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# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1           SECTION 1. The legislature finds that a significant amount  
2 of pesticides and insecticides continue to be released into  
3 Hawaii's fragile environment which poses significant health  
4 risks to our residents, particularly our Keiki O Ka 'Aina. When  
5 used properly, pesticides can protect plants or homes from  
6 damage. But, when the label instructions are not followed  
7 correctly, plant injury may occur, pests may not be controlled,  
8 health may be impaired, and pesticides may contribute to soil,  
9 air, or water pollution.

10           The United States Environmental Protection Agency  
11 classifies pesticides as restricted use pesticides if they are  
12 determined to cause "unreasonable adverse effects on the  
13 environment" when used "without additional regulatory  
14 restrictions." The legislature also finds that information  
15 pertaining to the use of pesticides, including intensive use,  
16 within the State is not readily available to the public.



1           In 2013, the department of agriculture began the Kauai  
2 agricultural good neighbor program to collect and publish  
3 information regarding outdoor usage of restricted use pesticides  
4 by commercial agricultural operations in the county of Kauai.  
5 Similar programs do not exist for the other counties or  
6 political subdivisions in the State. Moreover, the information  
7 collected is completely voluntary, is unverified, and is only  
8 published on the department's website months after the reported  
9 pesticide applications. As a result, the public is unable to  
10 evaluate the full extent of any impacts accruing to Hawaii's  
11 environment or its residents and to decide whether the risks  
12 associated with the agricultural use of such pesticides across  
13 the State is acceptable.

14           The legislature further finds that the State currently does  
15 not have an adequate regulatory structure in place to monitor  
16 the human health impacts of pesticide drift near sensitive  
17 populations. Pesticides may volatilize, or change from a solid  
18 or liquid state into a vapor state, into the lower atmosphere  
19 for days, weeks, or months after the application. Accordingly,  
20 drift from pesticides may have lingering effects on the  
21 environment long after the initial exposure. The direct,



1 indirect, and cumulative impacts on the environment and public  
2 health related to long-term intensive use of pesticides has yet  
3 to be properly or independently evaluated.

4 The study entitled, "Pesticide Use by Large Agribusinesses  
5 on Kaua'i," published by the independent Joint Fact Finding (JFF)  
6 Study Group and issued in May 2016, confirms that the State  
7 lacks sufficient data on pesticide use and human and  
8 environmental exposure. The JFF Study Group recommended the  
9 good neighbor program be made mandatory, and that its  
10 implementation be expanded statewide.

11 The legislature finds that Hawaii's children, elderly,  
12 other sensitive residents, and animals have no choice but to  
13 live, work, and commute daily in close proximity to areas where  
14 pesticides and insecticides are being sprayed. Children can be  
15 exposed to pesticides and insecticides applied on school  
16 grounds, pesticides and insecticides that drift onto school  
17 grounds, or pesticide and insecticide residue. One key concern  
18 is that restricted use pesticides such as chlorpyrifos, which  
19 scientists have definitively linked to developmental delays in  
20 children, and other toxic exposure to pesticides during fetal,  
21 neonatal, and infant life will disrupt critical development



1 processes. Life-long pesticide exposure for those living in  
2 exposed areas has been linked to long-term health effects,  
3 including cancer and other serious diseases, decreased cognitive  
4 function, and behavioral problems.

5 Pesticides usually contain more than one ingredient, and  
6 each may have a different toxicity level. While the  
7 Environmental Protection Agency continues to improve regulations  
8 regarding the use of pesticides, problems continue to be  
9 reported. In December 2013, the European Union health  
10 authorities issued a warning that two products from commonly  
11 used pesticides, neonicotinoids and imidacloprids, may be toxic  
12 to the developing human brain and should be more strictly  
13 controlled to reduce exposure to the public.

14 In 2009 and 2010, multiple studies were conducted by Dana  
15 Boyd Barr and other environmental health researchers on the  
16 human health threats of pyrethroids. According to these  
17 studies, this class of pesticides, previously thought to be  
18 safe, also poses a significant environmental and health risk,  
19 particularly to neurological, immune, and reproductive systems.  
20 While approximately seventy per cent of people in the United  
21 States have been exposed to pyrethroids, children face the



1 highest exposure as they spend more time, and take part in more  
2 activities that occur, on the ground.

3 Furthermore, a 2014 study led by University of California  
4 at Davis researchers showed that pyrethroid exposure is  
5 increasing, with the pesticide being found in two-thirds of  
6 adults and children residing in homes that were tested.

7 Additionally, pyrethroid use is rapidly growing in the  
8 United States due to the ever increasing restrictions being  
9 placed on the use of more commonly found pesticides such as  
10 chlorpyrifos. In California, pyrethroid use increased fifty-  
11 eight per cent in a one-year period after the 2001 federally  
12 mandated phase-out of insecticides, such as chlorpyrifos and  
13 diazinon.

