A BILL FOR AN ACT

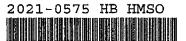
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES.

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

- 1 SECTION 1. The legislature finds that subdivisions on
- 2 agricultural lands have significantly increased over the past
- 3 few decades. Homes within these subdivisions are often marketed
- 4 as "gentlemen estates" where wealthy individuals can purchase
- 5 large parcels of land on which to live and pursue farming as a
- 6 hobby. The rise of subdivisions has led to homeowners'
- 7 associations, which govern those subdivisions, imposing
- 8 restrictions that limit bona fide agricultural uses on
- 9 agricultural lands.
- 10 The legislature further finds that provisions restricting
- 11 agricultural uses on agricultural lands conflict with
- 12 article XI, section 3, of the Hawaii State Constitution which
- 13 mandates that the State "conserve and protect agricultural
- 14 lands, promote diversified agriculture, increase agricultural
- 15 self-sufficiency and assure the availability of agriculturally
- 16 suitable lands." The legislature also finds that Act 170,
- 17 Session Laws of Hawaii 2004, exempted agricultural leases and

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- 1 utility and access easements from the prohibition of private
- 2 restrictions on agricultural uses and activities within state
- 3 agricultural districts, thus prohibiting homeowners'
- 4 associations from restricting agricultural activities on
- 5 agricultural lands. However, to avoid impairing any existing
- 6 contracts, the Act only applied to restrictions made after
- 7 July 8, 2003.
- 8 The legislature believes that some homeowners' associations
- 9 have been circumventing the law by renewing agricultural
- 10 restrictions that existed prior to July 8, 2003, claiming that
- 11 the renewed terms continue to be exempt from the law despite
- 12 those agreements, by their own terms, expiring after 2003.
- 13 Bona fide farmers seeking to enforce the law have been faced
- 14 with accepting the restriction or hiring an attorney for a
- 15 costly lawsuit against the well-funded homeowners' association.
- 16 The purpose of this Act is to clarify that renewed
- 17 contracts restricting agricultural uses and activities within
- 18 agricultural lands are considered new contracts and are
- 19 therefore voidable, subject to limited circumstances.
- 20 SECTION 2. Section 205-4.6, Hawaii Revised Statutes, is
- 21 amended by amending subsection (a) to read as follows:



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1	"(a)	Agricultural uses and activities as defined in
2	sections	205-2(d) and 205-4.5(a) on lands classified as
3	agricultu	ral shall not be restricted by any private agreement
4	contained	in any:
5	(1)	Deed, agreement of sale, or other conveyance of land
6		recorded in the bureau of conveyances after July 8,
7		2003, that subject [such] the agricultural lands to
8		any servitude, including but not limited to covenants,
9		easements, or equitable and reciprocal negative
10		servitudes; [and] provided that any private agreement
11		under this subsection that:
12		(A) Limits or prohibits agricultural use or activity,
13		and
14		(B) Is renewed and recorded in the bureau of
15		conveyances after July 8, 2003,
16		shall be considered a new private agreement that is
17		subject to this section; and
18	(2)	Condominium declaration, map, bylaws, and other
19		documents executed and submitted in accordance with
20		chapter 514B or any predecessor thereto.

- 1 Any [such] private restriction limiting or prohibiting
- 2 agricultural use or activity shall be voidable, subject to
- 3 special restrictions enacted by the county ordinance pursuant to
- 4 section 46-4; except that restrictions taken to protect
- 5 environmental or cultural resources, agricultural leases,
- 6 utility easements, and access easements shall not be subject to
- 7 this section."
- 8 SECTION 3. Statutory material to be repealed is bracketed
- 9 and stricken. New statutory material is underscored.
- 10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Mallore K. Mulm

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Report Title:

Agricultural Lands; Covenants; Easements

Description:

Disallows the enforcement of a re-recorded homeowners' association restriction if the restriction prohibits bona fide agricultural uses and activities on agricultural land.

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