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# A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

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

1           SECTION 1. The legislature finds that certain native  
2           Hawaiians who are eligible for a lease pursuant to the Hawaiian  
3           Homes Commission Act, 1920, as amended, have acquired a lease,  
4           sold or transferred their interest in the lease, and then placed  
5           their name on the waiting list for a second lease of Hawaiian  
6           home lands. This has contributed to many otherwise eligible  
7           native Hawaiians never receiving a lease offer.

8           The legislature believes that all department of Hawaiian  
9           home lands beneficiaries should be able to enter the Hawaiian  
10          Homes Commission Act program with a reasonable expectation of  
11          eventually receiving a lease.

12          The purpose of this Act is to prohibit lessees who sell or  
13          transfer their interest in a Hawaiian home lands tract for  
14          personal gain from being placed on the waiting list maintained  
15          by the department of Hawaiian home lands for an additional  
16          lease.

17          SECTION 2. Section 208 of the Hawaiian Homes Commission  
18          Act, 1920, as amended, is amended to read as follows:



1           "§208. Conditions of leases. Each lease made under the  
2 authority granted the department by section 207 of this Act, and  
3 the tract in respect to which the lease is made, shall be deemed  
4 subject to the following conditions, whether or not stipulated  
5 in the lease:

6           (1) The original lessee shall be a native Hawaiian, [~~not~~]  
7           no less than eighteen years of age. In case two  
8           lessees either original or in succession marry, they  
9           shall choose the lease to be retained, and the  
10          remaining lease shall be transferred, quitclaimed, or  
11          canceled in accordance with the provisions of  
12          succeeding sections[-];

13          (2) The lessee shall pay a rental of \$1 a year for the  
14          tract and the lease shall be for a term of ninety-nine  
15          years; except that the department may extend the term  
16          of any lease; provided that the approval of any  
17          extension shall be subject to the condition that the  
18          aggregate of the initial ninety-nine year term and any  
19          extension granted shall not be for more than one  
20          hundred ninety-nine years[-];



- 1           (3) The lessee may be required to occupy and commence to  
2           use or cultivate the tract as the lessee's home or  
3           farm or occupy and commence to use the tract for  
4           aquaculture purposes, as the case may be, within one  
5           year after the commencement of the term of the  
6           lease[-];  
7           (4) The lessee thereafter, for at least such part of each  
8           year as the department shall prescribe by rules, shall  
9           occupy and use or cultivate the tract on the lessee's  
10          own behalf[-];  
11          (5) The lessee shall not in any manner transfer to, or  
12          otherwise hold for the benefit of, any other person or  
13          group of persons or organizations of any kind, except  
14          a native Hawaiian or Hawaiians, and then only upon the  
15          approval of the department, or agree so to transfer,  
16          or otherwise hold, the lessee's interest in the tract;  
17          except that the lessee, with the approval of the  
18          department, also may transfer the lessee's interest in  
19          the tract to the following qualified relatives of the  
20          lessee who are at least one-quarter Hawaiian:  
21          [~~husband, wife,~~] spouse, child, or grandchild. A



1 lessee who is at least one-quarter Hawaiian who has  
2 received an interest in the tract through succession  
3 or transfer may, with the approval of the department,  
4 transfer the lessee's leasehold interest to a [~~brother~~  
5 ~~or sister~~] sibling who is at least one-quarter  
6 Hawaiian. Such interest shall not, except in  
7 pursuance of such a transfer to or holding for or  
8 agreement with a native Hawaiian or Hawaiians or  
9 qualified relative who is at least one-quarter  
10 Hawaiian approved of by the department or for any  
11 indebtedness due the department or for taxes or for  
12 any other indebtedness the payment of which has been  
13 assured by the department, including loans from other  
14 agencies where such loans have been approved by the  
15 department, be subject to attachment, levy, or sale  
16 upon court process. The lessee shall not sublet the  
17 lessee's interest in the tract or improvements  
18 thereon; provided that a lessee may be permitted, with  
19 the approval of the department, to rent to a native  
20 Hawaiian or Hawaiians, lodging either within the



