

JAN 28 2015

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. The legislature finds that Hawaii's
2 agricultural industry is one of the State's most important
3 economic sectors. Article XI, section 3, of the Hawaii State
4 Constitution mandates that "The State shall conserve and protect
5 agricultural lands, promote diversified agriculture, increase
6 agricultural self sufficiency and assure the availability of
7 agriculturally suitable lands." This policy sets forth the
8 State's responsibility to oversee and implement laws and rules
9 to guide the success and development of Hawaii's agricultural
10 industry.

11 The legislature further finds that the state department of
12 agriculture and the United States Department of Agriculture both
13 have the responsibility to oversee the agricultural industry in
14 Hawaii as well as agricultural products being imported and
15 exported out of the State. The Hawaii Right to Farm Act, the
16 United States Department of Agriculture's Plant Protection Act,



1 and other state and federal mandates provide consistent policies
2 that apply to all farmers doing business in Hawaii and abroad.

3 The legislature further recognizes that while Hawaii's
4 agricultural industry has made great strides over the years,
5 state law and rules should be uniform and consistent. The
6 legislature also finds that state laws and rules should reflect
7 changes in the agricultural industry and encourage investing in
8 infrastructure, technology, and generally accepted agricultural
9 practices to provide farmers the freedom to farm and compete in
10 a global marketplace.

11 It is the intent of this Act to establish a state policy to
12 promote commercial farm operations as a vital economic activity,
13 along with providing a proper balance among the varied and
14 sometimes conflicting interests of all lawful activities in the
15 State. All state departments and agencies should encourage the
16 maintenance of agricultural production, support the development
17 of agriculture, and create a positive agricultural business
18 climate.

19 The purpose of this Act is to protect and promote
20 reasonable agricultural activities that are consistent with
21 state and federal laws, rules, and regulations.



1 SECTION 2. Section 165-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§165-1 Findings and purpose. The legislature finds that
4 when nonagricultural land uses extend into agricultural areas,
5 farming operations often become the subject of nuisance lawsuits
6 that may result in the premature removal of lands from
7 agricultural use and may discourage future investments in
8 agriculture. The legislature also finds that under the Hawaii
9 State Planning Act, it is a declared policy of this State to
10 "foster attitudes and activities conducive to maintaining
11 agriculture as a major sector of Hawaii's economy."
12 Accordingly, it is the purpose of this chapter to reduce the
13 loss to the State of its agricultural resources by both limiting
14 the circumstances under which farming operations may be deemed
15 to be a nuisance[-] and promoting and fostering an atmosphere of
16 acceptance of all the various forms of agricultural practices
17 and operations that are generally accepted as legitimate and
18 appropriate within our nation."

19 SECTION 3. Section 165-2, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§165-2 Definitions. As used in this chapter, unless the
2 context otherwise requires[+] and notwithstanding any law to the
3 contrary:

4 "Farming operation" means a commercial agricultural,
5 silvicultural, or aquacultural facility or pursuit conducted, in
6 whole or in part, including the care and production of livestock
7 and livestock products, poultry and poultry products, apiary
8 products, and plant and animal production for nonfood uses; the
9 planting, cultivating, harvesting, and processing of crops; and
10 the farming or ranching of any plant or animal species in a
11 controlled salt, brackish, or freshwater environment. "Farming
12 operation" includes but shall not be limited to:

- 13 (1) Agricultural-based commercial operations as described
14 in section [+]205-2(d)(15)[+];
- 15 (2) Noises, odors, dust, and fumes emanating from a
16 commercial agricultural or an aquacultural facility or
17 pursuit;
- 18 (3) Operation of machinery and irrigation pumps;
- 19 (4) Ground and aerial seeding and spraying;
- 20 (5) The application of chemical fertilizers, conditioners,
21 insecticides, pesticides, and herbicides; and



1 (6) The employment and use of labor.
2 A farming operation that conducts processing operations or salt,
3 brackish, or freshwater aquaculture operations on land that is
4 zoned for industrial, commercial, or other nonagricultural use
5 shall not, by reason of that zoning, fall beyond the scope of
6 this definition; provided that those processing operations form
7 an integral part of operations that otherwise meet the
8 requirements of this definition.

9 "Nuisance" means any interference with reasonable use and
10 enjoyment of land, including but not limited to smoke, odors,
11 dust, noise, or vibration; provided that nothing in this chapter
12 shall in any way restrict or impede the authority of the State
13 to protect the public health, safety, and welfare. "Nuisance"
14 as used in this chapter, includes all claims that meet the
15 requirements of this definition regardless of whether a
16 complainant designates [~~such~~] the claims as brought in nuisance,
17 negligence, trespass, or any other area of law or equity;
18 provided that nuisance as used in this chapter does not include
19 an alleged nuisance that involves water pollution or flooding."

20 SECTION 4. Section 165-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§165-4 Right to farm. No court, official, public
2 servant, or public employee shall declare any farming operation
3 a nuisance for any reason if the farming operation has been
4 conducted in a manner consistent with generally accepted
5 agricultural and management practices. There shall be a
6 rebuttable presumption that a farming operation does not
7 constitute a nuisance. The right of farmers and ranchers to
8 engage in farming and ranching practices shall be guaranteed in
9 this State. No law shall be enacted that abridges the right of
10 farmers and ranchers to employ generally accepted agricultural
11 technology, livestock production, and ranching practices."

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval.

15

INTRODUCED BY: Clarence K. Nishihara



S.B. NO. 985

Report Title:

Agriculture; Right to Farm

Description:

Clarifies the State's policy to promote and foster an atmosphere of acceptance for agricultural practices. Guarantees the rights of farmers and ranchers to engage in farming and ranching practices.

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

