HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 2921

A BILL FOR AN ACT

RELATING TO KULEANA LANDS.

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

SECTION 1. The legislature finds that there have been countless instances in the past when persons using various means have disenfranchised native Hawaiian families and longtime kamaaina from their family kuleana lands. This practice continues today through various legal processes.

The purpose of this Act is to prevent the disenfranchising of native Hawaiians from their familial kuleana lands by having the title to any unclaimed kuleana lands held in trust in the office of Hawaiian affairs, as koa'aina of these lands, until rightful descendants can be found.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§10- Kuleana lands.** (a) The office shall hold title in trust to any unclaimed kuleana lands if the descendants of the native tenants are unknown or cannot be found.

(b) Periodically, but not less than once a year, the office shall publish a list of all kuleana lands that it holds

in trust, including the name of the last known native tenants and any known descendants thereof.

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

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

(e) For purposes of this section, "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Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended."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. Section 657-31.5, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

(b) For purposes of this section, "kuleana land" means that land granted to native tenants pursuant to L 1850, p. 202,

1 entitled "An Act Confirming Certain Resolutions of the King and
2 Privy Council, Passed on the 21st Day of December, A.D. 1849,
3 Granting to the Common People Allodial Titles for Their Own
4 Lands and House Lots, and Certain Other Privileges", as
5 originally enacted and as amended."
6 SECTION 4. Section 669-1, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:
8 "(a) Action may be brought by any person against another
9 person who claims, or who may claim adversely to the plaintiff,
10 an estate or interest in real property, for the purpose of
11 determining the adverse claim[~~.~~]; except that no action shall be
12 brought by any person to quiet title to kuleana land. For
13 purposes of this subsection, "kuleana land" means that land
14 granted to native tenants pursuant to L 1850, p. 202, entitled
15 "An Act Confirming Certain Resolutions of the King and Privy
16 Council, Passed on the 21st Day of December, A.D. 1849, Granting
17 to the Common People Allodial Titles for Their Own Lands and
18 House Lots, and Certain Other Privileges", as originally enacted
19 and as amended."
20 SECTION 5. Section 669-2, Hawaii Revised Statutes, is
21 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~~] As 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~~] As shown by the complaint [~~giving~~], other facts give 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, shall affect only the property [~~which~~] that 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~~] that 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 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY: _____

JAN 22 2008

H.B. NO. 2921

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 or claiming by adverse possession of any kuleana lands.