1           lessee's existing home or in a separate residential  
2           dwelling unit constructed on the premises[-] ;  
3       (6) Notwithstanding the provisions of paragraph (5), the  
4           lessee, with the consent and approval of the  
5           commission, may mortgage or pledge the lessee's  
6           interest in the tract or improvements thereon to a  
7           recognized lending institution authorized to do  
8           business as a lending institution in either the State  
9           or elsewhere in the United States; provided the loan  
10          secured by a mortgage on the lessee's leasehold  
11          interest is insured or guaranteed by the Federal  
12          Housing Administration, Department of Veterans  
13          Affairs, or any other federal agency and their  
14          respective successors and assigns, which are  
15          authorized to insure or guarantee such loans, or any  
16          acceptable private mortgage insurance as approved by  
17          the commission. The mortgagee's interest in any such  
18          mortgage shall be freely assignable. Such mortgages,  
19          to be effective, must be consented to and approved by  
20          the commission and recorded with the department.



1 Further, notwithstanding the authorized purposes  
2 of loan limitations imposed under section 214 of this  
3 Act and the authorized loan amount limitations imposed  
4 under section 215 of this Act, loans made by lending  
5 institutions as provided in this paragraph, insured or  
6 guaranteed by the Federal Housing Administration,  
7 Department of Veterans Affairs, or any other federal  
8 agency and their respective successors and assigns, or  
9 any acceptable private mortgage insurance, may be for  
10 such purposes and in such amounts, not to exceed the  
11 maximum insurable limits, together with such  
12 assistance payments and other fees, as established  
13 under section 421 of the Housing and Urban Rural  
14 Recovery Act of 1983 which amended Title II of the  
15 National Housing Act of 1934 by adding section 247,  
16 and its implementing regulations, to permit the  
17 Secretary of Housing and Urban Development to insure  
18 loans secured by a mortgage executed by the homestead  
19 lessee covering a homestead lease issued under section  
20 207(a) of this Act and upon which there is located a  
21 one to four family single family residence[-];



1 (7) The lessee shall pay all taxes assessed upon the tract  
2 and improvements thereon. The department may pay such  
3 taxes and have a lien therefor as provided by section  
4 216 of this Act [-];

5 (8) If the lessee sells or transfers the lessee's interest  
6 in the lease for personal gain, whether or not in a  
7 manner otherwise authorized by this Act, the lessee  
8 shall be ineligible for placement on any subsequent  
9 waiting list maintained by the department to receive a  
10 lease authorized by section 207; and

11 [~~8~~] (9) The lessee shall perform such other conditions,  
12 not in conflict with any provision of this Act, as the  
13 department may stipulate in the lease; provided that  
14 an original lessee shall be exempt from all taxes for  
15 the first seven years after commencement of the term  
16 of the lease."

17 SECTION 3. Section 209 of the Hawaiian Homes Commission  
18 Act, 1920, as amended, is amended to read as follows:

19 "§209. **Successors to lessees.** (a) Upon the death of the  
20 lessee, the lessee's interest in the tract or tracts and the  
21 improvements thereon, including growing crops and aquacultural

1 stock (either on the tract or in any collective contract or  
2 program to which the lessee is a party by virtue of the lessee's  
3 interest in the tract or tracts), shall vest in the relatives of  
4 the decedent as provided in this paragraph. From the following  
5 relatives of the lessee who are (1) at least one thirty-second  
6 Hawaiian, spouse, children, grandchildren, [~~brothers, or~~  
7 ~~sisters,~~] siblings, or (2) native Hawaiian, [~~father and~~  
8 ~~mother, widows or widowers~~] parents, surviving spouses of the  
9 children, [~~widows or widowers~~] surviving spouses of the  
10 [~~brothers and sisters,~~] siblings, or [~~nieces and nephews,~~]  
11 children of the siblings,--the lessee shall designate the person  
12 or persons to whom the lessee directs the lessee's interest in  
13 the tract or tracts to vest upon the lessee's death. The  
14 Hawaiian blood requirements shall not apply to the descendants  
15 of those who are not native Hawaiians but who were entitled to  
16 the leased lands under section 3 of the Act of May 16, 1934 (48  
17 Stat. 777, 779), as amended, or under section 3 of the Act of  
18 July 9, 1952 (66 Stat. 511, 513). In all cases that person or  
19 persons need not be eighteen years of age. The designation  
20 shall be in writing, may be specified at the time of execution  
21 of the lease with a right in the lessee in similar manner to





1 change the beneficiary at any time and shall be filed with the  
2 department and approved by the department in order to be  
3 effective to vest the interests in the successor or successors  
4 so named.

