

ACT 269

S.B. NO. 3271

A Bill for an Act Relating to Unlicensed Activity in Contracting.

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

SECTION 1. Chapter 481C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§481C- Unlicensed contracting.** If the contract referred to in section 481C-1 is for activities subject to chapter 444 and the seller does not possess the license required by that chapter, the cancellation period to be provided in section 481C-2 shall be extended to thirty calendar days.”

SECTION 2. 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, taxes, and all other items is [less than \$100.] equal to or less than \$1,000. This exemption shall not apply in any case wherein a building permit is required regardless of the aggregate contract price, nor where 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] equal to or less than \$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]. Any owner or lessee of property found to have violated the provisions of this paragraph shall not be permitted to engage in any activities pursuant to this paragraph or to register under section 444-9.1 for a period of three years; or
- (8) Any copartnership or joint venture if all members thereof hold licenses issued under this chapter."

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

"§444-11 No license issued when. (a) 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 requirements as prescribed in the board's rules; provided that the board may accept experience acquired on a self-employed basis if the experience can be verified;
- [(2)] (3) Any person who does not possess a good reputation for 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 financial integrity;
- [(3)] (4) Any individual unless the individual is age eighteen years or more;
- [(4)] (5) 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)] (6) 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)] (7) 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)] (b) 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 444-17, Hawaii Revised Statutes, is amended to read as follows:

**"§444-17 Revocation, suspension, and renewal of licenses.** The contractors license board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

- (1) Any dishonest or fraudulent or deceitful act as a contractor which causes [a] substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
- (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- (8) When the licensee being a copartnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;

- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (17) [Knowingly entering] Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
- (18) Servicing an air conditioning unit utilizing CFCs without using refrigerant recovery and recycling equipment;
- (19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment; and
- (20) Wilfully causing or allowing CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

**"§444-23 Violation; penalties.** (a) Any licensee who contracts outside the appropriate scope of classification for which the licensee is licensed [under or who violates section 444-9.3 or 444-17(17)] shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Any licensee who violates section 444-9.3 or 444-17(17) shall be fined up to \$25,000 or up to the full amount of the contract price for each offense, whichever is greater.

[(b)] (c) Except as provided in [subsection] subsections (a)[.] and (b), any person who violates or fails to comply with any of the provisions of this chapter shall be fined not less than \$100 and not more than \$5,000 for each violation;

provided that persons who violate section 444-9 shall be fined \$500 or forty per cent of the total contract price, whichever is greater, for the first offense; \$1,000 or forty per cent of the total contract price, whichever is greater, for the second offense; and \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense.

[(c)] (d) Any licensee who violates, or whose employee violates, sections 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and \$300 to [\$1000] \$1,000 for each subsequent offense, provided that each unit serviced in violation of section 444-17(18) or disposed of in violation of section 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.