

ACT 177

H.B. NO. 2100

A Bill for an Act Relating to Naming of the Office of Hawaiian Affairs as a Defendant in Quiet Title Actions Involving Kuleana Land.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Findings and purpose. The legislature finds that:

- (1) In 1987, the “Kuleana Escheat Act” was enacted as Act 307, Session Laws of Hawaii 1987, and amended in 1988 by Act 141, Session Laws of Hawaii 1988. This provision is codified as section 560:2-105.5, Hawaii Revised Statutes. This section provides that if the owner of an inheritable interest in kuleana lands dies intestate, or partially intestate and the partial intestacy includes the kuleana land, with no taker under article II of the Hawaii uniform probate code, the kuleana land would ultimately pass to the office of Hawaiian affairs.
- (2) There are numerous quiet title actions filed every year in the State of Hawaii involving kuleana lands and that there may be interests involved in such actions which properly should pass to the office of Hawaiian affairs under the terms of the “Kuleana Escheat Act”.
- (3) The office of Hawaiian affairs should be notified of and made a party to those quiet title actions involving kuleana lands where an owner of the inheritable interest died intestate, or partially intestate and the partial intestacy includes the kuleana land, and there is or was no taker under article II of the Hawaii uniform probate code.

The purpose of this Act is to require that the office of Hawaiian affairs be made a defendant in any quiet title action involving kuleana lands where an owner of the inheritable interest died intestate, or partially intestate and the partial intestacy includes the kuleana land, and there is or was no taker under article II of the Hawaii uniform probate code.

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

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

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

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

- (2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.
- (c) In any action brought under section 669-1(b):
  - (1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.
  - (2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the property which is the subject of the action except as provided by section 634-23.
- (d) In any action brought under section 669-1, the State may be joined as a defendant only when:
  - (1) It is an adjoining property owner and the same is alleged by the plaintiff[,]; or
  - (2) The party asserting the claim can demonstrate, by a title search prepared at the party's own expense by an abstractor, that the State has a clear and specific interest in the subject matter of the suit which is adverse to the plaintiff's claim, and a copy of the title search is furnished to the State without cost, together with the complaint.
- (e) In any action brought under section 669-1, the office of Hawaiian affairs shall be joined as a defendant, by service upon the office of Hawaiian affairs, when:
  - (1) The land claimed by the plaintiff is kuleana land; and
  - (2) The plaintiff has reason to believe that an owner of an inheritable interest in the kuleana land died intestate or died partially intestate and there is or was no taker under article II of the Hawaii uniform probate code.

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

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

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

(Approved May 23, 1991.)