

JAN 23 2009

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# 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 kama'aina 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 by having  
8 the title to any unclaimed kuleana lands held in trust in the  
9 office of Hawaiian affairs until rightful descendants can be  
10 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 if 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, including the name of the last known native tenants  
4 and any known descendants thereof.

5        (c) Any descendant of a native tenant may make a claim  
6 with the office for any unclaimed kuleana land. The office  
7 shall adopt necessary rules, pursuant to chapter 91, for  
8 purposes of this section.

9        (d) The circuit court of the circuit in which the  
10 unclaimed kuleana land is located shall have exclusive  
11 jurisdiction of all disputes arising between alleged descendants  
12 of a native tenant over a claim made with the office for  
13 unclaimed kuleana land. An action in circuit court under this  
14 subsection may not be brought against any person more than five  
15 years after the disputed claim is first made with the office for  
16 the unclaimed kuleana land in question.

17        (e) For purposes of this section, "kuleana land" means  
18 that land granted to native tenants pursuant to L 1850, p. 202,  
19 entitled "An Act Confirming Certain Resolutions of the King and  
20 Privy Council, Passed on the 21st Day of December, A.D. 1849,  
21 Granting to the Common People Allodial Titles for Their Own



1 Lands and House Lots, and Certain Other Privileges", as  
2 originally enacted and as amended."

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

5 **"§657-31.5 Adverse possession.** (a) In an action under  
6 this part where the person defending the action claims by  
7 adverse possession in excess of the period of limitation, [~~said~~]  
8 the claim can only be made:

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

11 (2) [~~where~~] If the person claiming by adverse possession  
12 has not asserted any similar claim, in good faith,  
13 within the past twenty years; [~~however,~~] provided that  
14 this shall not include similar claims made before  
15 November 7, 1978[~~-~~]; and

16 (3) If the real property that is the subject of the action  
17 is not kuleana land;

18 [~~However,~~] provided that, except for paragraph (3), any person  
19 defending an action under this part may claim adverse possession  
20 if that person's time period of adverse possession of the land  
21 exceeded twenty years prior to November 7, 1978, or exceeded  
22 other earlier applicable time periods of adverse possession.



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

8        SECTION 4. Section 669-1, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10        "(a) Action may be brought by any person against another  
11 person who claims, or who may claim adversely to the plaintiff,  
12 an estate or interest in real property, for the purpose of  
13 determining the adverse claim[-]; except that no action shall be  
14 brought by any person to quiet title to kuleana land. For  
15 purposes of this subsection, "kuleana land" means that land  
16 granted to native tenants pursuant to L 1850, p. 202, entitled  
17 "An Act Confirming Certain Resolutions of the King and Privy  
18 Council, Passed on the 21st Day of December, A.D. 1849, Granting  
19 to the Common People Allodial Titles for Their Own Lands and  
20 House Lots, and Certain Other Privileges", as originally enacted  
21 and as amended."



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

3 **"§669-2 Defendants; unknown persons.** (a) Any person may  
4 be made a defendant in the action who has or claims, or may  
5 claim, an interest in the property adverse to the plaintiff[7]  
6 or who is a necessary party to a complete determination or  
7 settlement of the issues involved therein.

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

10 (1) [~~It shall be~~] As shown by the complaint [~~that~~], there  
11 are or may be persons unknown, claiming by, through,  
12 or under any named person; or

13 (2) [~~Other facts shall be~~] As shown by the complaint  
14 [~~giving~~], other facts give rise to an actual  
15 controversy between plaintiff and persons unidentified  
16 or whose names are unknown.

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

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

21 (2) If all persons interested who are known or can be  
22 joined as provided by subsection (b) have been made



1 parties, the summons in addition to being directed to  
2 [~~such~~] the parties, may be directed to unknown persons  
3 generally and in such case, after service upon the  
4 persons summoned, known and unknown, the court shall  
5 have jurisdiction to proceed as though all persons  
6 interested were in being and personally served, but  
7 any adjudication [~~shall~~], as regards a defendant  
8 served pursuant to section 669-3, shall affect only  
9 the property [~~which~~] that is the subject of the action  
10 except as provided by section 634-23.

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

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

15 (2) The party asserting the claim can demonstrate, by a  
16 title search prepared at the party's own expense by an  
17 abstractor, that the State has a clear and specific  
18 interest in the subject matter of the suit [~~which~~]  
19 that is adverse to the plaintiff's claim, and a copy  
20 of the title search is furnished to the State without  
21 cost, together with the complaint.



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

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

5       ~~(2) The plaintiff has reason to believe that an owner of~~  
6       ~~an inheritable interest in the kuleana land died~~  
7       ~~intestate or died partially intestate and there is or~~  
8       ~~was no taker under article II of the Hawaii uniform~~  
9       ~~probate code.~~

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

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

19



1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

4. Kalani Eglish

*[Signature]*

*[Signature]*

Suzanne Chun Ouland

*[Signature]*

Nike Hubbard

*[Signature]*

Norman Sakomfo

Michelle N. Sidani

*[Signature]*

*[Signature]*





**Report Title:**

Quiet Title; Adverse Possession; Kuleana Lands

**Description:**

Makes the office of Hawaiian affairs the trustee of any unclaimed kuleana lands. Prohibits quieting title to kuleana lands or claiming kuleana lands by adverse possession.

