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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The purpose of this Act is to clarify the  
2 applicability of section 205-4.6, Hawaii Revised Statutes,  
3 relating to private restrictions on agricultural uses and  
4 activities, to condominium projects on lands classified as  
5 agricultural.

6           SECTION 2. Section 205-4.6, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "**§205-4.6 Private restrictions on agricultural uses and**  
9 **activities; not allowed.** (a) Agricultural uses and activities  
10 as defined in sections 205-2(d) and 205-4.5(a) on lands  
11 classified as agricultural shall not be restricted by any  
12 private agreement contained in any [~~deed~~]:

13           (1) Deed, agreement of sale, or other conveyance of land  
14 recorded in the bureau of conveyances after July 8,  
15 2003, that subject such agricultural lands to any  
16 servitude, including but not limited to covenants,  
17 easements, or equitable and reciprocal negative  
18 servitudes[-]; and



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

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       (b) For purposes of this section, "agricultural leases"  
12 means leases where the leased land is primarily utilized for  
13 purposes set forth in section 205-4.5(a)."

14       SECTION 3. Section 514B-5, Hawaii Revised Statutes, is  
15 amended to read as follows:

16       "~~§~~**514B-5**~~§~~ **Conformance with county land use laws.** Any  
17 condominium property regime established under this chapter shall  
18 conform to the existing underlying county zoning for the  
19 property and all applicable county permitting requirements  
20 adopted by the county in which the property is located,  
21 including any supplemental rules adopted by the county, pursuant  
22 to section 514B-6, to ensure the conformance of condominium



1 property regimes to the purposes and provisions of county zoning  
2 and development ordinances and chapter 205[-], including section  
3 205-4.6 where applicable. In the case of a property which  
4 includes one or more existing structures being converted to  
5 condominium status, the condominium property regime shall comply  
6 with section 514B-32(a)(13) or 514B-84(a)."

7 SECTION 4. Section 514B-32, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) A declaration shall describe or include the  
10 following:

- 11 (1) The land submitted to the condominium property regime;
- 12 (2) The number of the condominium map filed concurrently  
13 with the declaration;
- 14 (3) The number of units in the condominium property  
15 regime;
- 16 (4) The unit number of each unit and common interest  
17 appurtenant to each unit;
- 18 (5) The number of buildings and projects in the  
19 condominium property regime, and the number of stories  
20 and units in each building;
- 21 (6) The permitted and prohibited uses of each unit;



- 1           (7) To the extent not shown on the condominium map, a  
2           description of the location and dimensions of the  
3           horizontal and vertical boundaries of any unit. Unit  
4           boundaries may be defined by physical structures or,  
5           if a unit boundary is not defined by a physical  
6           structure, by spatial coordinates;
- 7           (8) The condominium property regime's common elements;
- 8           (9) The condominium property regime's limited common  
9           elements, if any, and the unit or units to which each  
10          limited common element is appurtenant;
- 11          (10) The total percentage of the common interest that is  
12          required to approve rebuilding, repairing, or  
13          restoring the condominium property regime if it is  
14          damaged or destroyed;
- 15          (11) The total percentage of the common interest, and any  
16          other approvals or consents, that are required to  
17          amend the declaration. Except as otherwise  
18          specifically provided in this chapter, and except for  
19          any amendments made pursuant to reservations set forth  
20          in paragraph (12), the approval of the owners of at  
21          least sixty-seven per cent of the common interest



1 shall be required for all amendments to the  
2 declaration;

3 (12) Any rights that the developer or others reserve  
4 regarding the condominium property regime, including,  
5 without limitation, any development rights, and any  
6 reservations to modify the declaration or condominium  
7 map. An amendment to the declaration made pursuant to  
8 the exercise of those reserved rights shall require  
9 only the consent or approval, if any, specified in the  
10 reservation; and

11 (13) A declaration, subject to the penalties set forth in  
12 section 514B-69(b), that the condominium property  
13 regime is in compliance with all zoning and building  
14 ordinances and codes, and all other permitting  
15 requirements pursuant to section 514B-5[7] and  
16 [specifying in] chapter 205, including section 205-4.6  
17 where applicable. In the case of a project in the  
18 agricultural district classified pursuant to chapter  
19 205, the declaration, subject to the penalties set  
20 forth in section 514B-69(b), shall include an  
21 additional statement that there are no private  
22 restrictions limiting or prohibiting agricultural uses



1           or activities in compliance with section 205-4.6. In  
2           the case of a property that includes one or more  
3           existing structures being converted to condominium  
4           property regime status[+], the declaration required by  
5           this section shall specify:

6           (A) Any variances that have been granted to achieve  
7           the compliance; and

8           (B) Whether, as the result of the adoption or  
9           amendment of any ordinances or codes, the project  
10          presently contains any legal nonconforming  
11          conditions, uses, or structures[+].

