
A BILL FOR AN ACT

relating to agriculture.

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 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. Moreover, the direct, indirect, and cumulative impacts on the environment and public health related to long-term intensive commercial use of pesticides has 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. 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 application. Accordingly, drift from restricted use pesticides may have lingering effects on the environment long after the initial exposure.

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 exposure to other toxic pesticides during fetal, neonatal, and infant life that may disrupt critical development processes. Life-long 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 children and schools from unintended impacts of large-scale agricultural pesticide use by establishing a pilot program of vegetative buffer zones around selected schools within the State.

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

**"PART . PILOT PROGRAM; VEGETATIVE BUFFER ZONES FOR THE
PROTECTION OF CHILDREN FROM UNINTENDED PESTICIDE EXPOSURE
§149A-A Definitions.** As used in this part:

"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.

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

"Health" includes physical and mental health.

"Outdoor application" means application of a pesticide outside of 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 of a building or enclosed structure.

"School" means an academic institution, including early 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, 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.

§149A-B Pilot program for vegetative buffer zones. Effective six months following the effective date of Act , Session Laws of Hawaii 2016, the department shall adopt rules pursuant to chapter 91 to designate five individual schools, one on the island of Oahu, one on the island of Kauai, one on the island of Maui, one on the island of Hawaii, and one on the island of Molokai, as pilot centers for vegetative buffer zones. The selected schools shall be located within miles of a commercial agricultural production area that is operated by a commercial agricultural entity that purchase or uses in excess of a total of pounds or gallons of restricted use pesticides annually.

§149A-C Acceptable vegetation for vegetative buffer zones. (a) Effective six months following the effective date of Act , Session Laws of Hawaii 2016, the department shall, in consultation with the University of Hawaii College of Tropical Agriculture and Human Resources, adopt rules pursuant to chapter 91 to establish a list of acceptable plants to be cultivated in vegetative buffer zones established under the pilot program.

(b) Plants that may be included in the list of acceptable plants may have the following qualities:

- (1) Known to be native to the State of Hawaii;
- (2) Known to have remediation or filtering properties to improve air, water, or soil quality;
- (3) Known to have beneficial properties for improving air, water, or soil quality; or
- (4) Are shrubs or trees of such density that their growth and cultivation will likely create a wind-break effect.

§149A-D Restrictions on pesticide use around school grounds selected for the pilot program. (a) Effective one year following the designation of the five schools described in section 149A-B, any commercial agricultural entity that purchases or uses in excess of a total of pounds or gallons of restricted use pesticides annually shall be prohibited from engaging in outdoor application of all pesticides, including restricted use, general use, and experimental use pesticides, within feet of any school grounds.

(b) The restrictions in subsection (a) shall be minimum standards. If this section, or any part thereof, is determined to conflict with any information contained in the labels of the pesticide or other regulation, the more restrictive standard on pesticide application shall apply.

§149A-E Vegetative buffer zones around school grounds selected for the pilot program. (a) Effective one year following the designation of the five schools described in section 149A-B, any commercial agricultural entity that purchases or uses in excess of a total of pounds or gallons of restricted use pesticides annually shall maintain a continuous buffer zone that is cultivated with acceptable perennially-rooted vegetation, derived from the list of plants designated by the department pursuant to section 149A-C, including those that would create a windbreak effect, in the buffer zone of no pesticide application described in section 149A-D(a).

(b) The restrictions in subsection (a) shall be minimum standards. If this section, or any part thereof, is determined to conflict with any information contained in the labels of the pesticide or other regulation, the more restrictive standard on pesticide application shall apply.

§149A-F Identification of application site and provision of site plan. (a) Any commercial agricultural entity that is subject to sections 149A-D and 149A-E shall ensure that, prior to any outdoor application of pesticides, the application site is positively identified using a unique and verifiable method, including:

- (1) An onboard, geo-referenced electronic mapping and navigation system;
- (2) Effective site markings visible to the pesticide applicator; or
- (3) Other methods approved by the department.

(b) Any commercial agricultural entity that is subject to sections 149A-D and 149A-E, prior to any application of pesticides, shall provide the certified pesticide applicator, commercial pesticide applicator, private pesticide applicator, or pest control operator with a site plan that includes a site map that:

- (1) Delineates the boundaries of the application area and the property lines;
- (2) Depicts the locations of school grounds within feet of the application area; and
- (3) Depicts the buffer zones around school grounds where no pesticide application is allowed.

§149A-G Exemptions. (a) Notwithstanding the provisions of sections 149A-D and 149A-E, any commercial agricultural entity may obtain from the department a single use exemption from the prohibition on outdoor applications of pesticides in buffer zones around school grounds, as provided in subsection (b).

(b) In accordance with rules adopted by the department, the department shall issue a single use exemption under this section if it determines that:

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

§149A-H Structural or termite application of pesticides. Nothing in this part shall be construed to prohibit the use of structural or termite application of pesticide regardless of whether the applications are applied in or outside of a building or enclosed structure.

§149A-I 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 attorney's fees incurred in investigating and prosecuting an action to enforce this part. An award shall not include monetary damages, but only fee and cost recovery.

§149A-J Authority of local government. Nothing in this chapter shall be construed to preempt or prohibit the authority of a unit of local government in the State, including counties and any other political subdivisions within the State created under article VIII, section 1 of the state constitution to regulate pesticide disclosure, notification, and use, including the establishment of buffer zones against pesticides, in a manner that is equivalent to, or more stringent than the provisions contained in this chapter.

§149A-K Rules. The department shall adopt any other rules pursuant to chapter 91 as necessary to implement this part, provided that the department shall not establish exemptions not expressly authorized in this part."

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

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

INTRODUCED BY: _____

Report Title:

Agriculture; Pilot Program; Vegetative Buffer Zones

Description:

Establishes a pilot program that creates a vegetative buffer zone around five selected schools near a commercial agricultural production area.

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