

ACT 258

H.B. NO. 3022

A Bill for an Act Relating to Contractors License Board.

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

SECTION 1. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

“§444-2 Exemptions. This chapter shall not apply to:

- (1) [An officer or employee] Officers and employees of the United States, the State, or any political subdivision while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, and all other items is less than [\$100.] \$1,000. This exemption shall not apply in any case wherein the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts less than [\$100] \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person's professional capacity;
- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person's sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing work, which must be performed only by persons or entities licensed under this chapter or the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or

offering for sale or lease, of the structure within one year after completion is prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1; [or]

- (8) Any [copartnership or] joint venture if all members thereof hold licenses issued under this chapter[.];
- (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that such work does not pose a potential danger to public health, safety, and welfare; or
- (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency."

SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

"§444-9.1 Issuance of building permits; owner-builder registration.

Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant [is] and all specialty contractors are licensed under this chapter, giving the [number of the] license numbers and stating that [it is] the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; (4) the approximate dates of construction activity; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor's duly authorized agent."

SECTION 3. Section 444-11, Hawaii Revised Statutes, is amended to read as follows:

"§444-11 No license issued when. No license hereunder shall be issued to:

- (1) Any person unless the person has filed an application therefor;

- (2) Any person unless the person meets the experience requirement as prescribed in the board's rules;
- [(2)] (3) Any person who does not possess a [good reputation for] history of honesty, truthfulness, financial integrity, and fair dealing; provided that any person who during the six years prior to application has failed to satisfy an undisputed debt or a judgment relating to services or materials rendered in connection with operations as a contractor shall be presumed not to possess a [good reputation for] history of financial integrity;
- (4) Any person unless the person has successfully passed a written examination as prescribed by the board;
- [(3)] (5) Any individual unless the individual is age eighteen years or more;
- [(4)] (6) Any [copartnership or] joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a partner or employee thereof, and unless such partner or employee holds an appropriate license;
- [(5)] (7) Any individual who is unable to qualify as a contractor or any corporation, unless the contracting business of such individual or corporation is under the direct management of an officer or employee thereof, and unless such officer or employee holds an appropriate license; or
- [(6)] (8) Any person unless the person submits satisfactory proof to the contractors license board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386[;
- (7) The provisions of this section shall not apply when it is determined by the contractors license board that less than ten persons are qualified to perform the work in question. The provisions also shall not apply with respect to public works projects which require additional qualifications beyond those established by the licensing law, and which are deemed necessary and in the public interest by the contracting agency].

In addition, any license issued hereunder shall not be renewed if the licensee no longer meets any one or more of the foregoing qualifications."

SECTION 4. Section 444-16, Hawaii Revised Statutes, is amended to read as follows:

"§444-16 Action on applications. Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the [contractors license] board shall (1) conduct an investigation of the applicant, and in such investigation may post pertinent information, including but not limited to, the name and address of the applicant, and if the applicant is associated in any partnership, corporation, or other entity, the names, addresses, and official capacities of the applicant's associates; and (2) either issue a license to the applicant or [else] notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify the applicant of the applicant's right to [have] submit a request for a contested case hearing pursuant to chapter 91 within [fifteen] sixty days [on] of the board's decision. The hearing shall be conducted in accordance with section 444-18."

SECTION 5. Section 444-28, Hawaii Revised Statutes, is amended by

amending subsection (a) to read as follows:

“(a) No action for an arbitration award or 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 injured person commences action for an arbitration award or for a judgment which may result in collection from the contractors recovery fund, the injured 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 limitations as contained in section 657-8.”

SECTION 6. Section 444-28, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(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] The license of the contractor shall be automatically terminated upon execution of a settlement agreement requiring payment from the contractors recovery fund or the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until the contractor has repaid in full, plus interest at the rate of [six] ten per cent a year, the amount paid from the contractors recovery fund on the contractor's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 18, 1992.)