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# A BILL FOR AN ACT

RELATING TO BUSINESS.

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

1       SECTION 1. Chapter 708, Hawaii Revised Statutes, is  
2       amended by adding a new part to be appropriately designated and  
3       to read as follows:

4               **"PART       .   UNLICENSED CONTRACTING OFFENSES**

5               **§708-A   Unlicensed contracting activity.** (1) A person  
6       commits the offense of unlicensed contracting activity if the  
7       person:

- 8               (a) Engages in any activity that requires a contractor's  
9               license under chapter 444 and is not a licensed  
10              contractor when engaging in the activity, other than a  
11              circumstance of an instance involving a previously  
12              licensed contractor who inadvertently failed to  
13              maintain licensing requirements under chapter 444; or  
14              (b) Uses any word, title, or representation to induce the  
15              false belief that the person is licensed under chapter  
16              444 to engage in contracting activity.

17              (2) Unlicensed contracting activity is a misdemeanor.



1           (3) Each day the violation of this section continues after  
2 written notice of the violation to the unlicensed contractor  
3 shall constitute a distinct and separate offense.

4           (4) It is an affirmative defense to a prosecution under  
5 this section that the defendant was a licensed contractor  
6 performing activity outside the scope of the defendant's  
7 contractor's license. This defense shall not preclude any  
8 administrative or civil enforcement action for the unlicensed  
9 activity.

10           **§708-B Habitual unlicensed contracting activity; felony.**

11          (1) A person commits the offense of habitual unlicensed  
12 contracting activity if the person has had two or more  
13 convictions within ten years, preceding the conduct for which  
14 the person is charged under this section, for unlicensed  
15 contracting activity in violation of section 436B-27 or 708-A,  
16 and:

17          (a) Engages in any activity for which a contractor's  
18 license is required under chapter 444, and is not  
19 licensed as a contractor under chapter 444 when  
20 engaging in the activity; or



(b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) A conviction for purposes of this section is a judgment on a verdict, a finding of guilt, or a judgment on a plea of guilty or nolo contendere. The convictions shall have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the convictions shall not have been expunged by pardon, reversed, or set aside.

(3) Habitual unlicensed contracting activity is a class C felony.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant's contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

**§708-C Unlicensed contractor fraud.** (1) A person commits the offense of unlicensed contractor fraud if the person:

(a) Engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a



1 contractor under chapter 444 when the person engages  
2 in the activity; and

3 (b) While engaged in the activity, obtains or exerts  
4 control over the property of another by deception,  
5 with intent to deprive the other of the property.

6 (2) For purposes of this section, "deception" has the same  
7 meaning as defined in section 708-800 and includes deception as  
8 to the person's status as a licensed contractor or as to permits  
9 required to engage in the activity.

10 (3) Unlicensed contractor fraud is a class B felony if the  
11 total value of all moneys and any assets of value paid or lost  
12 by the victims pursuant to the same scheme, plan, or  
13 representation exceeds \$20,000.

14 (4) Unlicensed contractor fraud is a class C felony if the  
15 total value of all moneys and any assets of value paid or lost  
16 by the victims pursuant to the same scheme, plan, or  
17 representation is not in excess of \$20,000.

18 **§708-D Unlicensed contractor fraud; valuation of property.**

19 For purposes of unlicensed contractor fraud, the value of the  
20 property shall be the greater of:

21 (1) The value of property as described in section 708-801;  
22 or



1           (2) The total value of all moneys and any assets of value  
2 paid or lost by the victim or victims pursuant to the same  
3 scheme or course of conduct."

4           SECTION 2. Section 436B-27, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6           "(b) Any person, who engages in an activity requiring a  
7 license issued by the licensing authority and who fails to  
8 obtain the required license, or who uses any word, title, or  
9 representation to induce the false belief that the person is  
10 licensed to engage in the activity, other than a circumstance of  
11 first instance involving the inadvertent failure to renew a  
12 previously existing license, shall be guilty of a misdemeanor  
13 ~~[and be subject to a fine of not more \$1,000 or imprisoned not~~  
14 ~~more than one year, or both,]~~ and each ~~[day's violation]~~ day of  
15 unlicensed activity shall be deemed a separate offense."

16           SECTION 3. In codifying the new sections added by section  
17 1 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20           SECTION 4. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun before its effective date.



1       SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 6. This Act shall take effect on July 1, 2112.



**Report Title:**

Unlicensed Contracting Offenses

**Description:**

Establishes unlicensed contracting activity as a misdemeanor offense; establishes habitual unlicensed contracting activity and unlicensed contractor fraud as felonies. Requires that each day of unlicensed contracting activity be deemed a distinct and separate offense under certain conditions. Exempts a previously licensed licensee who inadvertently fails to maintain licensing requirements from the newly created offenses. Establishes monetary penalties. Effective 07/01/2112. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

