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## 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 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:



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~~] 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: *Nadine K. Nelson*

JAN 20 2021



# H.B. NO. 74

**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.

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

