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## A BILL FOR AN ACT

RELATING TO INSECTICIDES.

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

1           SECTION 1.   Pollination by honeybees, beneficial insects,  
2   bats, and birds provide a vital role in agricultural production.  
3   One-third of food produced in North America and nearly ninety-  
4   five varieties of fruits depend on pollination by animals.   Over  
5   the past several years, however, bee colony collapses and  
6   excessive bee mortality have reached record highs, with some  
7   beekeepers losing large portions of their operations and  
8   suffering reduced production of honey.

9           Scientists have linked the use of systemic neonicotinoid  
10   insecticides to the rapid decline of honeybees and other  
11   pollinators and to the deterioration of pollinator health.  
12   Neonicotinoid insecticides damages the central nervous system of  
13   insects, causing tremors, paralysis, and death.

14           Neonicotinoid insecticides also cause sub-lethal effects,  
15   including impaired foraging and feeding behavior,  
16   disorientation, weakened immunity, delayed larval development,  
17   and increased susceptibility to viruses, diseases, and



1 parasites. Neonicotinoid insecticides are systemic, meaning  
2 they are absorbed into treated plants and distributed throughout  
3 their vascular systems. As a result, treating a plant or  
4 coating a seed with a neonicotinoid insecticide can render many  
5 parts of the plant toxic to insects, including the roots,  
6 leaves, stems, flowers, nectar, pollen, and guttation fluid.  
7 Neonicotinoid insecticides are also persistent in soil and are  
8 easily transported through air, dust, and water.

9 Neonicotinoids have also been found to kill or weaken  
10 beneficial invertebrates, birds, and other wildlife, through  
11 direct and indirect effects. Scientists have also found that  
12 seed coatings containing neonicotinoid insecticide are harmful  
13 to birds. Recent scientific study has demonstrated that  
14 consumption of a single corn kernel coated with neonicotinoid  
15 insecticide is toxic enough to kill a medium-sized songbird.  
16 Environmental contaminations by neonicotinoid insecticides harm  
17 honeybees, beneficial insects, birds, bats, and other  
18 pollinators.

19 In 2013, the European Union voted to suspend use of three  
20 major neonicotinoid insecticides, imidacloprid, clothianidin,  
21 and thiamethoxam, on certain agricultural crops pending a review



1 of their safety. Other states, including New York, have  
2 restricted the use of some neonicotinoid insecticides because of  
3 their risks. In 2014, the United States Fish and Wildlife  
4 Service announced that it would phase out uses of neonicotinoid  
5 insecticides on all national wildlife refuges, including those  
6 in Hawaii, by January 2016, due to their harmful effects on  
7 wildlife.

8 The purposes of this Act are to protect Hawaii's honeybees,  
9 insects, bats, birds, and other pollinators from exposure to  
10 neonicotinoid insecticides and to defend and protect Hawaii's  
11 agricultural economy and natural ecosystems.

12 This Act shall be liberally construed to fulfill these  
13 purposes.

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

17 "§149A- County authority. Any county may adopt a rule  
18 or ordinance that places stricter limitations on the use of  
19 neonicotinoid insecticides than those placed by this chapter or  
20 rules adopted under it. In the case of a conflict between the  
21 requirements or limitations of this chapter and any county rule



1 or ordinance regarding the use of neonicotinoid insecticides,  
2 the more restrictive requirements shall apply."

3 SECTION 3. Section 149A-2, Hawaii Revised Statutes, is  
4 amended by adding a new definition to be appropriately inserted  
5 and to read as follows:

6 "Neonicotinoid insecticide" means any systemic pesticide  
7 with a common mode of action that affects the central nervous  
8 system of insects containing any of the following active  
9 ingredients: acetamiprid, clothianidin, dinotefuran,  
10 imidacloprid, thiacloprid, thiamethoxamand, and other new  
11 ingredients as may be identified by rule adopted by the  
12 department pursuant to chapter 91."

