

ACT 246

H.B. NO. 3666

A Bill for an Act Relating to Nuisance Abatement.

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

SECTION 1. Section 712-1270, Hawaii Revised Statutes, is amended to read as follows:

“§712-1270 Places used to commit offenses against public health and morals, a nuisance. Every building, premises, or place used for the purpose of violating those laws pertaining to offenses against public health and morals contained in parts I, II, and IV of this chapter, except offenses under part IV which do

not involve the manufacture or distribution of drugs, and every building, premises, or place in or upon which the violations are held or occur in parts I, II, and IV, is a nuisance that shall be enjoined, abated, and prevented, regardless of whether it is a public or private nuisance."

SECTION 2. Section 712-1271, Hawaii Revised Statutes, is amended to read as follows:

"[§712-1271]] Suit to abate. Whenever there is reason to believe that a nuisance as defined in this chapter is in existence, kept, or maintained in any county, the attorney general of the State or the prosecutor or prosecuting attorney of the respective counties shall, or any citizen of the State residing within such county may in the citizen's own name, or any organization, including, but not limited to a tenant organization within such county may in the organization's own name, maintain a suit to abate and prevent such nuisance and to perpetually enjoin the person or persons[,] causing the nuisance, or the owner, lessee, or agent of the building, premises, or place in or upon which the nuisance exists from directly or indirectly causing, maintaining, or permitting the nuisance."

SECTION 3. Section 712-1272, Hawaii Revised Statutes, is amended to read as follows:

"[§712-1272]] Temporary writ. Whenever the existence of a nuisance is shown in a suit brought under this part to the satisfaction of the court or the judge thereof, either by verified petition or affidavit, or both, the court or judge thereof shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance[.],¹ which injunction may include a provision prohibiting the person or persons causing the nuisance from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The petition in such suit need not be verified, except in those suits brought by a citizen in the citizen's own name, or those suits brought by an organization in its own name, but shall be signed by the party bringing the same and shall include a certification that the complainant believes the allegations of the petition to be true."

SECTION 4. Section 712-1273, Hawaii Revised Statutes, is amended to read as follows:

"[§712-1273]] Suit to have precedence. The suit when brought shall have precedence over all cases, excepting criminal proceedings, election contests, and hearings on injunctions, and in such suit evidence of the general reputation of the building, premises, or place shall be admissible for the purpose of proving the existence of the nuisance."

SECTION 5. Section 712-1274, Hawaii Revised Statutes, is amended to read as follows:

"[§712-1274]] Failure to prosecute. If the petition is filed by a citizen[,], or by an organization, it shall not be dismissed by the complainant or for want of prosecution except upon a sworn statement by the complainant or the complainant's attorney, setting forth the reasons why the suit should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such suit with reasonable diligence, or at the request of the complainant, the court, in its discretion, may substitute any other citizen or organization, including, but not limited to the attorney general or the prosecutor or prosecuting attorney of the county consenting

thereto for the complainant. If a suit is brought by a citizen or by an organization and the court finds that there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen[.] or organization, except that no costs shall be taxed against state or county organizations.”

SECTION 6. Section 712-1275, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1275] Order of abatement.** If the existence of a nuisance is established in a suit as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall include a provision permanently prohibiting the person or persons causing the nuisance, if said person or persons are a party to the proceeding, from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The court, on the application of the person, may suspend the prohibition if the person is participating in a court-approved treatment and monitoring program which addresses the person’s conduct which caused the nuisance. If the court determines that the person has successfully completed the program and that the person is not likely to again create a nuisance, the court may dissolve the injunction against the person. In the event that the court determines that an injunction against the person or persons causing the nuisance will not completely abate the nuisance or that one or more of the persons causing the nuisance are not parties to the proceeding, [and] the court shall also direct the effectual closing of the building, premises, or place, against its use for any purpose, and that it be kept closed for a period not exceeding one year, unless sooner released, as provided by section 712-1277. While the order remains in effect as to closing, the building, premises, or place shall remain in the custody of the court.”

SECTION 7. Section 712-1276, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1276] Costs and expenses.** For any costs or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the costs and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.”

SECTION 8. Section 712-1277, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1277] Owner not guilty of contempt; may pay costs.** If the owner of the building, premises, or place has not been guilty of any criminal contempt of court in the proceedings, and appears and pays all costs, fees, and allowances which are a lien on the building, premises, or place and files a bond in a reasonable amount to be fixed by the court, with sureties, to be approved by the court or judge, conditioned that the owner will immediately abate any such nuisance that may exist at such building, premises, or place and prevent the same from being established or kept thereat for a period of one year thereafter, the court or the judge thereof, may, if satisfied of the owner’s good faith, order the [property] building, premises, or place closed under the order of abatement canceled so far as the same may relate to the closing of said [property] building, premises, or place. The release of the [property] building, premises, or place under the provisions of this section does not release it from any judgment, lien, penalty, or liability to which it may be subject by law.”

SECTION 9. Section 712-1278, Hawaii Revised Statutes, is amended to read as follows:

“[[§712-1278]] Fine, costs, lien on place. Any costs, expenses, and fines imposed against any owner of a business, premises or place in any proceedings under this part shall be a lien upon such business, premises, or place, to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court.”

SECTION 10. Section 712-1279, Hawaii Revised Statutes, is amended to read as follows:

“[[§712-1279]] Termination of lease. The notice by the owner of any business, premises, or place to the lessee that the lease will be revoked if the lessee continues the maintenance of the nuisance, and other action taken to revoke the lease or to obtain the termination of the nuisance shall be given appropriate consideration by the court in the determination of a criminal contempt action brought against the owner in connection with abatement procedures of this part.”

SECTION 11. Section 712-1280, Hawaii Revised Statutes, is amended to read as follows:

“[[§712-1280]] Place. “Place” as used in this part means any building, structure, or place, or any separate part or portion thereof, whether permanent or not, or the ground itself.”

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

Note

1. Should be underscored.