

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 use of the chemical
2 pesticide chlorpyrifos is a concern to the State. Chlorpyrifos
3 is a restricted use pesticide in the State and is also the most
4 widely used conventional insecticide in the country by pounds of
5 active ingredient.

6 The legislature recognizes that, in November 2016, the
7 Environmental Protection Agency released a revised human health
8 risk assessment for chlorpyrifos. In its revised risk
9 assessment, the Environmental Protection Agency confirmed that
10 there are no safe uses of chlorpyrifos.

11 Specifically, the Environmental Protection Agency found
12 that:

13 (1) All food and drinking water exposures to chlorpyrifos
14 exceed safe levels;

15 (2) Pesticide drift reaches unsafe levels at three hundred
16 feet from the field's edge;



1 (3) Chlorpyrifos is found at unsafe levels in the air at
2 schools, homes, and communities in agricultural areas;

3 (4) All workers who mix and apply chlorpyrifos are exposed
4 to unsafe levels of the pesticide even with maximum
5 personal protective equipment and engineering controls
6 in place;

7 (5) Field workers are allowed to re-enter fields within
8 one to five days after pesticide spraying, but unsafe
9 exposures continue on average for eighteen days after
10 applications; and

11 (6) Chlorpyrifos is acutely toxic and associated with
12 neurodevelopmental harms in children.

13 In previous studies, the Environmental Protection Agency
14 found that chlorpyrifos can overstimulate the nervous system,
15 causing nausea, dizziness, confusion, and, at very high
16 exposures, respiratory paralysis and death. Extensive
17 scientific studies show that exposing children or pregnant women
18 to chlorpyrifos in even small amounts may cause developmental
19 delays, permanently reduced cognitive capacity, behavioral
20 problems, and learning disabilities.



1 In response to a petition by advocacy groups, under the
2 Obama Administration, the Environmental Protection Agency twice
3 issued proposals to revoke all chlorpyrifos tolerances – the
4 maximum amount of pesticides allowed on a food product.
5 However, the Environmental Protection Agency failed to finalize
6 the ban on chlorpyrifos. After multiple delays, a federal judge
7 gave the agency a March 31, 2017, deadline to take action.

8 Under the Trump Administration, in March 2017, the
9 Environmental Protection Agency reversed its direction and
10 announced that it would formally postpone action on the use of
11 chlorpyrifos on food-grade products and instead study the
12 unresolved effects of chlorpyrifos through 2022. Despite a
13 legal challenge by several organizations and seven states to the
14 Environmental Protection Agency's decision, a federal appeals
15 court declined to direct the Environmental Protection Agency to
16 decide whether to ban the use of chlorpyrifos.

17 In Hawaii, in 2016, at least ten farm workers of a West
18 Kauai agribusiness operation were taken to the hospital after
19 exposure to chlorpyrifos. Chlorpyrifos has also been found in
20 the air at Waimea Canyon middle school, in the water in the
21 Kekaha ditch, and in streams in Hawaii county. Despite the



1 failure of the Environmental Protection Agency to ban
2 chlorpyrifos, the legislature finds that it must take action to
3 eliminate the health risks posed by the use of chlorpyrifos by
4 prohibiting its use within the State.

5 The purpose of this Act is to ban the distribution, sale,
6 transport, and use within the State of pesticides containing
7 chlorpyrifos as an active ingredient.

8 SECTION 2. Section 149A-11, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Except as otherwise exempted in section 149A-12, it
11 shall be unlawful for any person to distribute, solicit, sell,
12 offer for sale, hold for sale, transport, deliver for
13 transportation, or receive and having so received, deliver or
14 offer to deliver to any person in intrastate commerce or between
15 points within this State through any point outside this State
16 any of the following:

17 (1) Any pesticide which is not licensed pursuant to
18 section 149A-13, or any pesticide if any of the claims
19 made for it or any of the directions for its use
20 differ in substance from the representations made in
21 connection with its licensing, or if the composition



1 of a pesticide differs from its composition as
2 represented in connection with its licensing; provided
3 that in the discretion of the department, a change in
4 the labeling or formula of a pesticide may be made
5 within a licensing period without requiring an
6 additional licensing of the product.

7 (2) Any pesticide unless it is in the licensee's or the
8 manufacturer's unbroken immediate container, and there
9 is affixed to the container and to the outside
10 container or wrapper of the retail package, if any,
11 through which the required information on the
12 immediate container cannot be clearly read, a label
13 bearing information pursuant to section 149A-15.

