all



1 pesticides, including restricted use, general use, or
 2 experimental use, used in outdoor applications during
 3 the prior calendar year to the department. The
 4 department shall adopt rules pursuant to chapter 91
 5 and this section to require public annual reports
 6 containing but not limited to the following
 7 information:

8 (A) A listing of all pesticides used in outdoor
 9 applications by federal and state registrations
 10 or permit numbers, commercial product names, and
 11 active ingredients;

12 (B) The total quantities used for each pesticide; and

13 (C) A general description of the geographic location,
 14 including at minimum the tax map key, where the
 15 pesticides were used.

16 (b) Any school, child care facility, early childhood
 17 education and care facility, family child care home, group child
 18 care center, and group child care home subject to this section
 19 shall not conduct any outdoor application of pesticides when the
 20 wind speed is more than miles per hour. If a more
 21 restrictive standard is set forth in the information contained



1 on the label of the pesticide, or by other regulations,
2 including county or local regulations, the more restrictive
3 standard shall apply.

4 **§149A-C Mandatory disclosure and notification of**
5 **commercial agricultural pesticide use.** (a) Beginning July 1,
6 2016, it shall be mandatory for any commercial agricultural
7 entity that annually uses or purchases in excess of pounds
8 or gallons of restricted use pesticides during a prior
9 calendar year to disclose the use of all pesticides, including
10 restricted use, general use, or experimental use, in compliance
11 with the following disclosure and notification requirements:

12 (1) It shall be mandatory for any commercial agricultural
13 entity subject to this section to provide public
14 posting of warning signs in the area in which
15 pesticides are to be applied a minimum of twenty-four
16 hours prior to the outdoor application of any
17 pesticide, including restricted use, general use, or
18 experimental use. The warning signs shall remain
19 posted during the outdoor application of any pesticide
20 and until expiration of the applicable restricted-
21 entry interval established by the Environmental



1 Protection Agency for the particular pesticide. The
2 posting of warning signs during and after the outdoor
3 application of any pesticide shall conform to the
4 worker protection standard established by the
5 Environmental Protection Agency. The department shall
6 adopt rules pursuant to chapter 91 and this section to
7 require posting of pesticide warning signs to contain
8 but not be limited to the following information:

9 (A) The trade name of the pesticide to be applied;

10 (B) The name of the active ingredient or ingredients
11 of the pesticide to be applied;

12 (C) The potential hazards to humans and domestic
13 animals as listed in the precautionary statements
14 of the pesticide's label;

15 (D) Emergency telephone numbers to call in case of
16 poisoning from the pesticide; and

17 (E) Any other related information the department
18 deems helpful and appropriate for consumers;

19 (2) It shall be mandatory for any commercial agricultural
20 entity subject to this section to provide
21 pre-application written notification to any sensitive



1 area and any property owner, lessee, or person
2 otherwise occupying any residential property within
3 feet of the property line of the commercial
4 agricultural entity where any pesticide is anticipated
5 to be applied outdoors a minimum of twenty-four hours
6 prior to the outdoor application of any pesticide,
7 including restricted use, general use, or experimental
8 use. The department shall adopt rules pursuant to
9 chapter 91 and this section to require pre-application
10 written notifications to contain but not be limited to
11 the following information:

- 12 (A) The trade name of the pesticide to be applied;
13 (B) The name of the active ingredient or ingredients
14 of the pesticide to be applied;
15 (C) The potential hazards to humans and domestic
16 animals as listed in the precautionary statements
17 of the pesticide's label;
18 (D) Emergency telephone numbers to call in case of
19 poisoning from the pesticide; and
20 (E) Any other related information the department
21 deems helpful and appropriate for consumers; and



- 1 (3) No later than sixty days following the end of each
2 calendar year, it shall be mandatory for any
3 commercial agricultural entity subject to this section
4 to provide annual public reports of all pesticides,
5 including restricted use, general use, or experimental
6 use, used in outdoor applications during the prior
7 calendar year to the department. The public annual
8 reports shall be posted online on the department's
9 website. The department shall adopt rules pursuant to
10 chapter 91 and this section to require public annual
11 reports to contain but not be limited to the following
12 information:
- 13 (A) A listing of all pesticides used in outdoor
14 applications by federal and state registrations
15 or permit numbers, commercial product names, and
16 active ingredients;
- 17 (B) The total quantities used for each pesticide; and
- 18 (C) A general description of the geographic location,
19 including at minimum the tax map key and ahupuaa
20 where the pesticides were used.



