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# A BILL FOR AN ACT

RELATING TO NUISANCE ABATEMENT.

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

1 SECTION 1. Section 28-131, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[+]PART IX. [ ]—DRUG~~ **NUISANCE ABATEMENT UNIT**

4 ~~[+]§28-131 [ ]—Drug nuisance~~ **Nuisance abatement unit.** (a)

5 There is established in the department of the attorney general a  
6 ~~[drug]~~ nuisance abatement unit.

7 (b) The unit shall employ such attorneys, auditors,  
8 investigators, and other personnel as necessary to promote the  
9 effective and efficient conduct of the unit's activities.

10 Except for the attorneys, all other employees of the ~~[drug]~~  
11 nuisance abatement unit shall be subject to chapter 76.

12 (c) The purpose of the ~~[drug]~~ nuisance abatement unit  
13 shall be to provide for the effective enforcement and  
14 prosecution of ~~[these]~~ violations of the ~~[drug]~~ nuisance  
15 abatement laws under chapter 712~~[, part V but only for offenses~~  
16 ~~related to drugs and intoxicating compounds as provided under~~  
17 ~~chapter 712, part IV]~~. The ~~[drug]~~ nuisance ~~[+]abatement[+]~~ unit  
18 may also review and take appropriate action on ~~[drug]~~ nuisance



1 complaints of any citizen of the State~~[,]~~ or ~~[drug]~~ nuisances  
2 that are discovered by the unit in carrying out its activities."

3 SECTION 2. Section 712-1270, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 " ~~[+]~~ **PART V. [+]** **NUISANCE ABATEMENT**

6 **§712-1270 Places used to commit offenses against public**  
7 **health and morals, a nuisance.** Every building, premises, or  
8 place used for the purpose of violating ~~[these]~~ laws pertaining  
9 to offenses against public health and morals contained in ~~[parts~~  
10 ~~I, II, and IV of]~~ this chapter~~[, except offenses under part IV~~  
11 ~~which do not involve the manufacture or distribution of drugs,]~~  
12 and every building, premises, or place in or upon which the  
13 violations are held or occur ~~[in parts I, II, and IV]~~, is a  
14 nuisance that shall be enjoined, abated, and prevented,  
15 regardless of whether it is a public or private nuisance."

16 SECTION 3. Section 712-1270.3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 " ~~[+]~~ **§712-1270.3 [+]** **Citizen's rights.** Any citizen who  
19 brings a nuisance abatement suit against a place used for the  
20 purpose of committing ~~[drug]~~ offenses under ~~[part IV of]~~ this  
21 chapter or who files a complaint with the local police or ~~[drug]~~  
22 nuisance abatement unit of the department of the attorney

1 general shall be entitled to the same rights and protections of  
2 victims and witnesses in criminal proceedings in accordance with  
3 chapter 801D."

4 SECTION 4. Section 712-1270.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§712-1270.5** [~~Injunctions against persons.~~] Remedies not

7 exclusive. (a) Nothing in this part shall be construed to  
8 prohibit injunctions against persons causing, maintaining,  
9 aiding, abetting, or permitting a nuisance from entering or  
10 residing in any public or private building, premises, or place,  
11 in or upon which the nuisance exists.

12 (b) Nothing in this part shall be construed to prohibit a  
13 private person from bringing any other action under statutory or  
14 common law to abate or collect damages for a nuisance declared  
15 under this part, and such action may be joined with an action  
16 brought under this part by that person."

17 SECTION 5. Section 712-1271, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§712-1271 Suit to abate.** (1) Whenever there is reason  
20 to believe that a nuisance as defined in this chapter is in  
21 existence, kept, or maintained in any county, the attorney  
22 general of the State or the prosecutor or prosecuting attorney



1 of the respective counties shall, or any citizen of the State  
2 residing within such county [~~may~~], in the citizen's own name, or  
3 any organization, including, but not limited to a tenant  
4 organization within such county [~~may~~], in the organization's own  
5 name, may maintain a suit to abate and prevent the nuisance and  
6 to perpetually enjoin the person or persons causing,  
7 maintaining, aiding, abetting, or permitting the nuisance, or  
8 the owner, lessee, or agent of the building, premises, or place  
9 in or upon which the nuisance exists from directly or indirectly  
10 causing, maintaining, aiding, abetting, or permitting the  
11 nuisance.

