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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 private construction work not subject to chapter 104,  
7 including but not limited to the erection, construction,  
8 alteration, or repair of a building, or structure, shall assume  
9 and is liable for any debt owed to a claimant for wages incurred  
10 by a subcontractor at any tier acting under, by, or for the  
11 general contractor, for the claimant's performance of labor  
12 included in the contract between the general contractor and the  
13 owner. The general contractor's liability under this section  
14 shall extend only to unpaid wages to the claimant, including any  
15 interest owed, but shall not extend to penalties, consequential  
16 or liquidated damages, or any benefit, fringe benefit, or  
17 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. The general contractor's liability shall  
14 be limited to unpaid wages, including any interest  
15 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 an 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 the unpaid wages of its direct employees. As a  
11 condition precedent to any action against a general  
12 contractor to enforce the liability established by  
13 subsection (a), the committee shall provide written  
14 notice to the general contractor and subcontractor who  
15 employed the claimant, within ninety days from the  
16 date on which the person did or performed the labor  
17 for which claim is made, but no later than forty-five  
18 days after the date of completion as defined in  
19 section 507-43, stating with substantial accuracy the  
20 amount claimed and the name of the party for whom the  
21 labor was done or performed. The written notice shall



1 be served by registered or certified mailing of the  
2 notice to the general contractor and subcontractor at  
3 any place the general contractor or subcontractor  
4 maintains an office or conducts their business, or in  
5 any manner authorized by law to serve such notice.

6 The written notice shall not limit the liability of  
7 the general contractor or preclude subsequent  
8 amendments of an action to encompass additional  
9 claimants employed by the subcontractor.

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

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

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

20 (e) This section does not apply to work performed by an  
21 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;  
9 provided that the last four digits of the employee's social  
10 security number shall be provided. Upon request of a general  
11 contractor to a subcontractor, the subcontractor and any lower  
12 tier 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 journeyperson 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; provided 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 as follows:

12       (1) Any money paid to a contractor shall be disbursed to  
13 subcontractors within ten days after receipt of the  
14 money in accordance with the terms of the subcontract;  
15 provided that the subcontractor has met all the terms  
16 and conditions of the subcontract and there are no  
17 bona fide disputes; and

18       (2) Upon final payment to the contractor, full payment to  
19 the subcontractor, including retainage, shall be made  
20 within ten days after receipt of the payment; provided



1           there are no bona fide disputes over the  
2           subcontractor's performance under the subcontract;  
3 provided further that a general contractor may withhold all sums  
4 owed to a subcontractor if the subcontractor does not provide  
5 the information requested under subsection (f) in a timely  
6 manner and until such time that the information is provided.

7           (i) The provisions of this section are severable. If any  
8 provision of this section or its application is held invalid,  
9 that invalidity shall not affect other provisions or  
10 applications that can be given effect without the invalid  
11 provision or application.

12           (j) For purposes of this section:

13           "General contractor" means a contractor who has a direct  
14 contractual relationship with an owner.

15           "Subcontractor" means a contractor who does not have a  
16 direct contractual relationship with an owner. "Subcontractor"  
17 includes a contractor who has a contractual relationship with a  
18 general contractor or with another subcontractor."

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



1 "Employer" includes any individual, partnership,  
2 association, joint-stock company, trust, corporation, the  
3 personal representative of the estate of a deceased individual  
4 or the receiver, trustee, or successor of any of the same,  
5 employing any person, but shall not include the State or any  
6 political subdivision thereof or the United States. "Employer"  
7 includes a general contractor, for purposes of wages owed to a  
8 subcontractor's employees, as those terms are defined in section  
9 388- ; who, for purposes of wages owed to a subcontractor's  
10 employees, is deemed the employer for enforcement."

11 SECTION 3. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 4. New statutory material is underscored.

15 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 for performance of labor in the contract between the general contractor and owner. Effective 6/30/3000. (SD1)

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

