

JAN 25 2006

S.B. NO. 2299

A BILL FOR AN ACT

RELATING TO INVESTIGATIVE ACCESS FOR UNLICENSED ACTIVITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 436B-26.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§]~~ §436B-26.5 ~~[§]~~ Citation for unlicensed activity; civil
4 penalties ~~[.];~~ investigative access. (a) In addition to any
5 other remedy available, the department's investigator may issue
6 citations to persons acting in the capacity of or engaging in
7 business within the State without having a license previously
8 obtained under and in compliance with this chapter, the
9 licensing laws for the respective profession or vocation, and
10 the rules adopted thereunder.

11 (b) Each citation shall be in writing and shall describe
12 the basis of the citation, including the specific statutory
13 provisions alleged to have been violated, and may contain an
14 order of abatement, and an assessment of civil penalties as
15 provided in this section. All penalties collected under this
16 section shall be deposited in the special fund established under
17 section 26-9(o).

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1 (c) Any person who violates this section shall be assessed
2 a civil penalty of not more than \$500 or forty per cent of the
3 total amount of the goods and services provided or to be
4 provided, whichever is greater, for the first violation; not
5 more than \$1,000 or forty per cent of the total amount of the
6 goods and services provided or to be provided, whichever is
7 greater, for the second violation; and not more than \$5,000 or
8 forty per cent of the total amount of the goods and services
9 provided or to be provided, whichever is greater, for any
10 subsequent violation.

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

15 (e) Any person cited under this section may submit a
16 written request to the director for a hearing, within twenty
17 days from the service of the citation, with respect to the
18 violations alleged, the scope of the order of abatement, or the
19 amount of the civil penalties assessed.

20 (f) If the person cited under this section timely notifies
21 the director of the request for a hearing, the director shall
22 afford an opportunity for a hearing under chapter 91. The

1 hearing shall be conducted by the director or the director may
2 designate a hearings officer to hold the hearing. The director
3 or any hearings officer designated by the director shall have
4 the power to issue subpoenas, administer oaths, hear testimony,
5 find facts, make conclusions of law, and issue a final order.

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

10 (h) The director may apply to the appropriate court for a
11 judgment to enforce the provisions of any final order issued by
12 the director or designated hearings officer pursuant to this
13 section, including the provision for abatement and civil
14 penalties imposed.

15 (i) If any party is aggrieved by the decision of the
16 director or the designated hearings officer, the party may
17 appeal in the manner provided in chapter 91 to the circuit court
18 of the circuit in which the party resides or has the party's
19 principal place of business or in which the action in question
20 occurred. The operation of an abatement order shall not be
21 stayed on appeal unless specifically ordered by a court of

1 competent jurisdiction after applying the stay criteria
2 enumerated in section 91-14(c).

3 (j) The sanctions and disposition authorized under this
4 section shall be separate from and in addition to all other
5 remedies either civil or criminal provided in any other
6 applicable statutory provision.

7 (k) In an investigation of a signed complaint alleging
8 unlicensed activity under chapter 444 or 448E for which a
9 citation may be issued, the department's investigator, upon
10 proper identification and between the hours of 7:00 a.m. and
11 7:00 p.m., shall be provided access to the public, commercial,
12 or residential premises of any business or site of work;
13 provided that in the case of occupied residential premises,
14 access shall be limited to exterior areas only. Any person who
15 fails to permit the access required under this subsection shall
16 be subject to a fine of not more than \$500.

17 Notwithstanding any other provision to the contrary, the
18 department may also apply to the appropriate court for a search
19 warrant to effectuate the purposes of this section.

20 [~~k~~] (l) The director may adopt rules pursuant to chapter
21 91 necessary [~~for~~] to effectuate the [~~purpose~~] purposes of this
22 section."

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

3 SECTION 3. This Act shall take effect on July 1, 2006.

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INTRODUCED BY: 

6

BY REQUEST

JUSTIFICATION SHEET

SB. NC 2299

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INVESTIGATIVE ACCESS FOR UNLICENSED ACTIVITY.

PURPOSE: To allow the investigators of the Department of Commerce and Consumer Affairs access to the commercial, public, or residential premises of any business or work site to investigate unlicensed activity.

MEANS: Amend section 436B-26.5, Hawaii Revised Statutes.

JUSTIFICATION: Section 436B-26.5, Hawaii Revised Statutes, authorizes the Department's investigators to issue citations to persons acting or engaging in business without a license. Investigative access to business premises and work sites is a necessary component of the Department's existing statutory authority to investigate and issue citations for unlicensed conduct.

This bill would amend section 436B-26.5, Hawaii Revised Statutes, to allow the Department's investigators access to business premises and work sites on commercial, public, and residential property for the purpose of investigating signed complaints alleging unlicensed activity under chapter 444 or 448E, Hawaii Revised Statutes. Access would be limited to the hours between 7:00 a.m. and 7:00 p.m., occur upon proper identification of the Department's investigator, and would be restricted to exterior areas on occupied residential property. Failure to permit access would result in a fine. The bill would address an ongoing problem involving gated communities, where the Department's investigators have been denied access to conduct investigations of unlicensed activity.

The access authorized in this bill is analogous to the access Department of Labor and Industrial Relations personnel possess pursuant to section 378-28.5, Hawaii Revised Statutes, to investigate complaints of unlawful employment practices, section 398-23, Hawaii Revised Statutes, to investigate complaints involving family leave, section 371-11, Hawaii Revised Statutes, to investigate and gather data regarding wages, hours, and conditions and practices of employment, and section 388-9, Hawaii Revised Statutes, to investigate violations of the wages and compensation law.

Impact on the public: The bill will enhance the Department's abilities to effectively investigate licensing law violations to the public's benefit.

Impact on the department and other agencies:

None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2006.