
A BILL FOR AN ACT

RELATING TO KULEANA LANDS.

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

1 SECTION 1. The legislature finds that there have been
2 countless instances in the past when persons using various means
3 have disenfranchised native Hawaiian families and longtime
4 kamaaina from their family kuleana lands. This practice
5 continues today through various legal processes.

6 The purpose of this Act is to prevent the disenfranchising
7 of native Hawaiians from their familial kuleana lands and have
8 the title to any unclaimed kuleana lands held in trust in the
9 office of Hawaiian affairs, as koa'aina of these lands, until
10 rightful descendants can be found.

11 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
12 by adding a new section to be appropriately designated and to
13 read as follows:

14 "§10- Kuleana lands. (a) The office shall hold title
15 in trust to any unclaimed kuleana lands where the descendants of
16 the native tenants are unknown or cannot be found.



1 (b) Periodically, but not less than once a year, the
2 office shall publish a list of all kuleana lands that it holds
3 in trust.

4 (c) Any descendant of a native tenant may make a claim
5 with the office for any unclaimed kuleana land. The office
6 shall establish procedures to settle any claims.

7 For purposes of this section, "kuleana land" means that
8 land granted to native tenants pursuant to L 1850, p. 202,
9 entitled "An Act Confirming Certain Resolutions of the King and
10 Privy Council, Passed on the 21st Day of December, A.D. 1849,
11 Granting to the Common People Allodial Titles for Their Own
12 Lands and House Lots, and Certain Other Privileges", as
13 originally enacted and as amended."

14 SECTION 3. Section 657-31.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§657-31.5 Adverse possession.** In an action under this
17 part where the person defending the action claims by adverse
18 possession in excess of the period of limitation, [~~said~~] the
19 claim can only be made:

20 (1) If the real property [~~which~~] that is the subject of
21 the action is five acres or less; [~~and~~]

1 (2) Where the person claiming by adverse possession has
 2 not asserted any similar claim, in good faith, within
 3 the past twenty years; however, this shall not include
 4 similar claims made before November 7, 1978[-]; and

5 (3) The property that is the subject of the action is not
 6 kuleana land.

7 However, any person defending an action under this part may
 8 claim adverse possession if that person's time period of adverse
 9 possession of the land exceeded twenty years prior to November
 10 7, 1978, or exceeded other earlier applicable time periods of
 11 adverse possession.

12 For purposes of this section, "kuleana land" means that
 13 land granted to native tenants pursuant to L 1850, p. 202,
 14 entitled "An Act Confirming Certain Resolutions of the King and
 15 Privy Council, Passed on the 21st Day of December, A.D. 1849,
 16 Granting to the Common People Allodial Titles for Their Own
 17 Lands and House Lots, and Certain Other Privileges", as
 18 originally enacted and as amended."

19 SECTION 4. Section 669-1, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**§669-1 Object of action.** (a) Action may be brought by
 22 any person against another person who claims, or who may claim



1 adversely to the plaintiff, an estate or interest in real
2 property, for the purpose of determining the adverse claim.

3 (b) Action for the purpose of establishing title to a
4 parcel of real property of five acres or less may be brought by
5 any person who has been in adverse possession of the real
6 property for not less than twenty years. Action for the purpose
7 of establishing title to a parcel of real property of greater
8 than five acres may be brought by any person who had been in
9 adverse possession of the real property for not less than twenty
10 years prior to November 7, 1978, or for not less than earlier
11 applicable time periods of adverse possession. For purposes of
12 this section, any person claiming title by adverse possession
13 shall show that such person acted in good faith. Good faith
14 means that, under all the facts and circumstances, a reasonable
15 person would believe that the person has an interest in title to
16 the lands in question and such belief is based on inheritance, a
17 written instrument of conveyance, or the judgment of a court of
18 competent jurisdiction.

19 (c) Action brought to claim property of five acres or less
20 on the basis of adverse possession may be asserted in good faith
21 by any person not more than once in twenty years, after November
22 7, 1978.



1 (d) Action under subsection (a) or (b) shall be brought in
2 the circuit court of the circuit in which the property is
3 situated.

4 (e) Action may be brought by any person to quiet title to
5 land by accretion; provided that no action shall be brought by
6 any person other than the State to quiet title to land accreted
7 along the ocean[7]; except that a private property owner whose
8 eroded land has been restored by accretion may also bring such
9 an action for the restored portion. The person bringing the
10 action shall prove by a preponderance of the evidence that the
11 accretion is natural and permanent. The person bringing the
12 action shall supply the office of environmental quality control
13 with notice of the action for publication in the office's
14 periodic bulletin in compliance with section 343-3(c)(4). The
15 quiet title action shall not be decided by the court unless the
16 office of environmental quality control has properly published
17 notice of the action in the office's periodic bulletin.

