A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

SECTION 1. The legislature finds that the number of large-scale, outdoor commercial agricultural operations in Hawaii has been increasing. Unlike the majority of Hawaii's farmers, these operations regularly apply high volumes of restricted use pesticides into the environment. The United States Environmental Protection Agency classifies pesticides as restricted use pesticides if they are determined to cause "unreasonable adverse effects on the environment" when used "without additional regulatory restrictions." The legislature also finds that information pertaining to the intensive use of pesticides in large-scale commercial agriculture within the State is not readily available to the public.

In 2013, the department of agriculture established the Kauai agricultural good neighbor program to collect and publish information regarding outdoor usage of restricted use pesticides by large-scale commercial agricultural operations in the county of Kauai. Similar programs do not exist for the other counties.
in the State. Moreover, the information collected is completely voluntary, is neither mandatory nor verified, and is only published on the department of agriculture's website months after the reported pesticide applications. As a result, the public is unable to evaluate the full extent of any impacts accruing to Hawaii's environment or its residents and to decide whether the risks associated with the large-scale commercial agricultural use of the pesticides across the State are acceptable.

The legislature further finds that the State currently does not have an adequate regulatory structure in place to monitor the human health impacts of pesticide drift near sensitive populations. Pesticides may volatilize, or change from a solid or liquid state into a vapor state, into the lower atmosphere for days, weeks, or months after the application. Accordingly, drift from restricted use pesticides may have lingering effects on the environment long after the initial exposure. The direct, indirect, and cumulative impacts on the environment and public health related to long-term intensive commercial use of pesticides have yet to be properly or independently evaluated.
The legislature further finds that children, the elderly, and other sensitive residents have no choice but to live, work, and commute daily in close proximity to areas where restricted use pesticides are being sprayed. Children can be exposed to pesticides applied on school grounds, pesticides that drift onto school grounds, or pesticide residues. Of greatest concern are restricted use pesticides such as chlorpyrifos, which scientists have definitively linked to developmental delays in children, and other toxic exposure to pesticides during fetal, neonatal, and infant life that may disrupt critical development processes. Lifelong pesticide exposure for those living in exposed areas has been linked to long-term health effects, including cancer and other serious diseases, decreased cognitive function, and behavioral problems.

The purpose of this Act is to protect the State's environment and residents from the unintended impacts of large-scale pesticide use by:

(1) Making the reporting guidelines of the Kauai agricultural good neighbor program mandatory for large-scale, outdoor commercial agricultural operations across the State; and
(2) Establishing disclosure and public notification requirements for outdoor applications of pesticides in and in the proximity of schools, healthcare facilities, child care facilities, elder care facilities, and other environmentally-sensitive areas.

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

"PART . PESTICIDE MANDATORY DISCLOSURE

§149A-A Definitions. As used in this part:

"Adult residential care home" means an adult residential care home as defined in section 321-15.1 that is licensed by the State.

"Ahupuaa" shall have the same meaning as in section 226-2.

"Assisted living facility" means an assisted living facility, as defined in section 321-15.1 that is licensed by the State.

"Child care facility" means child care facility as defined in section 346-151 that is licensed by the State.

"Commercial agricultural entity" means any individual, partnership, association, corporation, limited liability
company, or organized group of persons, regardless of whether
incorporated, that is engaged in commercial agricultural
production.

"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.

"Expanded adult residential care home" means an expanded
adult residential care home as defined in section 321-15.1 that
is licensed by the State.
"Experimental use pesticide" means a pesticide whose use is authorized by an experimental use permit by either the EPA or the department.

"Extended care adult residential care home" shall have the same meaning as in section 323D-2.

"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.

"Group child care home" means a group child care home as defined in section 346-151 that is licensed by the State.

"Health" includes physical and mental health.

"Hospice home" shall have the same meaning as in section 321-15.1.

"Hospital" includes all hospitals licensed pursuant to section 321-14.5.

"Outdoor application" means an application of a pesticide outside a building or enclosed structure. The term excludes:

(1) Indoor applications of pesticides; and

(2) Structural or termite application of pesticides,
whether the applications are applied in or outside a
building or enclosed structure.

"Primary care clinic" means a primary care clinic, as
defined in section 323D-2, that is licensed by the State.

"School" means an academic institution, including early
college education, public schools, department schools, and
charter schools, as those terms are defined in section 302A-101,
and private schools licensed by the State. The term does not
include institutions of higher education, as defined in section
346-16.

"School grounds" means:

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, hospital, adult residential care home, assisted living facility, child care facility, family child care home, group child care center, group child care home, hospice home, extended care adult residential care home, expanded adult residential care home, healthcare facility, and primary care clinic;

and

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

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

"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 ground-water 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 Mandatory disclosure and notification of commercial agricultural pesticide use. Effective one year following the effective date of Act 2016, any entity that meets the requirements of the existing good neighbor program established and administered by the department and uses or purchases in excess of five pounds or fifteen gallons of restricted use pesticides during the prior calendar year shall:

(1) Post public warning signs of pesticide outdoor application. At least twenty-four hours prior to the outdoor application of any pesticide, any commercial agricultural entity subject to this section shall post public warning signs in the area in which pesticides are to be applied, in the manner prescribed by section 149A-C;

(2) Provide written notification to occupants and residents of sensitive areas. At least twenty-four hours prior to the outdoor application of any pesticide, any commercial agricultural entity subject to this section shall provide written notification to any sensitive area and any property owner, lessee, or
person otherwise occupying any residential property
within feet of the property line of the commercial
agricultural production area where any pesticide is
anticipated to be applied outdoors, in the manner
prescribed by section 149A-C; and

(3) Provide recordkeeping and annual public disclosure.
No later than sixty days following the end of each
calendar year, each commercial agricultural entity
subject to this section shall provide to the
department annual reports of all pesticides used in
outdoor applications during the preceding calendar
year. The annual reports shall comply with section
149A-D and shall be public records and posted online
on the department's website.

§149A-C Public warning signs; written notifications;
contents. (a) Any public warning sign required to be posted
under section 149A-B shall remain posted during the outdoor
application of any pesticide and until expiration of the
applicable restricted-entry interval established by the EPA for
the particular pesticide. The posting of a warning sign during
and after the outdoor application of any pesticide shall conform to the worker protection standard established by the EPA.

(b) The posted warning signs and written notifications required under section 149A-B shall include the following information:

(1) The trade name of the pesticides to be applied;

(2) The names of the active ingredients of the pesticides to be applied;

(3) The potential hazards to humans and domestic animals, as listed in the precautionary statements of the pesticide's label;

(4) Emergency telephone numbers to call in case of poisoning from the pesticides; and

(5) Any other related information the department deems appropriate.

§149A-D Public reports; contents. The public annual reports required under sections 149A-B shall include the following information:

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

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

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

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

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

(1) $ for a first violation;

(2) $ for a second violation; and

(3) $ for a third or subsequent violation.

Each day of violation shall be considered a separate violation.

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

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

**SECTION 3.** In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

**SECTION 5.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.
SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: 

JAN 26 2016
Report Title:
Reporting of Pesticide Use; Large-scale Agricultural Operations

Description:
Requires reporting guidelines for large-scale, outdoor commercial agricultural operations across the State. Establishes disclosure and public notification requirements for outdoor application of pesticides in various environmentally sensitive areas.

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