13 SECTION 4. Section 149A-31, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **§149A-31 Prohibited acts.** No person shall:

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

18 (A) Apply a pesticide at any dosage, concentration,  
19 or frequency less than that specified on the  
20 label or labeling; provided that the efficacy of  
21 the pesticide is maintained and further provided



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- 1           that, when a pesticide is applied by a commercial  
2           applicator, the deviation from the label  
3           recommendations must be with the consent of the  
4           purchaser of the pesticide application services;
- 5           (B) Apply a pesticide against any target pest not  
6           specified in the labeling if the application is  
7           to a crop, animal, or site specified on the label  
8           or labeling; provided that the label or labeling  
9           does not specifically prohibit the use on pests  
10          other than those listed on the label or labeling;
- 11          (C) Employ any method of application not prohibited  
12          by the labeling;
- 13          (D) Mix a pesticide or pesticides with a fertilizer  
14          when such mixture is not prohibited by the label  
15          or labeling; or
- 16          (E) Use in a manner determined by rule not to be an  
17          unlawful act;
- 18          (2) Use, store, transport, or discard any pesticide or  
19          pesticide container in any manner which would have  
20          unreasonable adverse effects on the environment;



- 1           (3) Use or apply restricted use pesticides unless the  
2           person is a certified pesticide applicator or under  
3           the direct supervision of a certified pesticide  
4           applicator with a valid certificate issued pursuant to  
5           rules adopted under section 149A-33(1); provided that  
6           it shall be prohibited to use or apply a restricted  
7           use pesticide for structural pest control uses for a  
8           fee or trading of services, unless the user or  
9           applicator is a pest control operator or is employed  
10          by a pest control operator licensed under chapter  
11          460J;
- 12          (4) Use or apply pesticides in any manner that has been  
13          suspended, canceled, or restricted pursuant to section  
14          149A-32.5;
- 15          (5) Falsify any record or report required to be made or  
16          maintained by rules adopted pursuant to this chapter;  
17          [~~or~~]
- 18          (6) Fill with water, through a hose, pipe, or other  
19          similar transmission system, any tank, implement,  
20          apparatus, or equipment used to disperse pesticides,  
21          unless the tank, implement, apparatus, equipment,



1 hose, pipe, or other similar transmission system is  
2 equipped with an air gap or a reduced-pressure  
3 principle backflow device meeting the requirements  
4 under section 340E-2 and the rules adopted  
5 thereunder[-]; or

6 (7) After June 30, 2017, apply any neonicotinoid  
7 insecticide without a license issued by the State or  
8 any agency of the federal government to conduct  
9 neonicotinoid insecticide research:

10 (A) On any public land owned or maintained by the  
11 State;

12 (B) In any outdoor agricultural production, including  
13 planting any seeds coated with neonicotinoid  
14 insecticides; or

15 (C) In any outdoor setting, including landscaping,  
16 ornamental, or other outdoor applications."

17 SECTION 5. Section 149A-41, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§149A-41 Violations, warning notice, and penalties. (a)  
20 Warning notice. Any person who violates this chapter or any  
21 rule issued under this chapter may upon the first violation be



1 issued a written warning notice citing the specific violation  
2 and necessary corrective action.

3 (b) Administrative penalties.

4 (1) In general, any registrant, commercial applicator,  
5 wholesaler, dealer, retailer, or other distributor who  
6 violates any provision of this chapter may be assessed  
7 an administrative penalty by the board of not more  
8 than \$5,000 for each offense;

9 (2) Any private applicator or other person not included in  
10 paragraph (1) who violates any provision of this  
11 chapter relating to the use of pesticides while on  
12 property owned or rented by that person or the  
13 person's employer, subsequent to receiving a written  
14 warning from the department or following a citation  
15 for a prior violation, may be assessed an  
16 administrative penalty by the board of not more than  
17 \$1,000 for each offense. Any private applicator or  
18 other person not included in paragraph (1) who  
19 violates any provision of this chapter relating to  
20 licensing, transport, sale, distribution, or  
21 application of a pesticide for commercial purposes may





1 be assessed an administrative penalty as provided in  
2 paragraph (1);

3 (3) No administrative penalty shall be assessed unless the  
4 person charged shall have been given notice and an  
5 opportunity for a hearing on the specific charge in  
6 the county of the residence of the person charged.  
7 The administrative penalty and any proposed action  
8 contained in the notice of finding of violation shall  
9 become a final order unless, within twenty days of  
10 receipt of the notice, the person or persons charged  
11 make a written request for a hearing. In determining  
12 the amount of penalty, the board shall consider the  
13 appropriateness of the penalty to the size of the  
14 business of the person charged, the effect on the  
15 person's ability to continue business, and the gravity  
16 of the violation; and