12 (2) If the prosecutor or prosecuting attorney of the  
13 respective county or a citizen has not brought suit under  
14 subsection (1) within thirty days after a building, premises, or  
15 place has become a nuisance per se pursuant to section 712-  
16 1271.5, the nuisance abatement unit of the department of the  
17 attorney general shall bring suit under this section within  
18 sixty days after the building, premises, or place became a  
19 nuisance per se. It shall not be a defense to a suit brought  
20 pursuant to this section that the action was brought more than  
21 sixty days after the building, premises, or place became a  
22 nuisance per se.



1           ~~[(2)]~~ (3) No action authorized under this part ~~[which]~~  
 2 that seeks to abate or prevent a nuisance shall be filed or  
 3 maintained against the State or any political subdivision  
 4 thereof."

5           SECTION 6. Section 712-1271.5, Hawaii Revised Statutes, is  
 6 amended to read as follows:

7           "~~[(1)]~~§712-1271.5~~[(1)]~~ ~~Standard~~ Nuisance per se; standard of  
 8 proof. (1) Every building, premises, or place to which the  
 9 following apply is declared a nuisance per se:

10           (a) At least three arrests of a resident of, or of a  
 11           principal, employee, or independent contractor of a  
 12           business occupying, the building, premises, or place  
 13           were made within a five-year period for alleged  
 14           violations of this chapter;

15           (b) Each person arrested was charged with an offense under  
 16           this chapter, that allegedly occurred on the building,  
 17           premises, or place;

18           (c) At least three of the persons charged were convicted  
 19           of, or received from the court a deferred acceptance  
 20           of the person's plea of guilty or no contest to, the  
 21           offense under this chapter for which the person was  
 22           charged; and



1        (d) The same person or business occupied the premises  
2        continuously from the first arrest counted under  
3        paragraph (a) until the third conviction or deferred  
4        acceptance of guilty or no contest plea under  
5        paragraph (c). For the purpose of this paragraph, a  
6        business shall be deemed the same as long as a  
7        controlling ownership interest remained held by the  
8        same person, even if changes occurred in the name of  
9        the business, purpose of the business, proportion of  
10       controlling ownership interest held by the person,  
11       members of the controlling ownership group, if any, of  
12       the business, or any other factor that did not affect  
13       the person's holding or sharing of controlling  
14       ownership interest.

15       (2) The existence of the following conditions shall not be  
16       necessary for the building, premises, or place to become a  
17       nuisance per se under subsection (1).

18       (a) Knowledge of any resident of, or of a principal,  
19       employee, or independent contractor of a business  
20       occupying, the building, premises, or place that an  
21       offense under this chapter was committed in the



1           building, premises, or place by another resident,  
2           principal, employee, or independent contractor;

3       (b) Orders by any resident of, or of a principal,  
4           employee, or independent contractor of a business  
5           occupying, the building, premises, or place that  
6           another resident, principal, employee, or independent  
7           contractor commit an offense under this chapter in the  
8           building, premises, or place; or

9       (c) Acquiescence by any resident of, or of a principal,  
10           employee, or independent contractor of a business  
11           occupying, the building, premises, or place to the  
12           commission of any offense under this chapter by  
13           another resident, principal, employee, or independent  
14           contractor in the building, premises, or place.

15       (3) The absence of facts necessary to prove that a  
16 building, premises, or place is a nuisance per se under  
17 subsection (1) shall not prohibit a finding that the building,  
18 premises, or place is a nuisance under this part or under any  
19 other statutory or common law.

20       (4) Except as may be otherwise expressly provided, the  
21 civil causes of action in this part shall be proved by a  
22 preponderance of the evidence."



1 SECTION 7. Section 712-1272, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§712-1272 Temporary [~~writ.~~] and permanent writs. (1)**

4 Whenever the existence of a nuisance is shown in a suit brought  
5 under this part to the satisfaction of the court or the judge  
6 thereof, either by verified petition or affidavit, or both, the  
7 court or judge thereof shall allow a temporary writ of  
8 injunction to abate and prevent the continuance or recurrence of  
9 such nuisance, which injunction may include a provision  
10 prohibiting the person or persons causing, maintaining, aiding,  
11 abetting, or permitting the nuisance from residing in or  
12 entering into the building, premises, or place in or upon which  
13 the nuisance exists. The petition in such suit need not be  
14 verified, except in those suits brought by a citizen in the  
15 citizen's own name, or those suits brought by an organization in  
16 its own name, but shall be signed by the party bringing the same  
17 and shall include a certification that the complainant believes  
18 the allegations of the petition to be true.

19 (2) Whenever a court determines after trial that a  
20 building, premises, or place occupied by a person or business  
21 other than the owner is a nuisance under this part, the court,  
22 without regard to chapter 521, may issue a writ of possession or





1 otherwise permanently terminate the occupancy of the building,  
2 premises, or place by the person or business."

