
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



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 as of July 8, 2003, claiming that the
11 renewed terms continue to be exempt from the law despite those
12 agreements, by their own terms, expiring after 2003. Bona fide
13 farmers seeking to enforce the law have had to accept the
14 restriction or hire an attorney for a costly lawsuit against the
15 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:



1 "(a) Agricultural uses and activities as defined in
2 sections 205-2(d) and 205-4.5(a) on lands classified as
3 agricultural 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~~] subjects the agricultural
8 lands to any servitude, including but not limited to
9 covenants, easements, or equitable and reciprocal
10 negative servitudes; [and] provided that any private
11 agreement contained in a conveyance of land recorded
12 on or before before July 8, 2003, that:

13 (A) Limits or prohibits agricultural use or activity;
14 and

15 (B) Is renewed and recorded in the bureau of
16 conveyances after July 8, 2003,
17 shall be considered a new private agreement that is
18 subject to the prohibition on agricultural use and
19 activity restrictions under this section; and



1 (2) Condominium declaration, map, bylaws, and other
2 documents executed and submitted in accordance with
3 chapter 514B or any predecessor thereto.

4 Any [~~such~~] private restriction limiting or prohibiting
5 agricultural use or activity shall be voidable, subject to
6 special restrictions enacted by the county ordinance pursuant to
7 section 46-4; except that restrictions taken to protect
8 environmental or cultural resources, agricultural leases,
9 utility easements, and access easements shall not be subject to
10 this section."

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 Statutory material to be repealed is bracketed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

13 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Agricultural Lands; Covenants; Easements; Re-recorded
Restrictions

Description:

Disallows the enforcement of a re-recorded homeowners'
association restriction if the restriction prohibits bona fide
agricultural uses and activities on agricultural land.
Effective 1/1/2050. (HD1)

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not legislation or evidence of legislative intent.*

