

[CHAPTER 673]
NATIVE HAWAIIAN TRUSTS JUDICIAL RELIEF ACT

Section

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Note

Hawaiian home lands trust claims. L 1992, c 316; L 1993, c 352.

Cross References

Lands conveyed for development of housing projects, see §§10-13.6 and 171-18.5.

Law Journals and Reviews

The Native Hawaiian Trusts Judicial Relief Act: The First Step in an Attempt to Provide Relief. 14 UH L. Rev. 889 (1992).
Courts and the Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue. 16 UH L. Rev. 1 (1994).

A Modest Proposal for Determining Class Member Damages: Aggregation and Extrapolation in the Kalima v. State Breach of Homelands Trust Class Action. 34 UH L. Rev. 1 (2012).

Case Notes

Where breach of trust claims were for damages resulting from the State's breach of trust duties and did not require a determination of the office of Hawaiian affairs' proportionate share of revenues under §673-9, this chapter applied to the instant claims. 110 H. 338, 133 P.3d 767 (2006).

Where plaintiffs failed to comply with the sixty-day notice requirement for filing suit under §673-3, this failure precluded the supreme court from reviewing any claims brought under this chapter. 110 H. 338, 133 P.3d 767 (2006).

Defendant State and state officials did not waive their sovereign immunity pursuant to chapter 673 where plaintiffs did not bring their claims under chapter 673 in their first amended complaint and plaintiffs' after-the-fact reliance on chapter 673 for a waiver of the State's sovereign immunity was solely for the purpose of their attorneys' fee request. 130 H. 162, 307 P.3d 142 (2013).

" **[§673-1] Waiver of immunity.** (a) The State waives its immunity for any breach of trust or fiduciary duty resulting from the acts or omissions of its agents, officers and employees in the management and disposition of trust funds and resources of:

- (1) The Hawaiian home lands trust under article XII, sections 1, 2, and 3 of the Constitution of the State

of Hawaii, implementing sections 4 and 5(f) of the Admission Act (Act of March 18, 1959, Public Law 86-3, 73 Stat. 4); and

- (2) The native Hawaiian public trust under article XII, sections 4, 5, and 6 of the Constitution of the State of Hawaii implementing section 5(f) of the Admission Act;

and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for punitive damages.

(b) This waiver shall not apply to the following:

- (1) The acts or omissions of the State's officers and employees, even though such acts or omissions may not realize maximum revenues to the Hawaiian home lands trust and native Hawaiian public trust, so long as each trust is administered in the sole interest of the beneficiaries; provided that nothing herein shall prevent the State from taking action which would provide a collateral benefit to nonbeneficiaries, but only so long as the primary benefits are enjoyed by beneficiaries, and the collateral benefits do not detract from nor reduce the benefits enjoyed by the beneficiaries;
- (2) Any claim for which a remedy is provided elsewhere in the laws of the State; and
- (3) Any claim arising out of the acts or omissions of the members of the board of trustees, officers and employees of the office of Hawaiian affairs, except as provided in section 10-16. [L 1988, c 395, pt of §2]

Case Notes

Plaintiffs conceded that this section did not apply to office of Hawaiian affairs trustees, but suggested that the standard outlined in subsection (b) should apply; however, the standard articulated in this section did not apply. 131 H. 62, 315 P.3d 213 (2013).

" **[§673-2] Right to sue.** (a) Native Hawaiians as defined in section [201(a)] of the Hawaiian Homes Commission Act, native Hawaiian organizations, the office of Hawaiian affairs, and Hawaiians defined as any person who is qualified to succeed to a homestead lease under section 209 of the Hawaiian Homes Commission Act 1920, as amended, shall have the right to bring an action in the circuit courts of the State to resolve controversies relating to the Hawaiian home lands trust described in section 673-1(a)(1).

(b) The office of Hawaiian affairs, native Hawaiians as defined in section 10-2, and native Hawaiian organizations shall have the right to bring an action in the circuit courts of the State to resolve controversies relating to the native Hawaiian public trust described in section 673-1(a)(2).

