

**ACT 181**

**H.B. NO. 428**

**A Bill for an Act Relating to Nuisance Abatement.**

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

**SECTION 1. Purpose.** The purpose of this Act is to provide an appropriate remedy to abate offenses against public health and morals in the nature of offenses defined as prostitution, displaying indecent matter, and the like.

SECTION 2. The Hawaii Revised Statutes are amended by adding a new part to chapter 712 to be appropriately designated and to read as follows:

**“PART  
NUISANCE ABATEMENT**

**Sec. 712- Places of prostitution, displaying indecent matter, etc., a nuisance.** Every place used for the purpose of violating those laws pertaining to offenses against public health and morals contained in parts I and II of chapter 712, and every place in or upon which such violations are held or occur, including but not limited to all forms of prostitution, displaying indecent matter, promoting pornography, and promoting pornography for minors, is a nuisance which shall be enjoined, abated and prevented, whether it is a public or private nuisance.

**Sec. 712- 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 of Hawaii or the prosecutor or prosecuting attorney of the respective counties shall, or any citizen of the State residing within such county may in his own name, maintain a suit to abate and prevent such nuisance and to perpetually enjoin the person or persons, owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

**Sec. 712- 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. The petition in such suit need not be verified, except in those suits brought by a citizen in his 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.

**Sec. 712- 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 place shall be admissible for the purpose of proving the existence of the nuisance.

**Sec. 712- Failure to prosecute.** If the petition is filed by a citizen, 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 consenting thereto for the complainant. If a suit is brought by a citizen and the court finds that there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen.

**Sec. 712- 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, and the court shall also direct the effectual closing of the 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- . While the order remains in effect as to closing, the place shall remain in the custody of the court.

**Sec. 712- Costs and expenses.** For any costs or expenses incurred in the closing of the place and keeping it closed, as well as the costs and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.

**Sec. 712- Owner not guilty of contempt; may pay costs.** If the owner of the building 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 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 he will immediately abate any such nuisance that may exist at such 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 or place closed under the order of abatement canceled so far as the same may relate to the closing of said property. The release of the property 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.

**Sec. 712- Fine, costs, lien on place.** Any costs, expenses, and fines imposed against any owner of a place in any proceedings under this part shall be a lien upon such place, to the extent of the interest of such person therein, enforceable and collectable by execution issued by the order of the court.

**Sec. 712- Termination of lease.** The notice by the owner of any premises to the lessee that the lease will be revoked if he 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.

**Sec. 712- 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 3. Section 710-1077, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 710-1077 Criminal contempt of court.** (1) A person commits the offense of criminal contempt of court if:

- (a) He recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority; or
- (b) He creates a breach of peace or a disturbance with intent to interrupt a court's proceedings; or
- (c) As an attorney, clerk, or other officer of the court, he knowingly fails to perform or violates a duty of his office, or knowingly disobeys a lawful directive or order of a court; or
- (d) He knowingly publishes a false report of a court's proceedings; or

- (e) Knowing that he is not authorized to practice law, he represents himself to be an attorney and acts as such in a court proceeding; or
- (f) He intentionally records or attempts to record the deliberation of a jury; or
- (g) He intentionally disobeys or resists the process, injunction, or other mandate of a court; or
- (h) He intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; or
- (i) Being a juror, he intentionally, without permission of the court, fails to attend a trial or official proceeding to which he has been summoned or at which he has been chosen to serve; or
- (j) He is in violation or disobedience of any injunction or order expressly provided for in part of chapter 712.

(2) Except as provided in subsections (3) and (7), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

- (a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and
- (b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that he has been charged with or convicted of the contempt.

(5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A judgment, sentence, or commitment under subsection (3) (a) shall not be subject to review by appeal, but shall be subject to review in an appropriate proceeding for an extraordinary writ or in a special proceeding for review.

All other judgments, sentences, or commitments for criminal contempt of court shall be subject to review by appeal, in a proceeding for an appropriate extraordinary writ, or in a special proceeding for review.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, he may be imprisoned until he has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall

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be made in support of the jurisdiction to render the judgment or order the commitment.

(7) Any violation or disobedience of any injunction or order expressly provided for in part \_\_\_\_\_ of chapter 712 is punishable by (a) a fine of not less than \$400 nor more than \$5,000, or (b) by imprisonment for not less than one nor more than six months, or (c) both (a) and (b).”

SECTION 4. New statutory material is underscored.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 1979.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.