12          ~~[except that a]~~ A property that is registered  
13          pursuant to section 514B-51 shall instead provide  
14          ~~[this]~~ the required declaration pursuant to section  
15          514B-54. If a developer is converting a structure to  
16          condominium property regime status and the structure  
17          is not in compliance with all zoning and building  
18          ordinances and codes, and all other permitting  
19          requirements pursuant to section 514B-5, and the  
20          developer intends to use purchaser's funds pursuant to  
21          the requirements of section 514B-92 or 514B-93 to cure  
22          the violation or violations, then the declaration



1 required by this paragraph may be qualified to  
2 identify with specificity each violation and the  
3 requirement to cure the violation by a date certain."

4 SECTION 5. Section 514B-52, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "~~§~~514B-52~~§~~ **Application for registration.** (a) An  
7 application for registration of a project shall:

8 (1) Be accompanied by nonrefundable fees as provided in  
9 rules adopted by the director of commerce and consumer  
10 affairs pursuant to chapter 91; and

11 (2) Contain the documents and information concerning the  
12 project and the condominium property regime as  
13 required by sections 514B-54, 514B-83, and 514B-84, as  
14 applicable, and as otherwise may be specified by the  
15 commission.

16 (b) An application for registration of a project in the  
17 agricultural district classified pursuant to chapter 205 shall  
18 include a verified statement, signed by an appropriate county  
19 official, that the project as described and set forth in the  
20 project's declaration, condominium map, bylaws, and house rules  
21 does not include any restrictions limiting or prohibiting  
22 agricultural uses or activities, in compliance with section



1 205-4.6. The commission shall not accept the registration of a  
2 project where a county official has not signed a verified  
3 statement.

4 [~~(b)~~] (c) The commission need not process any incomplete  
5 application and may return an incomplete application to the  
6 developer and require that the developer submit a new  
7 application, including nonrefundable fees. If an incomplete  
8 application is not completed within six months of the date of  
9 the original submission, it shall be deemed abandoned and  
10 registration of the project shall require the submission of a  
11 new application, including nonrefundable fees.

12 [~~(e)~~] (d) A developer shall promptly file amendments to  
13 report either any actual or expected pertinent or material  
14 change, or both, in any document or information contained in the  
15 application."

16 SECTION 6. Section 514B-54, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) Prior to the issuance of an effective date for a  
19 developer's public report, the commission shall have received  
20 the following:





- 1 (1) Nonrefundable fees as provided in rules adopted by the  
2 director of commerce and consumer affairs pursuant to  
3 chapter 91;
- 4 (2) The developer's public report prepared by the  
5 developer disclosing the information specified in  
6 section 514B-83 and, if applicable, section 514B-84;
- 7 (3) A copy of the deed, master lease, agreement of sale,  
8 or sales contract evidencing either that the developer  
9 holds the fee or leasehold interest in the property or  
10 has a right to acquire the same;
- 11 (4) Copies of the executed declaration, bylaws, and  
12 condominium map that meet the requirements of sections  
13 514B-32, 514B-33, and 514B-108;
- 14 (5) A specimen copy of the proposed contract of sale for  
15 units;
- 16 (6) An executed copy of an escrow agreement with a third  
17 party depository for retention and disposition of  
18 purchasers' funds that meets the requirements of  
19 section 514B-91;
- 20 (7) As applicable, the documents and information required  
21 in section 514B-92 or 514B-93;



- 1 (8) A declaration~~[7]~~ by the developer, subject to the  
2 penalties set forth in section 514B-69(b), that the  
3 project is in compliance with all county zoning and  
4 building ordinances and codes, and all other county  
5 permitting requirements applicable to the project,  
6 pursuant to chapter 205, including section 205-4.6,  
7 where applicable, and sections 514B-5 and  
8 514B-32(a)(13); [and]
- 9 (9) In the case of a project in the agricultural district  
10 classified pursuant to chapter 205, a verified  
11 statement signed by an appropriate county official  
12 that the project as described and set forth in the  
13 project's declaration, condominium map, bylaws, and  
14 house rules does not include any restrictions limiting  
15 or prohibiting agricultural uses or activities, in  
16 compliance with section 205-4.6; and
- 17 ~~[(+9)]~~ (10) Other documents and information that the  
18 commission may require."