1 (b) Any commercial agricultural entity subject to this
2 section shall not conduct any outdoor application of pesticides
3 when the wind speed is more than miles per hour. If a
4 more restrictive standard is set forth in information contained
5 on the label of the pesticide, or by other regulations,
6 including county or local regulations, the more restrictive
7 standard shall apply.

8 **§149A-D Pesticide buffer zones for sensitive areas.** (a)
9 Beginning July 1, 2016, it shall be mandatory for any commercial
10 agricultural entity that uses or purchases in excess of
11 pounds or gallons of restricted use pesticides annually on
12 commercial agricultural production areas or non-agricultural
13 production areas, or both, to restrict the outdoor application
14 of all pesticides, including restricted use, general use, or
15 experimental use, within feet of any sensitive area.

16 (b) If a more restrictive standard is set forth in the
17 information contained on the label of the pesticide, or by other
18 regulations, including county or local regulations, the more
19 restrictive standard shall apply.

20 (c) Any commercial agricultural entity that is subject to
21 section 149A-C shall ensure that prior to any outdoor



1 application of pesticides, the application site is positively
2 identified using a unique and verifiable method, including:

3 (1) An onboard, geo-referenced electronic mapping and
4 navigation system, such as Global Positioning System;

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

7 (3) Other methods approved by the department.

8 (d) Any commercial agricultural entity that is subject to
9 section 149A-C, prior to any application of pesticides, shall
10 provide the certified pesticide applicator, commercial pesticide
11 applicator, or pest control operator with a site plan that
12 includes a site map that:

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

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

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

19 **§149A-E Exemptions.** Notwithstanding the provisions of
20 this chapter, any school, child care facility, early childhood
21 education and care facility, family child care home, group child



1 care center, and group child care home subject to section
2 149A-B, or commercial agricultural entity subject to section
3 149A-C, may obtain from the department a single use exemption
4 from the prohibition on outdoor applications of pesticides in
5 pesticide buffer zones around sensitive areas. The department
6 shall issue a single use exemption if it determines that:

- 7 (1) The pest situation poses an immediate threat to human
8 health and the environment; and
9 (2) That there is no viable alternative to the use of the
10 proposed pesticide.

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

14 (b) Any person or entity who knowingly violates this part
15 shall be liable to the department for a civil penalty in the
16 amount of:

- 17 (1) \$ for a first violation;
18 (2) \$ for a second violation; or
19 (3) \$ for a third or subsequent violation.

20 In assessing penalties, each day of violation shall be
21 considered a separate violation.



1 (c) Any injured citizen in the State who acts in the
2 public interest, after giving notice of the alleged violation to
3 the department and waiting at least sixty days, may bring an
4 action to enjoin the violation in any court of competent
5 jurisdiction.

6 (d) In a civil suit, the court may award to a prevailing
7 plaintiff reasonable costs and attorneys' fees incurred in
8 investigating and prosecuting an action to enforce this part.
9 An award may not include monetary damages, but only fee and cost
10 recovery."

11 SECTION 3. The department shall adopt rules, pursuant to
12 chapter 91, Hawaii Revised Statutes, necessary for the purposes
13 of this Act.

14 SECTION 4. Nothing in this Act shall be construed to
15 prohibit or preempt the authority of an unit of local government
16 in the State of Hawaii, including counties and any other
17 political subdivisions created under article VIII, section 1, of
18 the Hawaii State Constitution, to regulate pesticide disclosure,
19 notification, and use in a manner that is equivalent to or more
20 restrictive than the provisions contained in this Act.



1 SECTION 5. 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 6. 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 7. This Act shall take effect upon its approval.

12



Report Title:

Pesticide Drift; Sensitive Areas; Health

Description:

Establishes mandatory notice, reporting, and use requirements when pesticides are applied outdoors near sensitive areas.
(SD1)

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

