

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 1295  
H.D. 3  
S.D. 2

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Ways and Means, to which was referred H.B. No. 1295, H.D. 3, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO BUSINESS,"

begs leave to report as follows:

The purpose and intent of this measure is to address the problem of unlicensed contractors by imposing criminal penalties upon persons who engage in contracting activity without a license.

Specifically, this measure:

- (1) Makes it a misdemeanor for a person without a contractor's license to engage in activity requiring a contractor's license;
- (2) Makes habitual unlicensed contracting activity a class C felony; and
- (3) Makes unlicensed contractor fraud a class B or C felony, depending upon the value of the victim's loss.

Your Committee received written comments in support of this measure from the Department of Labor and Industrial Relations; Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office; Building Industry Association Hawaii; Complete Construction Services; and Pacific Resource Partnership.



Written comments on this measure were received from the Department of the Attorney General; and Department of Commerce and Consumer Affairs, Contractors License Board.

Your Committee finds that unlicensed contractors often operate without regard to safety and building requirements, unfairly undercut legitimate and licensed business operations, place consumers at risk, and cost the State millions of dollars in lost tax revenue. Your Committee further finds that unlicensed contractors often continue to engage in illegal work despite receiving civil penalties. Authorizing the imposition of criminal penalties on unlicensed contractors will help reduce the number of unlicensed contractors performing illegal work, promote legitimate businesses, protect consumers, and enhance State revenues.

Your Committee has amended this measure by:

- (1) Clarifying that, with respect to applying the offense of unlicensed contracting activity, each day of violation that occurs after written notice of the violation is provided to the unlicensed contractor is a distinct and separate offense;
- (2) Clarifying that affirmative defenses shall apply to prosecutions, for purposes of consistency with other affirmative defense provisions of the Hawaii Revised Statutes;
- (3) Clarifying that the monetary threshold for a class B felony unlicensed contractor fraud is a total value "exceeding \$20,000" to be consistent with the threshold of theft in the first degree pursuant to section 708-830.5(1)(a), Hawaii Revised Statutes; and
- (4) Making technical nonsubstantive amendments for purposes of style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1295, H.D. 3, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1295, H.D. 3, S.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Ways and Means,

*David Y. Ige*  
\_\_\_\_\_  
DAVID Y. IGE, Chair



The Senate  
Twenty-Sixth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Ways and Means**  
**WAM**

Bill / Resolution No.:* <b>HB1295 HD3SD1</b>	Committee Referral: <b>JDL/CPN, WAM</b>	Date: <b>3-29-12</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	/			
KIDANI, Michelle N. (VC)	/			
CHUN OAKLAND, Suzanne	/			
DELA CRUZ, Donovan M.	/			
ENGLISH, J. Kalani	/			
ESPERO, Will	/			
FUKUNAGA, Carol	/			
KIM, Donna Mercado	/			
KAHELE, Gilbert	/			
KOUCHI, Ronald D.				✓
RYAN, Pohai	/			
TOKUDA, Jill N.	/			
WAKAI, Glenn	/			
SLOM, Sam		/		
TOTAL	12	1	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <span style="margin-left: 100px;"><input type="checkbox"/> Not Adopted</span>				
Chair's or Designee's Signature: <i>Michelle N. Kidani</i>				
<b>Distribution:</b> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>Original File with Committee Report</span> <span>Yellow Clerk's Office</span> <span>Pink Drafting Agency</span> <span>Goldenrod Committee File Copy</span> </div>				

\*Only one measure per Record of Votes