18 As used in this section, "permanent" means that the
19 accretion has been in existence for at least twenty years. The
20 accreted portion of land shall be state land except as otherwise
21 provided in this section and shall be considered within the



1 conservation district. Prohibited uses are governed by section
2 183-45.

3 (f) No action may be brought by any person to quiet title
4 to kuleana land.

5 For purposes of this subsection, "kuleana land" means that
6 land granted to native tenants pursuant to L 1850, p. 202,
7 entitled "An Act Confirming Certain Resolutions of the King and
8 Privy Council, Passed on the 21st Day of December, A.D. 1849,
9 Granting to the Common People Allodial Titles for Their Own
10 Lands and House Lots, and Certain Other Privileges", as
11 originally enacted and as amended."

12 SECTION 5. Section 669-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§669-2 Defendants; unknown persons.** (a) Any person may
15 be made a defendant in the action who has or claims, or may
16 claim, an interest in the property adverse to the plaintiff[7]
17 or who is a necessary party to a complete determination or
18 settlement of the issues involved therein.

19 (b) Unknown persons may be made parties as provided by the
20 rules of court, if:



1 (1) It shall be shown by the complaint that there are or
2 may be persons unknown, claiming by, through, or under
3 any named person; or

4 (2) Other facts shall be shown by the complaint giving
5 rise to an actual controversy between plaintiff and
6 persons unidentified or whose names are unknown.

7 (c) In any action brought under section 669-1(b):

8 (1) There shall be joined as defendants, in addition to
9 persons known to have an adverse interest, the
10 adjoining owners and occupants so far as known.

11 (2) If all persons interested who are known or can be
12 joined as provided by subsection (b) have been made
13 parties, the summons in addition to being directed to
14 such parties, may be directed to unknown persons
15 generally and in such case, after service upon the
16 persons summoned, known and unknown, the court shall
17 have jurisdiction to proceed as though all persons
18 interested were in being and personally served, but
19 any adjudication [~~shall~~], as regards a defendant
20 served pursuant to section 669-3, shall affect only
21 the property [~~which~~] that is the subject of the action
22 except as provided by section 634-23.

1 (d) In any action brought under section 669-1, the State
2 may be joined as a defendant only when:

3 (1) It is an adjoining property owner and the same is
4 alleged by the plaintiff; or

5 (2) The party asserting the claim can demonstrate, by a
6 title search prepared at the party's own expense by an
7 abstractor, that the State has a clear and specific
8 interest in the subject matter of the suit which is
9 adverse to the plaintiff's claim, and a copy of the
10 title search is furnished to the State without cost,
11 together with the complaint.

12 ~~[(e) In any action brought under section 669-1, the office~~
13 ~~of Hawaiian affairs shall be joined as a defendant, by service~~
14 ~~upon the office of Hawaiian affairs, when:~~

15 ~~(1) The land claimed by the plaintiff is kuleana land; and~~

16 ~~(2) The plaintiff has reason to believe that an owner of~~
17 ~~an inheritable interest in the kuleana land died~~
18 ~~intestate or died partially intestate and there is or~~
19 ~~was no taker under article II of the Hawaii uniform~~
20 ~~probate code.~~

21 ~~For purposes of this subsection, "kuleana land" means that~~
22 ~~land granted to native tenants pursuant to L 1850, p. 202,~~



1 ~~entitled "An Act Confirming Certain Resolutions of the King and~~
 2 ~~Privy Council, Passed on the 21st Day of December, A.D. 1849,~~
 3 ~~Granting to the Common People Allodial Titles for Their Own~~
 4 ~~Lands and House Lots, and Certain Other Privileges", as~~
 5 ~~originally enacted and as amended.]"~~

6 SECTION 6. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.
 9

INTRODUCED BY: *Ngā P. Tāroha*

Michael P. Kalikena

Pono Oroy

Tony Wata

Namine Inoué

JAN 20 2006

HB 2113

Report Title:

Quiet Title; Adverse Possession; Kuleana Lands

Description:

Makes OHA trustee of any unclaimed kuleana lands. Prohibits quieting title to or claiming by adverse possession of any kuleana lands.

