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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL COMMERCE.

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

1           SECTION 1. The legislature finds that agricultural-based  
2 commercial operations are a critical component to economic  
3 viability of Hawaii's farming operations. The legislature  
4 further finds that, although agricultural-based commercial  
5 operations are specifically authorized in section 205-2(15),  
6 Hawaii Revised Statutes, with bona-fide farming operation  
7 provisions as provided in section 165-2, the land use commission  
8 and various county ordinances create undue impediments that  
9 interfere with the legislature's intent of supporting  
10 agricultural commerce.

11           The legislature also finds that Act 113, Session Laws of  
12 Hawaii 2012, created specific state authorization to prevent  
13 undue county restrictions. Preexisting land use commission  
14 rules, however, have effectively left details to various  
15 cumbersome county ordinances, where permitting processes are  
16 hindering the purpose of Act 113. It is the legislature's  
17 intent to support farmers' ability to improve their economic



1 feasibility and thus continue to farm with expressly permissible  
2 uses of agricultural commerce related to their Hawaiian  
3 products.

4 The purpose of this Act is to specifically allow  
5 agricultural commerce on agricultural land without undue county  
6 restrictions.

7 SECTION 2. Section 205-2, Hawaii Revised Statutes, is  
8 amended by amending subsection (d) to read as follows:

9 "(d) Agricultural districts shall include:

- 10 (1) Activities or uses as characterized by the cultivation  
11 of crops, crops for bioenergy, orchards, forage, and  
12 forestry;
- 13 (2) Farming activities or uses related to animal husbandry  
14 and game and fish propagation;
- 15 (3) Aquaculture, which means the production of aquatic  
16 plant and animal life within ponds and other bodies of  
17 water;
- 18 (4) Wind generated energy production for public, private,  
19 and commercial use;



- 1 (5) Biofuel production, as described in section  
2 205-4.5(a)(16), for public, private, and commercial  
3 use;
- 4 (6) Solar energy facilities; provided that:
- 5 (A) This paragraph shall apply only to land with soil  
6 classified by the land study bureau's detailed  
7 land classification as overall (master)  
8 productivity rating class B, C, D, or E; and
- 9 (B) Solar energy facilities placed within land with  
10 soil classified as overall productivity rating  
11 class B or C shall not occupy more than ten per  
12 cent of the acreage of the parcel, or twenty  
13 acres of land, whichever is lesser, unless a  
14 special use permit is granted pursuant to section  
15 205-6;
- 16 (7) Bona fide agricultural services and uses that support  
17 the agricultural activities of the fee or leasehold  
18 owner of the property and accessory to any of the  
19 above activities, regardless of whether conducted on  
20 the same premises as the agricultural activities to  
21 which they are accessory, including farm dwellings as



- 1 defined in section 205-4.5(a) (4), employee housing,  
2 farm buildings, mills, storage facilities, processing  
3 facilities, photovoltaic, biogas, and other small-  
4 scale renewable energy systems producing energy solely  
5 for use in the agricultural activities of the fee or  
6 leasehold owner of the property, agricultural-energy  
7 facilities as defined in section 205-4.5(a) (17),  
8 vehicle and equipment storage areas, and plantation  
9 community subdivisions as defined in section  
10 205-4.5(a) (12);
- 11 (8) Wind machines and wind farms;
- 12 (9) Small-scale meteorological, air quality, noise, and  
13 other scientific and environmental data collection and  
14 monitoring facilities occupying less than one-half  
15 acre of land; provided that these facilities shall not  
16 be used as or equipped for use as living quarters or  
17 dwellings;
- 18 (10) Agricultural parks;
- 19 (11) Agricultural tourism conducted [~~on a working farm, or~~  
20 a] in conjunction with a bona fide farming operation  
21 as defined in section 165-2, for the enjoyment,



1 education, or involvement of visitors; provided that  
2 the agricultural tourism use or activity is accessory  
3 and secondary to the principal agricultural use and  
4 does not interfere with surrounding farm operations;  
5 and provided further that this paragraph shall apply  
6 only to a county that has adopted ordinances  
7 regulating agricultural tourism under section 205-5;  
8 (12) Agricultural tourism activities, including overnight  
9 accommodations of twenty-one days or less, for any one  
10 stay within a county; provided that this paragraph  
11 shall apply only to a county that includes at least  
12 three islands and has adopted ordinances regulating  
13 agricultural tourism activities pursuant to section  
14 205-5; provided further that the agricultural tourism  
15 activities coexist with a bona fide agricultural  
16 activity. For the purposes of this paragraph, "bona  
17 fide agricultural activity" means a farming operation  
18 as defined in section 165-2;  
19 (13) Open area recreational facilities;



