

JAN 19 2007

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

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

1 SECTION 1. Chapter 444, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "5444- Record of complaints against contractors. The
5 department shall develop and maintain an electronic database
6 containing a current history of all complaints filed against a
7 contractor under the contractor's name, and including cross-
8 references to the contractor and any complaints filed against
9 the contractor individually under a different company name, in a
10 partnership or joint venture, or as an RME of a contracting
11 entity holding a contractors license. All information in the
12 database shall be made available without charge to the public
13 through electronic posting on an Internet site established by
14 the department; provided that the department may charge a
15 reasonable fee for the reproduction and transmission of such
16 information in a printed form."



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

3 **"§444-2 Exemptions.** This chapter shall not apply to:

4 (1) Officers and employees of the United States, the
5 State, or any county while in the performance of their
6 governmental duties;

7 (2) Any person acting as a receiver, trustee in
8 bankruptcy, personal representative, or any other
9 person acting under any order or authorization of any
10 court;

11 (3) A person who sells or installs any finished products,
12 materials, or articles of merchandise that are not
13 actually fabricated into and do not become a permanent
14 fixed part of the structure, or to the construction,
15 alteration, improvement, or repair of personal
16 property;

17 (4) Any project or operation for which the aggregate
18 contract price for labor, materials, taxes, and all
19 other items is not more than \$1,000. This exemption
20 shall not apply in any case where a building permit is
21 required regardless of the aggregate contract price,
22 nor where the undertaking is only a part of a larger



1 or major project or operation, whether undertaken by
2 the same or a different contractor or in which a
3 division of the project or operation is made in
4 contracts of amounts not more than \$1,000 for the
5 purpose of evading this chapter or otherwise;

6 (5) A registered architect or professional engineer acting
7 solely in the person's professional capacity;

8 (6) Any person who engages in the activities regulated in
9 this chapter as an employee with wages as the person's
10 sole compensation; provided that the employee is not
11 the RME for a contracting entity;

12 (7) Owners or lessees of property who build or improve
13 residential, farm, industrial, or commercial buildings
14 or structures on property for their own use, or for
15 use by their grandparents, parents, siblings, or
16 children and who do not offer the buildings or
17 structures for sale or lease; provided that this
18 exemption shall not apply to electrical or plumbing
19 work that must be performed only by persons or
20 entities licensed under this chapter, or to the owner
21 or lessee of the property if the owner or lessee is
22 licensed under chapter 448E. In all actions brought



1 under this paragraph, proof of the sale or lease, or
2 offering for sale or lease, of the structure not more
3 than one year after completion is prima facie evidence
4 that the construction or improvement of the structure
5 was undertaken for the purpose of sale or lease;
6 provided that this provision shall not apply to
7 residential properties sold or leased to employees of
8 the owner or lessee; provided further that in order to
9 qualify for this exemption the owner or lessee must
10 register for the exemptions as provided in section
11 444-9.1. Any owner or lessee of property found to
12 have violated this paragraph shall not be permitted to
13 engage in any activities pursuant to this paragraph or
14 to register under section 444-9.1 for a period of
15 three years. There is a presumption that an owner or
16 lessee has violated this section, when the owner or
17 lessee obtains an exemption from the licensing
18 requirements of section 444-9 more than once in two
19 years;

20 (8) Any joint venture if all members thereof hold licenses
21 issued under this chapter;



1 (9) Any project or operation where it is determined by the
2 board that less than ten persons are qualified to
3 perform the work in question and that the work does
4 not pose a potential danger to public health, safety,
5 and welfare; or

6 (10) Any public works project that requires additional
7 qualifications beyond those established by the
8 licensing law and which is deemed necessary and in the
9 public interest by the contracting agency."

