

A Bill for an Act Relating to Farming.

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

SECTION 1. 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 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.]

“Farming operation” means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, [and] apiary[-, horticultural, or floricultural products;] products, and plant and animal production for nonfood uses; 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];

- (1) Marketed produce at roadside stands or farm markets; [noises,]
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit; [operation]
- (3) Operation of machinery and irrigation pumps; [ground]
- (4) Ground and aerial seeding and spraying; [the]
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and [the]
- (6) 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 that zoning, fall beyond the scope of this definition; provided that 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 2. Section 165-4, Hawaii Revised Statutes, is amended to read as follows:

“**§165-4 Right to farm.** (a)<sup>1</sup> 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 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) and (2), 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.]~~
- the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance.”

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 Statutory material to be repealed is bracketed and stricken.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

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

(Approved April 25, 2001.)

**Note**

1. No subsection (b).