5 In case of the death of any lessee, except as hereinabove  
6 provided, who has failed to specify a successor or successors as  
7 approved by the department, the department may select from only  
8 the following qualified relatives of the decedent:

- 9 (1) Spouse; [~~or~~]
- 10 (2) If there is no spouse, then the children; [~~or~~]
- 11 (3) If there is no spouse or child, then the  
12 grandchildren; [~~or~~]
- 13 (4) If there is no spouse, child, or grandchild, then  
14 [~~brothers or sisters,~~] siblings; or
- 15 (5) If there is no spouse, child, grandchild, [~~brother, or~~  
16 ~~sister,~~] sibling, then from the following relatives of  
17 the lessee who are native Hawaiian: [~~father and~~  
18 ~~mother, widows or widowers~~] parents, surviving spouses  
19 of the children, [~~widows or widowers~~] surviving  
20 spouses of the [~~brothers and sisters,~~] siblings, or  
21 [~~nieces and nephews.~~] children of the siblings.



1 The rights to the use and occupancy of the tract or tracts may  
2 be made effective as of the date of the death of the lessee.

3 In the case of the death of a lessee leaving no designated  
4 successor or successors, spouse, children, grandchildren, or  
5 relative qualified to be a lessee of Hawaiian home lands, the  
6 land subject to the lease shall resume its status as unleased  
7 Hawaiian home lands and the department is authorized to lease  
8 the land to a native Hawaiian as provided in this Act.

9 Upon the death of a lessee who has not designated a  
10 successor and who leaves a spouse not qualified to succeed to  
11 the lease or children not qualified to succeed to the lease, or  
12 upon the death of a lessee leaving no relative qualified to be a  
13 lessee of Hawaiian home lands, or the cancellation of a lease by  
14 the department, or the surrender of a lease by the lessee, the  
15 department shall appraise the value of all the improvements and  
16 growing crops or improvements and aquacultural stock, as the  
17 case may be, and shall pay to the nonqualified spouse or the  
18 nonqualified children as the lessee shall have designated [~~prior~~  
19 ~~to~~] before the lessee's death, or to the legal representative of  
20 the deceased lessee, or to the previous lessee, as the case may  
21 be, the value thereof, less any indebtedness to the department,



1 or for taxes, or for any other indebtedness the payment of which  
2 has been assured by the department, owed by the deceased lessee  
3 or the previous lessee. These payments shall be made out of the  
4 Hawaiian home loan fund and shall be considered an advance  
5 therefrom and shall be repaid by the successor or successors to  
6 the tract involved. If available cash in the Hawaiian home loan  
7 fund is insufficient to make these payments, payments may be  
8 advanced from the Hawaiian home general loan fund and shall be  
9 repaid by the successor or successors to the tract involved;  
10 provided that any repayment for advances made from the Hawaiian  
11 home general loan fund shall be at the interest rate established  
12 by the department for loans made from the Hawaiian home general  
13 loan fund. The successor or successors may be required by the  
14 commission to obtain private financing in accordance with  
15 section 208(6) to pay off the amount advanced from the Hawaiian  
16 home loan fund or Hawaiian home general loan fund.

