

RELATING TO AGRICULTURE.

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

- 1 SECTION 1. Article XI, section 3, of the Hawaii State
- 2 Constitution, mandates the State to "conserve and protect
- 3 agricultural lands, promote diversified agriculture, increase
- 4 agricultural self-sufficiency and assure the availability of
- 5 agriculturally suitable lands." The constitution also mandates
- 6 the legislature to provide standards and criteria to accomplish
- 7 these objectives.
- 8 The State, recognizing the critical importance of
- 9 agricultural lands, has established the agricultural district as
- 10 one of the four major land classifications in which all lands in
- 11 Hawaii must be placed. Section 205-2, Hawaii Revised Statutes,
- 12 sets forth the allowable activities in an agricultural district
- 13 including "the cultivation of crops, orchards, forage, and
- 14 forestry".
- However, classification and protection of agricultural
- 16 lands has been subverted and undermined by the development of
- 17 "gentleman farming estates", whereby the primary purpose of
- 18 activity upon these lands is not agricultural, but luxury

- 1 residential. Moreover, these developments place restrictive
- 2 covenants, including imposing height restriction on growing
- 3 crops in agricultural subdivisions and other private agreements
- 4 that restrict or even prohibit bona fide agricultural activities
- 5 on agricultural lands. Such practices and covenants are
- 6 repugnant to public policy as enunciated by Article XI, section
- 7 3, of the State Constitution.
- 8 Section 1-5, Hawaii Revised Statutes, grants individuals
- 9 the ability to contract away any of their legal rights so long
- $10\,$  as the renouncement does not affect others' rights and "is not
- 11 contrary to the public good." The legislature finds that
- 12 restrictive covenants against agriculture uses are contrary to
- 13 the public good because the intent of the State Constitution,
- 14 and the intent of land use laws, as shown below by their
- 15 history, demonstrate that these covenants dismantle the
- 16 protections and conservation that are embodied in Hawaii's laws.
- In 1961, the State of Hawaii was revolutionary in its
- 18 approach to planning and growth when it passed the Land Use Law,
- 19 chapter 205, Hawaii Revised Statutes. In passing the Land Use
- 20 Law, the senate noted in Senate Standing Committee Report
- 21 No. 580, on Senate Bill 937:

1	The purpose of this bill is to preserve
2	and protect land best suited for
3	cultivation, forestry and other agricultural
4	purposes and to facilitate sound and
5	economical urban development in order to
6	promote the economy and general welfare of
7	the state, and to insure the efficient
8	expenditure of public funds
9	***
10	The state's highly productive
11	agricultural lands are jeopardized by normal
12	economic laws which encourage land owners to
13	place their own particular pieces of land to
14	the most profitable current use for which
15	they can find a market. Long term
16	agricultural leases are expiring annually.
17	Because of the pressure for urbanization the
18	land owners are reluctant to continue long
19	term renewals of such leases, and the lessee
20	is therefor discouraged to develop the land
21	to its maximum agricultural production. If
22	exclusive agricultural zones are not

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1		established to preserve and protect prime
2		agricultural land from infringement by none-
3		agricultural [sic] uses, the possibility of
4		land speculation through inflated or
5		artificial land prices may jeopardize the
6		existence of major agricultural companies or
7		activities. The most effective protection
8		for prime agricultural lands, preservation
9		of open space and direction for urban
10		growth, is through state zoning.
11	Also	important to note is that chapter 205, Hawaii Revised
12	Statutes,	was specifically enacted in an effort to manage growth
13	on island	s of limited resources. Act 187, Session Laws of
14	Hawaii 19	61, reads:
15		Scattered subdivisions with expensive, yet
16		reduced, public services; the shifting of
17		prime agricultural lands into nonrevenue
18		[sic] producing residential uses when other
19		lands are available that could serve
20		adequately the urban needs; these are
21		evidences of the need for public concern and
22		action.