3 SECTION 8. Section 712-1279, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§712-1279** ~~[Termination]~~ Evidence of termination of lease.

6 The notice by the owner of any business, premises, or place to  
7 the lessee that the lease will be revoked if the lessee  
8 continues the maintenance of the nuisance, and other action  
9 taken to revoke the lease or to obtain the termination of the  
10 nuisance shall be given appropriate consideration by the court  
11 in the determination of a criminal contempt action brought  
12 against the owner in connection with abatement procedures of  
13 this part."

14 SECTION 9. Section 712-1280, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§712-1280** ~~[Place-]~~ Definitions. As used in this part:

17 "Business" means a corporation, partnership, or sole  
18 proprietorship.

19 "Place" ~~[as used in this part]~~ means any building,  
20 structure, or place, or any separate part or portion thereof,  
21 whether permanent or not, or the ground itself.



1       "Premises" means the portion of a place occupied by a  
2 resident or business through ownership, lease, rental, or other  
3 conveyance, but does not include common areas shared by the  
4 resident or business with other parties.

5       "Principal" means an officer, director, shareholder,  
6 partner, or sole proprietor of a business."

7       SECTION 10. Section 712A-16, Hawaii Revised Statutes, is  
8 amended by amending subsection (4) to read as follows:

9       "(4) There is established in the department of the  
10 attorney general a revolving fund to be known as the criminal  
11 forfeiture fund, hereinafter referred to as the "fund" in which  
12 shall be deposited one-half of the proceeds of a forfeiture and  
13 any penalties paid pursuant to section 712A-10(6). All moneys  
14 in the fund shall be expended by the attorney general and are  
15 hereby appropriated for the following purposes:

16       (a) The payment of any expenses necessary to seize,  
17       detain, appraise, inventory, safeguard, maintain,  
18       advertise, or sell property seized, detained, or  
19       forfeited pursuant to this chapter or of any other  
20       necessary expenses incident to the seizure, detention,  
21       or forfeiture of such property and such contract  
22       services and payments to reimburse any federal, state,



1 or county agency for any expenditures made to perform  
2 the foregoing functions;

3 (b) The payment of awards for information or assistance  
4 leading to a civil or criminal proceeding;

5 (c) The payment of supplemental sums to state and county  
6 agencies for law enforcement purposes;

7 (d) The payment of expenses arising in connection with  
8 programs for training and education of law enforcement  
9 officers; and

10 (e) The payment of expenses arising in connection with  
11 enforcement pursuant to the [~~drug~~] nuisance abatement  
12 unit in the department of the attorney general."

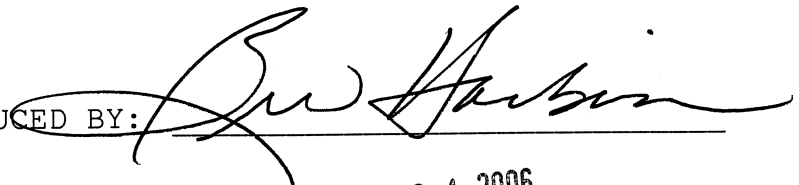
13 SECTION 11. There is appropriated out of the criminal  
14 forfeiture fund the sum of \$ , or so much thereof as may  
15 be necessary for fiscal year 2006-2007, for operation of the  
16 nuisance abatement unit within the department of the attorney  
17 general. The sum appropriated shall be expended by the  
18 department of the attorney general for the purposes of this Act.

19 SECTION 12. This Act does not affect rights and duties  
20 that matured, penalties that were incurred, and proceedings that  
21 were begun, before its effective date.

1 SECTION 13. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect on July 1, 2006.

4

INTRODUCED BY:   
JAN 24 2006



HB 2545

**Report Title:**

Nuisance Abatement

**Description:**

Expands authority of nuisance abatement unit in the department of attorney general to all nuisances under penal code, not just drug nuisances. Expands nuisance abatement law under penal code, to include gambling and all drug offenses, not just prostitution, obscenity, and drug offenses involving the manufacture and distribution of drugs. Allows a private citizen to join damage claims with a nuisance abatement action brought by the person. Defines "nuisance per se". Requires nuisance abatement unit to bring suit within 60 days after a building, premises, or place has become a nuisance per se if no action has been brought by the prosecuting attorney or a private citizen. Allows court to issue a writ of possession after determining the existence of a nuisance. Appropriates funds from the criminal forfeiture fund for operation of the nuisance abatement unit.

