

ACT 256

H.B. NO. 2377-82

A Bill for an Act Relating to the Hawaii Right to Farm Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII RIGHT TO FARM ACT**

§ -1 **Findings and purpose.** The legislature finds that when nonagricultural land uses extend into agricultural areas, farming operations often become the subject of nuisance lawsuits which may result in the premature removal of lands from agricultural use and discourages future investments in agriculture. The legislature also finds that under the Hawaii State Planning Act, it is a declared policy of this State to “foster attitudes and activities conducive to maintaining agriculture as a major sector of Hawaii’s economy.” Accordingly, it is the purpose of this chapter to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

- (1) “Farming operation” means a commercial agricultural or aquacultural facility or pursuit in an area zoned by the county for agricultural use, including the care and production of livestock and livestock products, poultry and poultry products, and apiary, horticultural or floricultural products; the planting, cultivating, and harvesting and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;
- (2) “Nuisance” means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare.
- (3) “Established date of operation” means the date on which the farming operation commenced operation. If the physical facilities of the farming operation are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent estab-

lished date of operation established as of the date of commencement of the expanded operation, and the commencement of the expanded operation shall not divest the farming operation of a previously established date of operation.

§ -3 **Declaration of public purpose.** The preservation and promotion of farming is declared to be in the public purpose and deserving of public support.

§ -4 **Right to farm.** No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if the following have been proven:

- (1) That the farming operation was not in violation of this section at its established date of operation;
- (2) That the stated or implied basis for the nuisance complaint is that conditions have changed in the vicinity of the farming operation since its established date of operation;
- (3) That the farm operation was lawfully in operation for at least one year prior to the nuisance complaint;
- (4) That the alleged nuisance did not result from the negligent conduct or improper operation of the farming operation; or from any aspect of said operation which is determined to be injurious to public health or safety; and
- (5) That the alleged nuisance does not involve water pollution or flooding.”

SECTION 3.¹ This Act shall take effect upon its approval.

(Approved June 16, 1982.)

Note

1. Should be SECTION 2.