14 (3) Any pesticide which contains any substance or
15 substances in quantities highly toxic to humans,
16 determined as provided in section 149A-19, unless the
17 label bears, in addition to any other matter required
18 by this chapter:

19 (A) A symbol of the skull and crossbones;

20 (B) The word "POISON" prominently, in red, on a
21 background of distinctly contrasting color; and



- 1 (C) A statement of emergency medical treatment or an
2 antidote when appropriate for the pesticide.
- 3 (4) Pesticides containing any of the ingredients commonly
4 known as standard lead arsenate, basic lead arsenate,
5 calcium arsenate, magnesium arsenate, zinc arsenate,
6 zinc arsenite, sodium fluoride, sodium fluosilicate,
7 or barium fluosilicate, unless they have been
8 distinctly colored or discolored, or any other white
9 powder pesticide which the board requires to be
10 distinctly colored or discolored after investigation
11 of and after a public hearing on the necessity for and
12 feasibility of coloring or discoloring the pesticide
13 for the protection of the public health, unless it has
14 been so colored or discolored pursuant to section
15 149A-16.
- 16 (5) Any pesticide or device which is adulterated or
17 misbranded as defined in section 149A-2.
- 18 (6) Any pesticide or device that is an imitation of
19 another pesticide or device.
- 20 (7) Any restricted use pesticide unless the person has a
21 permit issued in accordance with section 149A-17.



1 (8) Any restricted use pesticide to persons other than a
 2 certified pesticide applicator or any uncertified
 3 personnel under the certified pesticide applicator's
 4 supervision; or a licensed dealer, wholesaler, or
 5 retailer.

6 (9) Any pesticide containing chlorpyrifos as an active
 7 ingredient."

8 SECTION 3. Section 149A-31, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "**§149A-31 Prohibited acts.** No person shall:

11 (1) Use any pesticide in a manner inconsistent with its
 12 label, except that it shall not be unlawful to:

13 (A) Apply a pesticide at any dosage, concentration,
 14 or frequency less than that specified on the
 15 label or labeling; provided that the efficacy of
 16 the pesticide is maintained and further provided
 17 that, when a pesticide is applied by a commercial
 18 applicator, the deviation from the label
 19 recommendations must be with the consent of the
 20 purchaser of the pesticide application services;



- 1 (B) Apply a pesticide against any target pest not
- 2 specified in the labeling if the application is
- 3 to a crop, animal, or site specified on the label
- 4 or labeling; provided that the label or labeling
- 5 does not specifically prohibit the use on pests
- 6 other than those listed on the label or labeling;
- 7 (C) Employ any method of application not prohibited
- 8 by the labeling;
- 9 (D) Mix a pesticide or pesticides with a fertilizer
- 10 when such mixture is not prohibited by the label
- 11 or labeling; or
- 12 (E) Use in a manner determined by rule not to be an
- 13 unlawful act;
- 14 (2) Use, store, transport, or discard any pesticide or
- 15 pesticide container in any manner which would have
- 16 unreasonable adverse effects on the environment;
- 17 (3) Use or apply restricted use pesticides unless the
- 18 person is a certified pesticide applicator or under
- 19 the direct supervision of a certified pesticide
- 20 applicator with a valid certificate issued pursuant to
- 21 rules adopted under section 149A-33(1); provided that



1 it shall be prohibited to use or apply a restricted
2 use pesticide for structural pest control uses for a
3 fee or trading of services, unless the user or
4 applicator is a pest control operator or is employed
5 by a pest control operator licensed under chapter
6 460J;

7 (4) Use or apply pesticides in any manner that has been
8 suspended, canceled, or restricted pursuant to section
9 149A-32.5;

10 (5) Falsify any record or report required to be made or
11 maintained by rules adopted pursuant to this chapter;
12 [~~or~~]

13 (6) Fill with water, through a hose, pipe, or other
14 similar transmission system, any tank, implement,
15 apparatus, or equipment used to disperse pesticides,
16 unless the tank, implement, apparatus, equipment,
17 hose, pipe, or other similar transmission system is
18 equipped with an air gap or a reduced-pressure
19 principle backflow device meeting the requirements
20 under section 340E-2 and the rules adopted
21 thereunder[~~or~~]; or



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1 (7) Use or apply any pesticide containing chlorpyrifos as
2 an active ingredient."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on October 1, 2018.

6

INTRODUCED BY: Will Gro
Mike Hubbard

S.B. NO. 2636

Report Title:

Agriculture; Pesticides; Ban on Chlorpyrifos

Description:

Bans distribution, sale, transport, and use in the State of any pesticide containing chlorpyrifos as an active ingredient.

Takes effect on 10/1/2018.

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