

**ACT 44**

H.B. NO. 1927

A Bill for an Act Relating to Owner-Builders.

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

SECTION 1. The legislature finds that the intent of contractor licensing laws under chapter 444, Hawaii Revised Statutes, is to:

- (1) Protect the public from the dangers of unlicensed contracting activity;
- (2) Afford owner-builders a limited exemption from contractor licensing requirements for structures built for their own use, and which, at the time the exemption is obtained, the owner-builder does not intend to sell or lease; and
- (3) Prevent uses of the owner-builder exemption that circumvent contractor licensing requirements.

The legislature further finds that widespread economic hardship has forced many owner-builders into the unplanned sale of their property, despite their original intent to use the property for their own purposes. The legislature finds that it is necessary to provide relief for these owner-builders so that they may sell or lease their properties under these difficult circumstances without violating chapter 444.

The purpose of this Act is to provide further relief for owner-builders who must sell or lease a property prior to the expiration of the one-year prohibition on sales or leases and to clarify the applicability of the owner-builder exemption.

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§444-A Owner-builder exemption.** (a) This chapter shall not apply to 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 who do not offer the buildings or structures for sale or lease; provided that:

- (1) To qualify for an exemption under this section, the owner or lessee shall register for the exemption as provided in section 444-9.1; and
- (2) The exemption under this section shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed in accordance with this chapter, unless the owner or lessee of the property is licensed for such work under chapter 448E.

(b) Proof of the sale or lease, or offering for sale or lease, of the structure not more than one year after completion, unless the sale or lease was caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c), shall be prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this subsection shall not apply to:

- (1) Residential properties sold or leased to employees of the owner or lessee; or
- (2) Construction or improvements performed pursuant to an approved building permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000.

(c) The board shall determine the eligibility of an unforeseen hardship claimed by an owner under subsection (b); provided that an alleged unforeseen hardship shall not be deemed eligible if the board determines that the construction or improvement of the structure was undertaken for the purpose of sale or lease. An owner seeking a determination of eligibility of an unforeseen hardship shall:

- (1) Be in compliance with the requirements set forth in the disclosure statement required to be provided under section 444-9.1; and
- (2) Apply in writing to the board at any time prior to selling, leasing, or offering to sell or lease the property.

The board shall communicate its determination to the owner in writing within ninety days of receiving a completed application under this subsection.

(d) Any owner or lessee of property found to have violated this section shall not be permitted to engage in any activities pursuant to this section or to register under section 444-9.1 for a period of three years. There is a rebuttable presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years.

(e) For the purposes of this section, "completion" means the date of final inspection approval by the county."

SECTION 3. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Officers and employees of the United States, the State, or any county 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 that 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 not more than \$1,000. This exemption shall not apply in any case where 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 not more 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 who do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed under this chapter, or to 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 not more than 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 provision 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. Any owner or lessee of property found to have violated 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. There is a presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years;]~~ Owner-builders exempted under section 444-A;
- (8) Any 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 the 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 4. Section 444-9.1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Each county or other local subdivision of the [State] 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 and all specialty contractors are licensed ~~under~~ in accordance with this chapter, giving the license numbers and stating that 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);] 444-A, 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] state shall maintain an owner-builder registration list which shall contain the following information:

- (1) ~~the~~ The name of any owner or lessee who claims an exemption from this chapter as provided in section [444-2(7);] 444-A;
- (2) ~~the~~ The address of the property where exempt building or improvement activity is to occur;
- (3) ~~a~~ A description of the type of building or improvement activity to occur;
- (4) ~~the~~ The approximate dates of construction activity; and
- (5) ~~whether~~ 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)] 444-A does not apply.”

2. By amending subsection (c) to read:

“(c) ~~To qualify for the exemption under section 444-2(7), the~~ The county shall provide ~~the applicant~~ applicants for the exemption under section 444-A with a disclosure statement in substantially the following form:

“Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section [444-2(7);] 444-A, Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure

that subcontractors hired by you have licenses required by state law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building who is not licensed must be your employee which means that you must deduct F.I.C.A. and withholding taxes and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section ~~[444-2(7)]~~ 444-A or fail to comply with the requirements set forth in this disclosure statement, you may be fined \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offense."

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form."

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person who violates section [444-2(7);] 444-A, or fails to comply with the requirements set forth in the disclosure statement required to be provided under section 444-9.1 shall be fined:

- (1) \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and
- (2) \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offenses."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute the appropriate section number for the letter used in designating the new section in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2010.

(Approved April 21, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.