

A Bill for an Act Relating to Business.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . UNLICENSED CONTRACTING OFFENSES**

**§708-A Unlicensed contracting activity.** (1) A person commits the offense of unlicensed contracting activity if the person:

- (a) Engages in any activity that requires a contractor’s license under chapter 444 and is not a licensed contractor when engaging in the activity, other than an offense involving the inadvertent failure to renew a previously existing license; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) Unlicensed contracting activity is a misdemeanor.

(3) Each day the violation of this section continues after written notice of the violation to the unlicensed contractor shall constitute a distinct and separate offense.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant’s contractor’s license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

**§708-B Habitual unlicensed contracting activity; felony.** (1) A person commits the offense of habitual unlicensed contracting activity if the person has had two or more convictions within ten years, preceding the conduct for which the person is charged under this section, for unlicensed contracting activity in violation of section 436B-27 or 708-A, and:

- (a) Engages in any activity for which a contractor’s license is required under chapter 444, and is not licensed as a contractor under chapter 444 when engaging in the activity; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) A conviction for purposes of this section is a judgment on a verdict, a finding of guilt, or a judgment on a plea of guilty or nolo contendere. The convictions shall have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the convictions shall not have been expunged by pardon, reversed, or set aside.

(3) Habitual unlicensed contracting activity is a class C felony.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant's contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

**§708-C Unlicensed contractor fraud.** (1) A person commits the offense of unlicensed contractor fraud if the person:

- (a) Engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a contractor under chapter 444 when the person engages in the activity; and
- (b) While engaged in the activity, obtains or exerts control over the property of another by deception, with intent to deprive the other of the property.

(2) For purposes of this section, "deception," as defined in section 708-800, includes deception as to the person's status as a licensed contractor or as to permits required to engage in the activity.

**§708-D Unlicensed contractor fraud in the first degree.** (1) A person commits the offense of unlicensed contractor fraud in the first degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is equal to or greater than \$20,000.

(2) Unlicensed contractor fraud in the first degree is a class B felony.

**§708-E Unlicensed contractor fraud in the second degree.** (1) A person commits the offense of unlicensed contractor fraud in the second degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is less than \$20,000.

(2) Unlicensed contractor fraud in the second degree is a class C felony.

**§708-F Unlicensed contractor fraud; valuation of property.** For purposes of unlicensed contractor fraud, the value of the property shall be the greater of:

- (1) The value of property as provided in section 708-801; or
- (2) The total value of all moneys and any assets of value paid or lost by the victim or victims pursuant to the same scheme or course of conduct."

SECTION 2. Section 436B-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license, shall be guilty of a misdemeanor ~~[and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both,]~~ and each ~~[day's violation]~~ day of unlicensed activity shall be deemed a separate offense."

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)