

ACT 170

H. B. NO. 311

A Bill for an Act Relating to Contractors.

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

SECTION 1. Chapter 444, Hawaii Revised Statutes, is amended by adding new sections to be appropriately numbered and to read:

**“Sec. 444- Contractors recovery fund; use of fund; fees.** The contractors license board is authorized and directed to establish and maintain a con-

tractors recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$10,000 for damages sustained by the act, representation, transaction or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant.

Every contractor, when renewing his license in 1974, shall pay in addition to his license renewal fee, a fee of \$50 for deposit in the contractors recovery fund. On or after May 1, 1974, when any person makes application for a contractors license he shall pay, in addition to his original license fee, a fee of \$50 for deposit in the contractors recovery fund. In the event that the contractors license board does not issue the license, this fee shall be returned to the applicant."

**"Sec. 444- Additional payments to fund.** If, on December 31 of any year, the balance remaining in the contractors recovery fund is less than \$150,000, every contractor, when renewing his license during the following calendar year, shall pay, in addition to his license renewal fee, a fee not to exceed \$50 for deposit in the contractors recovery fund."

**"Sec. 444- Statute of limitations; recovery from fund.** (a) No action for a judgment which may subsequently result in an order for collection from the contractors recovery fund shall be commenced later than six years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the contractors recovery fund, the aggrieved person shall notify the contractors license board in writing to this effect at the time of the commencement of such action. The contractors license board shall have the right to intervene in and defend any such action. Nothing in this section shall supersede the statute of limitation as contained in Act 133, Session Laws of Hawaii, 1972.

(b) When any aggrieved person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any contractor for such act, representation, transaction, or conduct which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, which occurred on or after June 1, 1974, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the contractors license board, may apply to the court for an order directing payment out of the contractors recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. Before proceeding against the contractors recovery fund, the aggrieved person must first proceed against any existing bond covering the licensee.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) He is not a spouse of debtor, or the personal representative of such spouse.

- (2) He has complied with all the requirements of this section.
- (3) He has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.
- (4) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.
- (5) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the contractors license board requiring payment from the contractors recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(e) Should the contractors license board pay from the contractors recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed contractor, the license of the contractor shall be automatically terminated upon the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until he has repaid in full, plus interest at the rate of six per cent a year, the amount paid from the contractors recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(f) If, at any time, the money deposited in the contractors recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the contractors license board shall, when sufficient money has been deposited in the contractors recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed."

**"Sec. 444- Management of fund.** The sums received by the contractors license board for deposit in the contractors recovery fund shall be held by the contractors license board in trust for carrying out the purposes of the contractors recovery fund. The contractors license board, as trustee of the recovery fund, shall be authorized to retain private legal counsel to represent the board in any action which may result in collection from the contractors recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system, and the interest from these investments shall be deposited to the credit of the contractors education fund, and which

shall be available to the contractors license board for educational purposes, which is hereby created.”

“**Sec. 444- False statement.** It shall constitute a misdemeanor for any person or his agent to file with the contractors license board any notice, statement, or other document required under the provisions of this chapter, which is false or untrue or contains any material misstatement of fact.”

“**Sec. 444- The contractors license board has standing in court.** When the contractors license board receives notice, as provided in sec. 444- (a), the contractors license board may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action it may deem appropriate. The contractors license board or its legal representative shall be served with all pleadings in an action which may result in a recovery from the contractors recovery fund.

Settlement of any claim against the contractors recovery fund shall be made only with the unanimous agreement of the contractors license board, director of regulatory agencies and attorney general that settlement is in the best interest of the contractors recovery fund.”

“**Sec. 444- Subrogation to rights of creditor.** When, upon the order of the court, the contractors license board has paid from the contractors recovery fund any sum to the judgment creditor, the contractors license board shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the contractors license board and any amount and interest so recovered by the contractors license board on the judgment shall be deposited to the credit of said fund.”

“**Sec. 444- Waiver of rights.** The failure of an aggrieved person to comply with all of the provisions of this chapter relating to the contractors recovery fund shall constitute a waiver of any right hereunder.”

“**Sec. 444- Maximum liability.** Notwithstanding any other provision, the liability of the contractors recovery fund shall not exceed \$20,000 for any one licensee.”

“**Sec. 444- Disciplinary action against licensee.** Nothing contained herein shall limit the authority of the contractors license board to take disciplinary action against any licensee for a violation of any of the provisions of chapter 444, or of the rules and regulations of the contractors license board; nor shall the repayment in full of all obligations to the contractors recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 444 or the rules and regulations.”

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.\*

\*Edited accordingly.

**ACT 170**

**SECTION 3.** This Act shall take effect upon its approval.  
(Approved May 24, 1973.)