14 Moreover, contamination run-off flows into oceans, streams,  
15 and other water sources which may adversely affect fish, aquatic  
16 organisms, and marine life. Lethal amounts of pyrethroid were  
17 found in sediments in the bottom of rivers and streams in the  
18 Central Valley area of California. Scientists determined that  
19 about one-fifth of the sediment samples killed organisms at an  
20 elevated rate due to the presence of pyrethroids. Hawaii's



1 fragile ecosystem requires that we, as stewards, love the land  
2 and care for it righteously.

3 The purpose of this Act is to protect the State's  
4 environment and residents from the unintended impacts of  
5 pesticide and insecticide use by implementing the recommendation  
6 of the JFF Study Group's report that the good neighbor program  
7 be revised and expanded to all persons and entities by:

8 (1) Making the reporting guidelines of the Kauai  
9 agricultural good neighbor program mandatory for  
10 restricted pesticide and insecticide use across the  
11 State; and

12 (2) Establishing disclosure and public notification  
13 requirements for outdoor applications of pesticides  
14 and insecticides in, as well as in proximity to,  
15 schools, healthcare facilities, institutions of higher  
16 learning, childcare and eldercare facilities, and  
17 other environmentally sensitive areas.

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



1                   "PART       .   PESTICIDE MANDATORY DISCLOSURE

2           §149A-A   Definitions.   As used in this part:

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

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

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

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

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

17          "Commercial agricultural production" means:

- 18          (1)   Commercial production of any seed, crop, plant,  
19                timber, livestock, poultry, fish, bees, or apiary  
20                products; or



1           (2) Testing or experimental production of any seed, crop,  
2           plant, timber, livestock, poultry, fish, bees, or  
3           apiary products.

4           "Commercial agricultural production area" means real  
5 properties and areas owned, leased, or otherwise operated or  
6 controlled and used by a commercial agricultural entity for  
7 commercial agricultural production.

8           "Early childhood education and care facility" means any  
9 property licensed by the State for the care and instruction of  
10 children from birth to age five.

11           "Expanded adult residential care home" means an expanded  
12 adult residential care home, as defined in section 321-15.1,  
13 that is licensed by the State.

14           "Experimental use pesticide" means a pesticide whose use is  
15 authorized by an experimental use permit by either the EPA or  
16 the department.

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

19           "Family child care home" means a family child care home, as  
20 defined in section 346-151, that is licensed by the State.





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

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

5 "Health" includes physical and mental health.

6 "Hospice home" shall have the same meaning as in section  
7 321-15.1.

8 "Hospital" includes all health care facilities pursuant to  
9 section 323D-2.

10 "Insecticide" means chlorpyrifos, imidacloprids,  
11 neonicotinoids, pyrethroids, or any combination thereof,  
12 intended for preventing, destroying, repelling or mitigating any  
13 insects which may be present in any environment.

14 "Outdoor application" means an application of a pesticide  
15 made outside of a building or enclosed structure. The term  
16 excludes indoor applications of pesticides and insecticides.

17 "Person" means an individual, corporation, organization,  
18 governmental entity, or other legal entity.

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



1 "School" means an academic institution, including a public  
2 school, department school, and charter school, as those terms  
3 are defined in section 302A-101, early education institution, or  
4 private school licensed by the State and institution of higher  
5 education, as defined in section 346-16.

6 "School grounds" means:

- 7 (1) Land associated with any school, child care facility,  
8 early childhood education and care facility, family  
9 child care home, group child care center, or group  
10 child care home, including playgrounds, athletic  
11 fields, and agricultural fields used by students or  
12 staff of these entities; and
- 13 (2) Any other outdoor area used by students or staff of a  
14 school that is under the control or operation of any  
15 school, child care facility, early childhood education  
16 and care facility, family child care home, group child  
17 care center, or group child care home.

18 "Sensitive area" includes any:

- 19 (1) School, school grounds, hospital, adult residential  
20 care home, assisted living facility, child care  
21 facility, early childhood education and care facility,



1 family child care home, group child care center, group  
 2 child care home, hospice home, extended care adult  
 3 residential care home, expanded adult residential care  
 4 home, health care facility, and primary care clinic;  
 5 and

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

7 "Shoreline" shall have the same meaning as in section  
 8 205A-1.

9 "Watershed" means an area:

10 (1) From which the domestic water supply of any city,  
 11 town, or community is or may be obtained; or

12 (2) Where water infiltrates into artesian or other ground-  
 13 water areas from which the domestic water supply of  
 14 any city, town, or community is or may be obtained,  
 15 as determined by the department of land and natural resources  
 16 pursuant to section 183-31.