19 SECTION 7. Section 514B-67, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) The commission, after notice and hearing, may issue  
22 an order terminating the registration of a condominium project



1 upon determination that a developer, or any officer, principal,  
2 or affiliate of a developer has:

- 3 (1) Failed to comply with a cease and desist order issued  
4 by the commission affecting that condominium project;
- 5 (2) Concealed, diverted, or disposed of any funds or  
6 assets of any person in a manner impairing rights of  
7 purchasers of units in that condominium project;
- 8 (3) Failed to perform any stipulation or agreement made to  
9 induce the commission to issue an order relating to  
10 that condominium project;
- 11 (4) Misrepresented or failed to disclose a material fact  
12 in the application for registration; [~~or~~]
- 13 (5) Failed to meet any of the conditions described in this  
14 part necessary to qualify for registration[~~-~~]; or
- 15 (6) Failed to conform or comply with county zoning and  
16 development ordinances as required by chapter 205,  
17 including section 205-4.6 where applicable, and  
18 section 514B-5."

19 SECTION 8. Section 514B-83, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) A developer's public report shall contain:



- 1           (1) The name and address of the project, and the name,  
2           address, telephone number, and electronic mail  
3           address, if any, of the developer or the developer's  
4           agent;
- 5           (2) A statement of the deadline, pursuant to section  
6           514B-89, for completion of construction or, in the  
7           case of a conversion, for the completion of any  
8           repairs required to comply with section 514B-5, and  
9           the remedies available to the purchaser, including but  
10          not limited to cancellation of the sales contract, if  
11          the completion of construction or repairs does not  
12          occur on or before the completion deadline;
- 13          (3) A breakdown of the annual maintenance fees and the  
14          monthly estimated cost for each unit, certified to  
15          have been based on generally accepted accounting  
16          principles, and a statement regarding when a purchaser  
17          shall become obligated to start paying the fees  
18          pursuant to section 514B-41(b);
- 19          (4) A description of all warranties for the individual  
20          units and the common elements, including the date of  
21          initiation and expiration of any such warranties, or a  
22          statement that no warranties exist;



- 1 (5) A summary of the permitted uses of the units and, if  
2 applicable, the number of units planned to be devoted  
3 to a particular use;
- 4 (6) A description of any development rights reserved to  
5 the developer or others;
- 6 (7) A declaration, subject to the penalties set forth in  
7 section 514B-69(b), that the project is in compliance  
8 with all county zoning and building ordinances and  
9 codes, chapter 205, including section 205-4.6 where  
10 applicable, and all other county permitting  
11 requirements applicable to the project, pursuant to  
12 sections 514B-5 and 514B-32(a)(13); and
- 13 (8) Any other facts, documents, or information that would  
14 have a material impact on the use or value of a unit  
15 or any appurtenant limited common elements or  
16 amenities of the project available for an owner's use,  
17 or that may be required by the commission."

18 SECTION 9. Section 514B-84, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) In addition to the information required by section  
21 514B-83, the developer's public report for a project in the  
22 agricultural district pursuant to chapter 205 shall disclose:



1 (1) Whether the structures and uses anticipated by the  
2 developer's promotional plan for the project are in  
3 compliance with all applicable state and county land  
4 use laws[+] and with chapter 205, including section  
5 205-4.6 where applicable;

6 (2) Whether the structures and uses anticipated by the  
7 developer's promotional plan for the project are in  
8 compliance with all applicable county real property  
9 tax laws, and the penalties for noncompliance; and

10 (3) Other disclosures and information that the commission  
11 may require."

12 SECTION 10. This Act applies to a condominium project on  
13 lands classified as agricultural pursuant to chapter 205, Hawaii  
14 Revised Statutes, for which a developer submits an application  
15 for registration of a project pursuant to section 514A-31,  
16 Hawaii Revised Statutes.

17 SECTION 11. This Act does not affect rights and duties  
18 that matured, penalties that were incurred, and proceedings that  
19 were begun before its effective date.

20 SECTION 12. If any provision of this Act, or the  
21 application thereof to any person or circumstance, is held  
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

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

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

7



**Report Title:**

Condominiums; Condominium Projects; Agricultural Uses and Activities

**Description:**

Clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural. (SD1)

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

