

ACT 123

S.B. NO. 700

A Bill for an Act Relating to Nuisance Abatement.

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

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding three new sections to part V to be appropriately designated and to read as follows:

“§712- Standard of proof. Except as may be otherwise expressly provided, the civil causes of action in this part shall be proved by a preponderance of the evidence.

§712- Protective order. If proof of the existence of the nuisance depends, in whole or in part, upon the affidavits or testimony of witnesses who are not law enforcement officers, the court, upon a showing of prior threats of violence or acts of violence by any defendant may issue orders to protect those witnesses including, but not limited to, the nondisclosure of the name, address, or any other information that may identify those witnesses.

§712- Contempt. Any person who knowingly violates any order issued pursuant to this part shall be subject to civil contempt as well as punishment for criminal contempt of court under section 710-1077. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for violation of a controlled substance offense or any other criminal offense.”

SECTION 2. Section 712-1270.5, Hawaii Revised Statutes, is amended to read as follows:

“[E]§712-1270.5[E] Injunctions against persons. Nothing in this part shall be construed to prohibit injunctions against persons causing, maintaining, aiding, abetting, or permitting a nuisance from entering or residing in any public or private building, premises, or place, in or upon which the nuisance exists.”

SECTION 3. Section 712-1271, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) 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 the

nuisance and to perpetually enjoin the person or persons causing, maintaining, aiding, abetting, or permitting 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, aiding, abetting, or permitting the nuisance.”

SECTION 4. 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, which injunction may include a provision prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting 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 5. 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 the suit evidence of the general reputation of the building, premises, place, or persons, and of the use or threat of violence shall be admissible for the purpose of proving the existence of the nuisance.”

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, maintaining, aiding, abetting, or permitting 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, maintaining, aiding, abetting, or permitting the nuisance will not completely abate the nuisance or that one or more of the persons causing, maintaining, aiding, abetting, or permitting the nuisance are not parties to the proceeding, 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. The court’s orders may also include, but are not limited to, an order suspending or revoking any business, professional, operational, or liquor license.”

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

“**§712-1276 Costs and expenses.** For any attorneys’ fees, 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, maintaining, aiding, abetting, or permitting the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the attorneys’ fees, costs, and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved June 15, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.