(c) "Native Hawaiian organizations" as used in this chapter means a native Hawaiian homestead organization, or an unincorporated association, or corporation which is duly organized and thereby able to sue and be sued under the laws of this State and whose purpose is to protect and uphold the Hawaiian Homes Commission Act and the Admission Act section 5(f) relating to a public trust for the betterment of the conditions of native Hawaiians, or the social and economic self-sufficiency of native Hawaiians, and which organized body is controlled by native Hawaiians and a majority of its members receives or can receive benefits from the trust. [L 1988, c 395, pt of §2]

" **[\$673-3] Exhaustion of administrative remedies.** Before an action may be filed in circuit court under this chapter, the party filing suit shall have exhausted all administrative remedies available, and shall have given not less than sixty days written notice prior to filing of the suit that unless appropriate remedial action is taken suit shall be filed. All executive branch departments shall adopt in accordance with chapter 91, such rules as may be necessary to specify the procedures for exhausting any remedies available. [L 1988, c 395, pt of §2]

Law Journals and Reviews

The Native Hawaiian Trusts Judicial Relief Act: The First Step in an Attempt to Provide Relief. 14 UH L. Rev. 889 (1992).

Case Notes

Where plaintiffs failed to comply with the sixty-day notice requirement for filing suit under this section, this failure precluded the supreme court from reviewing any claims brought under this chapter. 110 H. 338, 133 P.3d 767 (2006).

" **[\$673-4] Scope of relief.** (a) In an action under this chapter the court may only award land or monetary damages to restore the trust which has been depleted as a result of any breach of trust duty and no award shall be made directly to or for the individual benefit of any particular person not charged by law with the administration of the trust property; provided that actual damages may be awarded to a successful plaintiff.

(b) "Actual damages", as used in this section, means direct, monetary, out of pocket loss, excluding noneconomic damages as defined in section 663-8.5 and any consequential damages, sustained by a native Hawaiian or Hawaiian individually rather than the class generally. [L 1988, c 395, pt of §2]

" **[\$673-5] Attorney's fees and costs.** (a) In any action under this chapter, the court shall, upon a specific finding that a non-prevailing party's claim or defense was frivolous, assess against such party and award to the prevailing party, and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney's fees.

(b) In any action brought under this chapter in which there is no finding by the court that the claims pled were frivolous the court may, as it deems just, award to a prevailing plaintiff and enter as a part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney's fees. [L 1988, c 395, pt of §2]

Cross References

Vexatious litigants, see chapter 634J.

" **[\$673-6] Award or judgment as bar.** An award or judgment in an action under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the agent, officer, or employee of the State whose act or omission gave rise to the claim. [L 1988, c 395, pt of §2]

" **[\$673-7] Limited remedy.** This chapter shall not be construed to limit or enlarge the scope of rights available under any other claims, proceedings or other actions against the State, its officers and employees, arising under chapter 662 or other provisions of law. [L 1988, c 395, pt of §2]

" **[\$673-8] Proof of liability.** In no action under this chapter shall any liability be implied against the State, and no award shall be made against the State except upon such legal evidence as would establish liability against an individual or corporation. [L 1988, c 395, pt of §2]

" **[\$673-9] Inapplicability to share of office of Hawaiian affairs.** This chapter shall not apply to suits in equity or law brought by or on behalf of the office of Hawaiian affairs in which the matters in controversy involve the proportionate share

of ceded land or special fund revenues allocated to the office of Hawaiian affairs by the legislature. [L 1988, c 395, pt of §2]

Case Notes

Where breach of trust claims were for damages resulting from the State's breach of trust duties and did not require a determination of the office of Hawaiian affairs' proportionate share of revenues under this section, this chapter applied to the instant claims. 110 H. 338, 133 P.3d 767 (2006).

" **§673-10 Limitation on actions; native Hawaiians.** Every claim arising under this chapter shall forever be barred unless the action is commenced within two years after the cause of action first accrues; provided that this statute of limitations shall be tolled until July 1, 1990; provided that the filing of the claim in an administrative proceeding pursuant to this chapter shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until ninety days after the date the decision is rendered in the administrative proceeding; provided further that any cause of action that first accrues after July 1, 1995 shall forever be barred unless the action is commenced within two years after the cause of action first accrues. [L 1988, c 395, pt of §2; am L Sp 1995, c 14, §13]

Case Notes

Where plaintiff office of Hawaiian affairs brought suit in its own corporate name under §10-16, rather than as an agency of the State on behalf of the people of the State, §657-1.5 did not exempt plaintiff from the statute of limitations for bringing a suit under this section. 110 H. 338, 133 P.3d 767 (2006).