17 (b) The appraisal of improvements and growing crops, or  
18 stock, if any, shall be made by any one of the following  
19 methods:

20 (1) By a disinterested appraiser hired by the department;  
21 provided that the previous lessee or deceased lessee's



1 legal representative shall not be charged for the cost  
2 of the appraisal; [~~or~~]

3 (2) By one disinterested appraiser mutually agreeable to  
4 both the department and the previous lessee or the  
5 deceased lessee's legal representative, with the cost  
6 of appraisal borne equally by the two parties; or

7 (3) By [~~not~~] no more than three disinterested appraisers  
8 of which the first shall be contracted for and paid by  
9 the department. If the previous lessee or the  
10 deceased lessee's legal representative does not agree  
11 with the appraised value, the previous lessee or the  
12 deceased lessee's legal representative shall contract  
13 with and pay for the services of a second appraiser  
14 whose appraisal report shall be submitted to the  
15 department [~~not~~] no later than ninety days from the  
16 date of the first appraisal report; provided that the  
17 first appraisal shall be used if the second appraiser  
18 is not hired within thirty days from the date the  
19 department transmits the first appraisal report to the  
20 previous lessee or the deceased lessee's  
21 representative. If the appraisal values are different



1 and a compromise value between the two appraisals is  
2 not reached, a third appraisal shall be made by an  
3 appraiser appointed by the first two appraisers [~~not~~]  
4 no later than ninety days from the date of the second  
5 appraisal report and the third appraiser shall  
6 determine the final value. The cost of the third  
7 appraisal shall be borne equally by the department and  
8 the previous lessee or the deceased lessee's legal  
9 representative.

10 The department may adopt rules not in conflict with this  
11 section to establish appraisal procedures, including the time  
12 period by which the department and the previous lessee or the  
13 deceased lessee's legal representative shall act on appraisal  
14 matters.

15 (c) If a previous lessee has abandoned the tract or tracts  
16 or cannot be located after at least two attempts to contact the  
17 previous lessee by certified mail, the department by public  
18 notice published at least once in each of four successive weeks  
19 in a newspaper of general circulation in the State shall give  
20 notice to the previous lessee that the lease will be canceled in  
21 accordance with sections 210 and 216 of this title and the



1 department will appraise the value of the improvements and  
2 growing crops and stock, if any, if the previous lessee does not  
3 present [~~himself or herself~~] oneself within one hundred and  
4 twenty days from the first day of publication of the notice.  
5 Following cancellation of the lease and appraisal of the  
6 improvements and growing crops and stock, if any, the department  
7 shall make the payout as provided in subsection (a).

8 (d) After the cancellation of a lease by the department in  
9 accordance with sections 210 and 216 of this title, or the  
10 surrender of a lease by a lessee, the department may transfer  
11 the lease or issue a new lease to any qualified native Hawaiian  
12 regardless of whether [~~or not~~] that person is related in any way  
13 by blood or marriage to the previous lessee.

14 (e) If any successor or successors to a tract is a minor  
15 or minors, the department may appoint a guardian therefor,  
16 subject to the approval of the court of proper jurisdiction.  
17 The guardian shall be authorized to represent the successor or  
18 successors in all matters pertaining to the leasehold; provided  
19 that the guardian, in so representing the successor or  
20 successors, shall comply with this title and the stipulations  
21 and provisions contained in the lease, except that the guardian



1 need not be a native Hawaiian as defined in section 201 of this  
2 title.

3 (f) If the successor sells or transfers the successor's  
4 interest in the lease for personal gain, whether or not in a  
5 manner otherwise authorized by this Act, the successor shall be  
6 ineligible for placement on any subsequent waiting list  
7 maintained by the department to receive a lease authorized by  
8 section 207."

9 SECTION 4. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 5. The provisions of the amendments made by this  
13 Act to the Hawaiian Homes Commission Act, 1920, as amended, are  
14 declared to be severable, and if any section, sentence, clause,  
15 or phrase, or the application thereof to any person or  
16 circumstances is held ineffective because there is a requirement  
17 of having the consent of the United States to take effect, then  
18 that portion only shall take effect upon the granting of consent  
19 by the United States and effectiveness of the remainder of these  
20 amendments or the application thereof shall not be affected.



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

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





**Report Title:**

Department of Hawaiian Home Lands; Lessees; Waiting List

**Description:**

Excludes from any waiting list maintained by the department of Hawaiian home lands any lessee or successor who sells or transfers their lease on a tract of Hawaiian home lands for personal gain. (CD1)

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