

ACT 94

S.B. NO. 186

A Bill for an Act Relating to Restrictions on Agricultural Uses and Activities.

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

SECTION 1. The legislature finds that subdivisions on agricultural lands have significantly increased over the past few decades. Homes within these subdivisions are often marketed as “gentlemen estates” where wealthy individu-

als can purchase large parcels of land on which to live and pursue farming as a hobby. The rise of subdivisions has led to homeowners' associations, which govern those subdivisions, imposing restrictions that limit bona fide agricultural uses on agricultural lands.

The legislature further finds that provisions restricting agricultural uses on agricultural lands conflict with article XI, section 3, of the Hawaii State Constitution, which mandates that the State "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The legislature also finds that Act 170, Session Laws of Hawaii 2004, exempted agricultural leases and utility and access easements from the prohibition of private restrictions on agricultural uses and activities within state agricultural districts, thus prohibiting homeowners' associations from restricting agricultural activities on agricultural lands. However, to avoid impairing any existing contracts, the Act only applied to restrictions made after July 8, 2003.

The legislature believes that some homeowners' associations have been circumventing the law by renewing agricultural restrictions that existed as of July 8, 2003, claiming that the renewed terms continue to be exempt from the law despite those agreements, by their own terms, expiring after 2003. Bona fide farmers seeking to enforce the law have had to accept the restriction or hire an attorney for a costly lawsuit against the well-funded homeowners' association.

The purpose of this Act is to clarify that renewed contracts restricting agricultural uses and activities within agricultural lands are considered new contracts and are therefore voidable, subject to limited circumstances.

SECTION 2. Section 205-4.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any:

- (1) Deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that ~~[subject such]~~ subjects the agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes; ~~[and] provided that any private agreement contained in a conveyance of land recorded on or before July 8, 2003, that:~~
 - (A) Limits or prohibits agricultural use or activity; and
 - (B) Is renewed and recorded in the bureau of conveyances after July 8, 2003,
shall be considered a new private agreement that is subject to the prohibition on agricultural use and activity restrictions under this section; and
- (2) Condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter 514B or any predecessor thereto.

Any ~~[such]~~ private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section."

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 June 25, 2021.)