

ACT 242

H.B. NO. 2299-86

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

“[[]§165-1[]] **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] that may result in the premature removal of lands from agricultural use and [discourages] may discourage 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.”

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:

(1) “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[;]. 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 zoning, fall beyond the scope of this definition; provided that such processing operations form an integral part of operations that otherwise meet the requirements of this definition.

(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. “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.

(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 established 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.] 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.

“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.”

SECTION 3. Section 165-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§165-4[]] **Right to farm.** (a) No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if all of 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 the 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.]
- (1) That during the twelve-month period preceding the filing of the nuisance complaint with a court or other adjudicative public body, the farming operation complied with statutes, ordinances, regulations, or rules relevant to the nuisance complaint; and
- (2) That the farming operation has used reasonable care in conducting its operation.
- (b) Notwithstanding a farming operation’s satisfaction of subsection (a)(1), (2), and (3), a farming operation may be declared a nuisance if:
 - (1) The farming operation or any aspect thereof has been previously determined to be injurious to public health or safety by the department of health, the department of agriculture, or a court of competent jurisdiction; and
 - (2) The complainant establishes by a preponderance of the evidence that the alleged nuisance resulted from the injurious operation or aspect thereof. Any determination of injuriousness shall be in writing and shall set forth the bases for the determination.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1986.)