17 **§149A-B Mandatory disclosure and notification of outdoor**  
 18 **pesticide and insecticide use on affected grounds.** Effective  
 19 one year following the effective date of Act , Session Laws  
 20 of Hawaii 2017, any person or commercial agriculture entity that  
 21 uses or purchases in excess of ten pounds or ten gallons of



1 restricted use pesticides or insecticides during the prior  
2 calendar year shall disclose the use of all insecticides or  
3 pesticides, including restricted use, general use, and  
4 experimental use pesticides, as follows:

5 (1) Public posting of pesticide or insecticide outdoor  
6 application. At a minimum of twenty-four hours prior  
7 to the outdoor application of any pesticide or  
8 insecticide on affected grounds, each entity subject  
9 to this section shall post public warning signs in the  
10 area in which pesticides or insecticides are to be  
11 applied, in the manner prescribed by section 149A-C;

12 (2) Notification to parents and guardians, and occupants  
13 and residents of sensitive areas. At a minimum of  
14 twenty-four hours prior to the outdoor application of  
15 any pesticide or insecticide on affected grounds, each  
16 entity subject to this section shall provide written  
17 notification in the manner prescribed by section 149A-  
18 C to:

19 (A) The parents or guardians of a child attending a  
20 school, a child care facility, early childhood  
21 education and care facility, family child care



- 1 home, group child care center, or group child
- 2 care home;
- 3 (B) An adult student attending a school, a child care
- 4 facility, early childhood education and care
- 5 facility, family child care home, group child
- 6 care center, group child care home, or an
- 7 institution of higher education;
- 8 (C) A patient of a hospital, adult residential care
- 9 home, assisted living facility, child care
- 10 facility, early childhood education and care
- 11 facility, family child care home, group child
- 12 care center, group child care home, hospice home,
- 13 extended care adult residential care home,
- 14 expanded adult residential care home, health care
- 15 facility, and primary care clinic; or
- 16 (D) Any property owner, lessee, or person otherwise
- 17 occupying any residential property within eight
- 18 hundred feet of the property line of the entity
- 19 where any pesticide or insecticide is anticipated
- 20 to be applied outdoors; and



1           (3) Recordkeeping and annual public disclosure. No later  
2           than sixty days following the end of each calendar  
3           year, each entity subject to this section shall  
4           provide to the department annual public reports of all  
5           pesticides used in outdoor applications during the  
6           preceding calendar year. The annual reports shall  
7           comply with the requirements of section 149A-D.

8           **§149A-C Public warning signs; written notifications;**  
9           **contents.** (a) Any public warning sign required to be posted  
10          under section 149A-B shall remain posted during the outdoor  
11          application of any pesticide or insecticide and until expiration  
12          of the applicable restricted-entry interval established by the  
13          EPA for the particular pesticide or insecticide. The posting of  
14          a warning sign during and after the outdoor application of any  
15          pesticide or insecticide shall conform to the worker protection  
16          standard established by the EPA.

17          (b) The department shall adopt rules pursuant to chapter  
18          91 requiring that all warning signs posted, and written  
19          notifications provided, pursuant to section 149A-B include the  
20          following information:



- 1           (1) The trade name of the pesticides or insecticides to be  
2           applied;
- 3           (2) The names of the active ingredients of the pesticides  
4           or insecticides to be applied;
- 5           (3) The potential hazards to humans and domestic animals,  
6           as listed in the precautionary statements of the  
7           pesticide's or insecticide's label;
- 8           (4) Emergency telephone numbers to call in case of  
9           poisoning from the pesticides or insecticides; and
- 10          (5) Any other related information the department deems  
11          appropriate.

12           **§149A-D Public reports; contents.** The department shall  
13 adopt rules, pursuant to chapter 91, requiring that public  
14 annual reports required under section 149A-B include the  
15 following information:

- 16          (1) A listing of all pesticides and insecticides used in  
17          outdoor applications by federal and state  
18          registrations or permit numbers, commercial product  
19          names, and active ingredients;
- 20          (2) The total quantities used for each pesticide and  
21          insecticide; and



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

5 **§149A-E Penalties and citizen suits.** (a) The department  
6 may bring an action in a court of competent jurisdiction to  
7 enjoin any person or entity from violating this part.

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

10 (1) \$ for a first violation;

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

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

13 Each day of violation shall be considered a separate violation.

14 (c) Any injured citizen of the State who acts in the  
15 public interest, at least ninety after first giving notice of  
16 the alleged violation to the department and the alleged  
17 violator, may bring an action to enjoin violation of this part  
18 in any court of competent jurisdiction. The court may award to  
19 a prevailing plaintiff reasonable costs and attorney's fees  
20 incurred in investigating and prosecuting an action to enforce





1 this part. An award may not include monetary damages, but only  
2 fee and cost recovery.

3       **§149A-F Authority of local government.** Nothing in this  
4 part shall be construed to preempt or prohibit the authority of  
5 a unit of local government in the State, including counties and  
6 any other political subdivisions of the State, to regulate  
7 pesticide and insecticide disclosure, notification, and use,  
8 including the establishment of buffer zones against pesticides  
9 and insecticides, in a manner that is more stringent than, the  
10 provisions contained in this part.

11       **§149A-G Rules.** The department shall adopt rules pursuant  
12 to chapter 91 to implement this part; provided that the  
13 department may not establish exemptions not expressly authorized  
14 in this part."

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

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



1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 5. In codifying the new sections added by section  
4 2 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Reporting of Pesticide Use; Large-scale Agricultural Operations

**Description:**

Establishes disclosure and public notification requirements for outdoor application of restricted use pesticides and insecticides in various sensitive areas. (HB790 HD3)

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