17 (4) In case of inability to collect the administrative  
18 penalty or failure of any person to pay all or such  
19 portion of the administrative penalty as the board may  
20 determine, the board shall refer the matter to the  
21 attorney general, who shall recover the amount by



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1           action in the appropriate court. For any judicial  
2           proceeding to recover the administrative penalty  
3           imposed, the attorney general need only show that  
4           notice was given, a hearing was held or the time  
5           granted for requesting a hearing has expired without  
6           such a request, the administrative penalty was  
7           imposed, and that the penalty remains unpaid.

8           (c) Criminal penalties.

9           (1) In general, any registrant, commercial applicator,  
10          wholesaler, dealer, retailer, or other distributor who  
11          knowingly violates any provision of this chapter shall  
12          be guilty of a misdemeanor and shall on conviction be  
13          fined not more than \$25,000, or imprisoned for not  
14          more than one year, or both.

15          (2) Any private applicator or other person not included in  
16          paragraph (1) who knowingly violates any provision of  
17          this chapter shall be guilty of a misdemeanor and  
18          shall on conviction be fined not more than \$1,000, or  
19          imprisoned for not more than one year, or both.

20          (3) Any person, who, with intent to defraud, uses or  
21          reveals information relative to formulas of products



1           acquired under the authority of section 3, Federal  
2           Insecticide, Fungicide, and Rodenticide Act (FIFRA),  
3           as amended, shall be fined not more than \$10,000, or  
4           imprisoned for not more than three years, or both.

5           (d) Any injured person may, after giving notice of the  
6           alleged violation to the attorney general and the alleged  
7           violation, may bring a civil action no sooner than sixty days  
8           after the notice to enjoin a violation of section 149A-31(7) by  
9           any person in any court of competent jurisdiction. The court  
10           may award to a prevailing plaintiff reasonable attorneys' fees  
11           and costs incurred, provided that the court may not award other  
12           monetary damages.

13           ~~(d)~~ (e) Liabilities. When construing and enforcing the  
14           provisions of this chapter, the act, omission, or failure of any  
15           officer, agent, or other person acting for or employed by any  
16           person shall in every case be also deemed to be the act,  
17           omission, or failure of such person as well as that of the  
18           person employed."

19           SECTION 6. By July 1, 2017, the chairperson shall issue a  
20           preliminary report evaluating whether clear, peer-reviewed,  
21           published scientific evidence exists that outdoor application of



1 neonicotinoid insecticides is safe for honeybees, other  
2 pollinators, other beneficial insects, the broader environment,  
3 and human health.

4 The public, including all interested entities, shall then  
5 be allowed to comment on the preliminary report.

6 No later than twenty days prior to the regular legislative  
7 session of 2018, and after considering the public comments and  
8 any other relevant information, the chairperson shall submit a  
9 final report to the legislature.

10 SECTION 7. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 8. If any provision of this Act, or the  
14 application thereof to any person or circumstance, is held  
15 invalid, the invalidity does not affect other provisions or  
16 applications of the Act that can be given effect without the  
17 invalid provision or application, and to this end the provisions  
18 of this Act are severable.

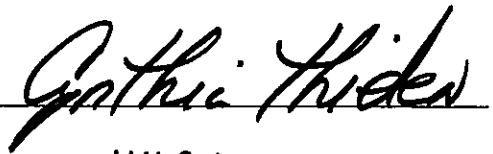
19 SECTION 9. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect on July 1, 2016;  
2 provided that the department of agriculture may extend the  
3 effective date of sections 2 to 5 for up to one year by rule  
4 adopted pursuant to chapter 91, Hawaii Revised Statutes.

5

INTRODUCED BY:



JAN 21 2016



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**Report Title:**

Neonicotinoid Insecticide; Pesticides; Agriculture

**Description:**

Prohibits application of neonicotinoid insecticides to protect honeybees and other pollinating animals.

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

