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# A BILL FOR AN ACT

RELATING TO WAGES.

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

1           SECTION 1. Chapter 388, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:  
4           "§388- Contractor liability; unpaid wages. (a) A  
5 general contractor entering into or under a contract in the  
6 State for the erection, construction, alteration, or repair of a  
7 building, structure, or other private construction work not  
8 subject to chapter 104 shall assume and be liable for any debt  
9 owed to a claimant for wages incurred by a subcontractor at any  
10 tier acting under, by, or for the general contractor, for the  
11 claimant's performance of labor included in the contract between  
12 the general contractor and the owner. The general contractor's  
13 liability under this section shall extend only to unpaid wages  
14 to the claimant, including any interest owed, but shall not  
15 extend to penalties, consequential or liquidated damages, or any  
16 benefit, fringe benefit, or contribution claims.



1       A general contractor shall not evade or commit any act that  
2 negates the requirements of this section; provided that this  
3 section does not prohibit a general contractor or subcontractor  
4 from contracting with or enforcing any lawful remedies against a  
5 subcontractor for the liability created by the nonpayment of  
6 wages by the subcontractor or by a subcontractor at any tier  
7 working under another subcontractor.

8       (b) Notwithstanding any law to the contrary, actions to  
9 enforce a general contractor's liability for unpaid wages may  
10 include the following:

11       (1) The director may enforce liability for unpaid wages  
12 established by subsection (a) against a general  
13 contractor; provided that the general contractor's  
14 liability shall be limited to unpaid wages, including  
15 any interest owed; or

16       (2) A joint labor-management cooperation committee  
17 established pursuant to section 175a of the federal  
18 Labor Management Cooperation Act of 1978 (29 U.S.C.  
19 175a) may bring an action in any court of competent  
20 jurisdiction against a general contractor or  
21 subcontractor at any tier for unpaid wages owed to a



1 claimant by the general contractor or subcontractor  
2 for the performance of private construction work not  
3 subject to chapter 104, including unpaid wages owed by  
4 the general contractor, pursuant to subsection (a).  
5 The court may award a prevailing party in the action  
6 reasonable attorney's fees and costs, including expert  
7 witness fees; provided that attorney's fees and costs,  
8 including expert witness fees, shall not be awarded  
9 against a general contractor for unpaid wages except  
10 for those of its direct employees. As a condition  
11 precedent to an action against a general contractor to  
12 enforce the liability established by subsection (a),  
13 the committee shall provide written notice to the  
14 general contractor and subcontractor who employed the  
15 claimant, within ninety days from the date on which  
16 the person did or performed the labor for which claim  
17 is made, but no later than forty-five days after the  
18 date of completion as defined in section 507-43,  
19 stating with substantial accuracy the amount claimed  
20 and the name of the party for whom the labor was done  
21 or performed. The written notice shall be served by



1 registered or certified mail to the general contractor  
2 and subcontractor at any place the general contractor  
3 or subcontractor maintains an office or conducts their  
4 business, or in any manner authorized by law to serve  
5 notice. The written notice shall not limit the  
6 liability of the general contractor or preclude  
7 subsequent amendments of an action to encompass  
8 additional claimants employed by the subcontractor.

9 No other party may bring an action against a general contractor  
10 to enforce the liability established in this section.

11 (c) Unless otherwise provided by law, property of the  
12 general contractor may be attached for the payment of any  
13 judgment received after trial and pursuant to this section.

14 (d) An action brought pursuant to this section shall be  
15 filed within one year from the date on which the person did or  
16 performed the labor for which the claim is made, but no later  
17 than forty-five days after the date of completion as defined in  
18 section 507-43.

19 (e) This section does not apply to work performed by an  
20 employee of the State or any political subdivision of the State.



1        (f) Upon request by a general contractor to a  
2 subcontractor, the subcontractor and any lower tier  
3 subcontractors under contract with the subcontractor shall  
4 provide payroll records, which, at a minimum, shall contain the  
5 information set forth in section 387-6 of its employees who are  
6 providing labor on a private construction work. The payroll  
7 records shall be marked or obliterated only to prevent  
8 disclosure of an employee's full social security number, except  
9 that the last four digits of the employee's social security  
10 number shall be provided. Upon request of a general contractor  
11 to a subcontractor, the subcontractor and any lower tier  
12 subcontractors under contract with the subcontractor shall  
13 provide the general contractor with award information that  
14 includes the project name, name and address of the  
15 subcontractor, lower-tier subcontractor with whom the  
16 subcontractor is under contract, anticipated start date,  
17 duration, estimated journeyman and apprentice hours, and  
18 contact information for the subcontractors on the project. A  
19 subcontractor's failure to comply with this subsection shall not  
20 relieve a general contractor from any of the obligations  
21 contained in this section.



1       (g) The obligations and remedies in this section shall be  
2 in addition to any obligations and remedies otherwise provided  
3 by law, except that nothing in this section shall be construed  
4 to impose liability on a general contractor for anything other  
5 than unpaid wages to the claimant, including any interest owed,  
6 and shall not extend to penalties, consequential or liquidated  
7 damages, or any benefit, fringe benefit, or contribution claims.

8       (h) Nothing in this section shall alter an owner's  
9 obligation to pay a general contractor, or the general  
10 contractor's obligation to pay a subcontractor, in a timely  
11 manner; provided that a general contractor may withhold all sums  
12 owed to a subcontractor if the subcontractor does not provide  
13 the information requested under subsection (f) in a timely  
14 manner and until the time that the information is provided.

15       (i) The provisions of this section shall be severable. If  
16 any provision of this section or its application is held  
17 invalid, that invalidity shall not affect other provisions or  
18 applications that can be given effect without the invalid  
19 provision or application.

20       (j) For purposes of this section:



1       "General contractor" means a contractor who has a direct  
2 contractual relationship with an owner.

3       "Subcontractor" means a contractor who does not have a  
4 direct contractual relationship with an owner. The term  
5 includes a contractor who has a contractual relationship with a  
6 general contractor or with another subcontractor."

7       SECTION 2. Section 388-1, Hawaii Revised Statutes, is  
8 amended by amending the definition of "employer" to read as  
9 follows:

10       ""Employer" includes any individual[  ]; partnership[  ];  
11 association[  ]; joint-stock company[  ]; trust[  ];  
12 corporation[  ]; the personal representative of the estate of a  
13 deceased individual or the receiver, trustee, or successor of  
14 any of the same[  ]; general contractor, for purposes of wages  
15 owed to the employees of a subcontractor, as those terms are  
16 defined in section 388-  ; employing any person, but shall not  
17 include the State or any political subdivision thereof or the  
18 United States."

19       SECTION 3. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on June 30, 3000.



**Report Title:**

Wages; Timely Payment; General Contractors; Subcontractors;  
Liability

**Description:**

Makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private construction works liable for debt incurred by subcontractors for wages due to claimants, including interest owed, for performance of labor in the contract between the general contractor and owner. Effective 6/30/3000. (HD1)

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