1	In 1976, the legislature noted, in Senate Standing
2	Committee Report No. 662-76, on House Bill 3262-76, that the
3	requirements of the Land Use Law had been skirted, and as such,
4	it amended the Land Use Law to clarify that urban type
5	residential subdivisions are not authorized on agricultural
6	land.
7	The purpose of the agricultural district
8	classification is to control the uses of the
9	land for agricultural purposes. This
10	purpose is being frustrated by the
11	development of urban type residential
12	communities in the guise of agricultural
13	subdivisions. To discourage abuse of this
14	purpose, the bill, as amended, more clearly
15	defines the uses permitted within the
16	agricultural district. Except for such uses
17	permitted under special use permits in
18	Section 205-6, and for nonconforming uses
19	permitted in section 205-8, uses not
20	permitted shall be prohibited.
21	Most revealing as to the efforts to curb against
22	development upon agricultural lands is the procedural history

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_	for the enactment of Article XI, section 3, of the State
2	Constitution. Fearing that urbanization and abuses would weaken
3	the protections meant to be provided to agricultural lands, the
4	committee deleted language referring to farm and home ownership,
5	and instead focused on the need to protect and promote
6	agricultural lands.
7	The State Constitutional Convention of 1978 noted in its
8	proceedings:
9	Your Committee deleted the provision in
10	Section 5 of Article X dealing with the use
11	of public lands for farm and home ownership.
12	It was generally understood, based on a
13	letter opinion by the attorney general, that
14	the phrase "farm and home ownership" meant
15	both farm or home ownership. The
16	inconsistency of this interpretation, with a
17	renewed emphasis on preserving valuable and
18	important agricultural lands, and the
19	recommendation of the chairman of the board
20	of agriculture convinced your Committee to
21	delete the provision on farm and home
22	ownership.

1	In response to increasing concerns
2	regarding the future of agriculture in the
3	State, your Committee has amended Section 5
4	of Article X, entitled "Farm and Home
5	Ownership, by revising it to "Agricultural
6	Lands" and by amending it to provide policy
7	direction to the State. Moreover, the
8	section has been amended to safeguard
9	existing agricultural lands designated by
10	the state Department of Agriculture as
11	"prime," "unique" or "other important" and
12	classified as agricultural by the state Land
13	Use Commission. Thus the reclassification
14	of these lands will now require, in addition
15	to approval by the state Land Use Commission
16	or other body assigned this function, the
17	approval of the legislature by two thirds of
18	each house.
19	Your Committee provided further
20	protection for important agricultural lands
21	by requiring that the lands be protected and
22	maintained for home fide as and said

1	agricultural use and that only support
2	facilities necessary for agricultural use of
3	such lands be permitted.
4	While Article XI, section 3, of the Hawaii State
5	Constitution was adopted in 1978, and at that time the concern
6	was over the large prime agricultural parcels of the sugar and
7	pineapple industries, since that time, the focus of concern has
8	shifted, for we have seen subdivisions and gentleman farmer
9	estates, with golf courses, orchards, and gated communities
10	proliferate upon agricultural lands. Thus, whereas previously
11	the concern was over the promotion of the agricultural industry
12	through its lands, we currently are dealing with a planning
13	issue of urban-like uses occupying agricultural lands. It is
14	for these reasons that the legislature finds that the courts of
15	this State should not be availed upon to enforce these private
16	agreements that contravene public policy.
17	SECTION 2. Chapter 205, Hawaii Revised Statutes, is
18	amended by adding a new section to be appropriately designated
19	and to read as follows:
20	*§205- Private restrictions on agricultural uses and
21	activities; not allowed. Agricultural uses and activities as
22	defined in sections 205-2(d) and 205-4.5(a) on lands classified

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- 1 as agricultural shall not be restricted by any private agreement
- 2 contained in any deed, lease, agreement of sale, or other
- 3 conveyance of land recorded in the bureau of conveyances after
- 4 the effective date of this section, that subject such
- 5 agricultural lands to any servitude, including but not limited
- 6 to covenants, easements, or equitable and reciprocal negative
- 7 servitudes. Any such private restriction limiting or
- 8 prohibiting agricultural use or activity shall be voidable
- 9 subject to special restrictions enacted by the county ordinance
- 10 pursuant to section 46-4, except that restrictions taken to
- 11 protect environmental or cultural resources shall not be void or
- 12 voidable."
- 13 SECTION 3. New statutory material is underscored.
- 14 SECTION 4. This Act shall not be applied so as to impair
- 15 any contract existing as of the effective date of this Act in a
- 16 manner violative of either the Hawaii Constitution or Article I,
- 17 section 10, of the United States Constitution.
- 18 SECTION 5. This Act shall take effect upon its approval.