

ACT 162

H.B. NO. 251

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

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

SECTION 1. Chapter 165, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§165- Frivolous lawsuits. Any nuisance action, found to be frivolous by the court, in which a farming operation is alleged to be a nuisance as defined in section 165-2, shall be governed by section 607-14.5.

§165- Liberal construction. This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.”

SECTION 2. Section 165-2, Hawaii Revised Statutes, is amended to read as follows:

“§165-2 Definitions. As used in this chapter, unless the context otherwise requires:

“Established date of operation” means the date on which the [farming operation commenced operation. If the farming operation’s facilities, whether land or improvements, are subsequently expanded, and a complaint arises out of that expansion, the date of commencement of the expansion shall be deemed to be the relevant established date of operation for the purposes of that complaint. When claims arise out of several portions of a farming operation, the established date of operation for each claim shall be the established date of operation of the portion of the farming operation giving rise to the particular claim, which established date shall be a separate and independent established date of operation. The commencement of any expansion of an operation shall not divest the farming operation of a previously established date of operation, which shall remain applicable to operations commenced as of that previously established date of operation.] original farming operation first commenced operation. If the physical facilities of the farming operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original operation, provided that this does not violate existing state law or county ordinances.

[“Expansion” includes any increase in land or aquatic environment used by the farming operation for any of the operations listed under the definition of

“farming operation” or any increase in buildings, equipment that is fixed in place, or other permanent structures that results in the alleged nuisance.

“Expansion” does not include:

- (1) Additions of or increases in movable equipment, including but not limited to tractors, trucks, trailers, barges, airplanes, helicopters, and boats; or
- (2) A change in or addition to the type of livestock, poultry, apiary, horticultural, or floricultural product or crop produced by a farming operation, unless such change or addition results in:
 - (A) The creation of a nuisance that continues beyond the period of transition during which the change is implemented or the addition made; or
 - (B) A substantial increase in the gravity of a previously present nuisance; provided that such increase extends beyond the period of transition.]

“Farming operation” means a commercial agricultural or aquacultural facility or pursuit conducted, in whole or in part, [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. “Farming operation” also includes, but shall not be limited to, marketed produce at roadside stands or farm markets; noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor. A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of [such] that zoning, fall beyond the scope of this definition; provided that [such] those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

“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. “Nuisance” as used in this chapter includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.