- 1       (14)    Geothermal resources exploration and geothermal  
2               resources development, as defined under section 182-1;  
3               and
- 4       (15)    Agricultural-based commercial operations, including:
  - 5               (A)    A roadside stand that is not an enclosed  
6                       structure, owned and operated by a producer for  
7                       the display and sale of agricultural products  
8                       grown in Hawaii and value-added products that  
9                       were produced using agricultural products grown  
10                      in Hawaii;
  - 11              (B)    Retail activities in an enclosed structure owned  
12                      and operated by a producer for the display and  
13                      sale of agricultural products grown in Hawaii,  
14                      value-added products that were produced using  
15                      agricultural products grown in Hawaii, logo items  
16                      related to the producer's agricultural  
17                      operations, and other food items; and
  - 18              (C)    A retail food establishment owned and operated by  
19                      a producer and permitted under title 11, chapter  
20                      12 of the rules of the department of health that  
21                      prepares and serves food at retail using products



1                   grown in Hawaii and value-added products that  
2                   were produced using agricultural products grown  
3                   in Hawaii.

4                   The owner of an agricultural-based commercial  
5                   operation shall certify, upon request of an officer or  
6                   agent charged with enforcement of this chapter under  
7                   section 205-12, that the agricultural products  
8                   displayed or sold by the operation meet the  
9                   requirements of this paragraph. Agricultural-based  
10                  commercial operations as identified in this paragraph  
11                  shall not be further limited with undue restrictions  
12                  by the land use commission or by county ordinance,  
13                  rule, or regulation.

14                  Agricultural districts shall not include golf courses and golf  
15                  driving ranges, except as provided in section 205-4.5(d).

16                  Agricultural districts include areas that are not used for, or  
17                  that are not suited to, agricultural and ancillary activities by  
18                  reason of topography, soils, and other related characteristics."

19                  SECTION 3. Section 205-5, Hawaii Revised Statutes, is  
20                  amended by amending subsection (b) to read as follows:



1           "(b) Within agricultural districts, uses compatible to the  
2 activities described in section 205-2 ~~as determined by the~~  
3 ~~commission~~ shall be permitted[+] without undue limitations or  
4 restrictions; provided that accessory agricultural uses and  
5 services described in sections 205-2 and 205-4.5 may be further  
6 defined by each county by zoning ordinance. Each county shall  
7 adopt ordinances setting forth procedures and requirements,  
8 including provisions for enforcement, penalties, and  
9 administrative oversight, for the review and permitting of  
10 agricultural tourism uses and activities as an accessory use on  
11 a working farm, or farming operation as defined in section  
12 165-2. Ordinances shall include but not be limited to:

- 13           (1) Requirements for access to a farm, including road  
14           width, road surface, and parking;
- 15           (2) Requirements and restrictions for accessory facilities  
16           connected with the farming operation, including gift  
17           shops and restaurants;
- 18           (3) Activities that may be offered by the farming  
19           operation for visitors;
- 20           (4) Days and hours of operation; and





1           (5) Automatic termination of the accessory use upon the  
2           cessation of the farming operation.

3 Each county may require an environmental assessment under  
4 chapter 343 as a condition to any agricultural tourism use and  
5 activity. Other uses may be allowed by special permits issued  
6 pursuant to this chapter. The minimum lot size in agricultural  
7 districts shall be determined by each county by zoning  
8 ordinance, subdivision ordinance, or other lawful means;  
9 provided that the minimum lot size for any agricultural use  
10 shall not be less than one acre, except as provided herein. If  
11 the county finds that unreasonable economic hardship to the  
12 owner or lessee of land cannot otherwise be prevented or where  
13 land utilization is improved, the county may allow lot sizes of  
14 less than the minimum lot size as specified by law for lots  
15 created by a consolidation of existing lots within an  
16 agricultural district and the resubdivision thereof; provided  
17 that the consolidation and resubdivision do not result in an  
18 increase in the number of lots over the number existing prior to  
19 consolidation; and provided further that in no event shall a lot  
20 which is equal to or exceeds the minimum lot size of one acre be  
21 less than that minimum after the consolidation and resubdivision



1 action. The county may also allow lot sizes of less than the  
2 minimum lot size as specified by law for lots created or used  
3 for plantation community subdivisions as defined in section  
4 205-4.5(a)(12), for public, private, and quasi-public utility  
5 purposes, and for lots resulting from the subdivision of  
6 abandoned roadways and railroad easements."

7 SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2015.



**Report Title:**

Agricultural Districts; Agricultural-based Commercial Operations

**Description:**

Clarifies legislative intent that agricultural-based commercial operations of bona-fide agricultural operations shall be expressly allowed without undue limitations or restrictions by either land use commission rules or by county ordinances.

(HB1194 HD2)

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

