

ACT 230

S.B. NO. 1778

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 444-10.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§444-10.5]~~ **Citation for unlicensed activity.** (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in the business of a contractor within the State, without having a license previously obtained under and in compliance with this chapter and the rules promulgated thereunder. If the investigator determines that a person is acting in the capacity of, or engaging in the business of, a contractor within this State without having a license to so act or engage, the investigator may issue a citation to such person.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and ~~may~~ shall contain an order ~~[of abatement,]~~ to cease and desist from the violation, and an assessment of civil penalties as provided in section 444-23. The

citation shall also include notice of the sanctions for violating the cease and desist order. All penalties collected under this section shall be deposited in the special fund established under section 26-9.

(c) Service of a citation issued under this section shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(d) Any person served with a citation under this section may submit a written request to the director for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order [~~of abatement~~] to cease and desist, and the amount of the civil penalties assessed.

(e) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and issue a final order.

(f) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(g) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provisions [~~for abatement~~] to cease and desist and ~~for~~ civil penalties imposed. In any proceeding to enforce the provisions of the final order of the director or designated hearings officer, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, and a certified copy of the final order of the director or designated hearings officer.

(h) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of [~~an abatement~~] a cease and desist order [~~will~~] shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(i) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The director may adopt rules under chapter 91 as may be necessary to fully effectuate this section.

(j) The director may apply to the appropriate court for injunctive or any other relief the court deems appropriate, including a fine of not less than \$10,000 for each offense, against any person who violates a cease and desist order. Each day's violation or failure to comply with a cease and desist order shall be deemed a separate offense. The allegations in the citation shall be deemed conclusively established for purposes of a proceeding for permanent or temporary relief to enforce the cease and desist order.'

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

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)