

JAN 25 2006

S.B. NO. 2421

A BILL FOR AN ACT

RELATING TO ADVERSE POSSESSION.

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

1 SECTION 1. The legislature finds that Hawaii law needs
2 amendment to bar actions to claim kuleana lands by adverse
3 possession. Complex historical events have put kuleana lands at
4 risk of inappropriate claims based on adverse possession. In
5 the decades following the mahele, many of the lands surrounding
6 kuleana passed out of the hands of the konohiki. Often, the new
7 owners of the ahupua`a or ili blocked access to kuleana located
8 within their lands, forcing the kuleana owners to abandon their
9 land. Other kuleana owners were forced to abandon their land to
10 move to towns to seek jobs as a result of the great social
11 upheaval of the time. Epidemics devastated entire communities
12 and people did not routinely use wills or trusts to provide for
13 the distribution of their estates. In actions to quiet title, a
14 surrounding owner or other party may have acquired title by
15 judicial decree because the true heirs are unknown, are not made
16 parties, are unaware of their interest in the proceeding, or
17 have abandoned possession of, but not the claim of title to, the
18 kuleana. As a result, kuleana may have passed to surrounding



1 owners or other parties based on claims of adverse possession,
2 yet no legitimate claim existed.

3 In light of the historical context, the legislature finds
4 that it would be fundamentally unfair to allow legitimate claims
5 of ancestral title to kuleana land to be foreclosed by another
6 party's adverse possession of such land. The purpose of this
7 Act is to bar claims to kuleana lands by adverse possession.

8 SECTION 2. Section 669-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§669-1 Object of action.** (a) Action may be brought by
11 any person against another person who claims, or who may claim
12 adversely to the plaintiff, an estate or interest in real
13 property, for the purpose of determining the adverse claim.

14 (b) Action for the purpose of establishing title to a
15 parcel of real property of five acres or less may be brought by
16 any person who has been in adverse possession of the real
17 property for not less than twenty years. Action for the purpose
18 of establishing title to a parcel of real property of greater
19 than five acres may be brought by any person who had been in
20 adverse possession of the real property for not less than twenty
21 years prior to November 7, 1978, or for not less than earlier
22 applicable time periods of adverse possession. For purposes of



1 this section, any person claiming title by adverse possession
2 shall show that such person acted in good faith. Good faith
3 means that, under all the facts and circumstances, a reasonable
4 person would believe that the person has an interest in title to
5 the lands in question and such belief is based on inheritance, a
6 written instrument of conveyance, or the judgment of a court of
7 competent jurisdiction.

8 (c) Notwithstanding subsections (a) and (b), no action may
9 be brought to claim real property by adverse possession if the
10 real property is kuleana land. For the purposes of this
11 subsection, "kuleana land" means land granted to native tenants
12 pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain
13 Resolutions of the King and Privy Council, Passed on the 21st
14 Day of December, A.D. 1849, Granting to the Common People
15 Allodial Titles for Their Own Lands and House Lots, and Certain
16 Other Privileges", as originally enacted and as amended.

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



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

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

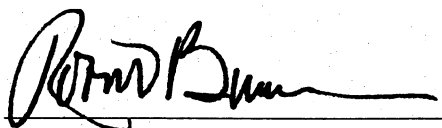
19 As used in this section, "permanent" means that the
20 accretion has been in existence for at least twenty years. The
21 accreted portion of land shall be state land except as otherwise
22 provided in this section and shall be considered within the

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

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

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

6

INTRODUCED BY:  _____

By Request



SB 2421

Report Title:

Adverse Possession; Kuleana Lands

Description:

Bars claims to kuleana lands based on adverse possession.