10 SECTION 3. Section 444-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§444-4 Powers and duties of board.** In addition to any
13 other powers and duties authorized by law, the board shall:

- 14 (1) Grant licenses, including conditional licenses, to
15 contractors pursuant to this chapter and rules;
- 16 (2) Adopt, amend, or repeal [such] rules [as] that the
17 board may deem proper fully to effectuate this chapter
18 and carry out the purpose thereof, which is the
19 protection of the general public. All rules shall be
20 approved by the governor and the director, and when
21 adopted pursuant to chapter 91, shall have the force
22 and effect of law. The rules may forbid acts or



1 practices deemed by the board to be detrimental to the
2 accomplishment of the purpose of this chapter. The
3 rules may require contractors to make reports to the
4 board containing any items of information [æ] that
5 will better enable the board to enforce this chapter
6 and rules, or [æ] that will better enable the board
7 from time to time to amend the rules more fully to
8 effectuate the purposes of this chapter. The rules
9 may require contractors to furnish reports to owners
10 containing any matters of information [æ] that the
11 board deems necessary to promote the purpose of this
12 chapter. The enumeration of specific matters which
13 may properly be made the subject of rules shall not be
14 construed to limit the board's general power to make
15 all rules necessary fully to effectuate the purpose of
16 this chapter;

- 17 (3) Adopt rules pursuant to chapter 91 necessary to
18 implement [~~the provisions of~~] this chapter relating to
19 CFCs, including, but not limited to, procedures for
20 the disposal of air conditioning units utilizing CFCs
21 that include mandatory recovery and recycling of CFCs;



- 1 (4) Enforce this chapter and rules adopted pursuant
2 thereto;
- 3 (5) Suspend or revoke any license for any cause prescribed
4 by this chapter, or for any violation of the rules,
5 and refuse to grant, renew, restore, or reinstate any
6 license for any cause which would be grounds for
7 revocation or suspension of a license;
- 8 (6) Publish and distribute pamphlets and circulars
9 containing any information [~~as~~] that the board deems
10 proper to further the accomplishment of the purpose of
11 this chapter;
- 12 (7) Contract for professional testing services to prepare,
13 administer, and grade the examinations for applicants
14 [~~as~~] that may be required for the purposes of this
15 chapter. The board shall determine the scope and
16 length of the examinations, whether the examinations
17 shall be oral, written, or both, and the score that
18 shall be deemed a passing score;
- 19 (8) Order summary suspension of a license; provided that
20 summary suspensions may be delegated in accordance
21 with section 436B-23;



1 (9) Issue informal nonbinding interpretations or
2 declaratory rulings, and conduct contested case
3 proceedings pursuant to chapter 91[~~7~~and]. When a
4 licensed contractor is subject to discipline for any
5 cause prescribed in this chapter, or for any violation
6 of the rules adopted pursuant to this section, in
7 addition to any remedies provided by law that the
8 board may impose on the contractor, the board may also
9 award reasonable attorney fees to the injured person;
10 and

11 (10) Subpoena witnesses and documents, administer oaths,
12 receive affidavits and oral testimony, including
13 telephonic communications."

14 SECTION 4. Section 444-11, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) No license hereunder shall be issued to:

17 (1) Any person unless the person has filed an application
18 and paid the applicable fees;

19 (2) Any person unless the person meets the experience
20 requirements as prescribed in the board's rules;
21 provided that the board may accept experience acquired



- 1 on a self-employed or unlicensed basis if the
2 experience can be verified;
- 3 (3) Any person or RME of a contracting entity who does not
4 possess a history of honesty, truthfulness, financial
5 integrity, and fair dealing; provided that any person
6 or RME of a contracting entity who during the six
7 years prior to application has failed to satisfy an
8 undisputed debt or a judgment relating to services or
9 materials rendered in connection with operations as a
10 contractor shall be presumed not to possess a history
11 of financial integrity;
- 12 (4) Any person unless the person has successfully passed a
13 written examination as prescribed by the board;
- 14 (5) Any individual unless the individual is age eighteen
15 years or more;
- 16 (6) Any joint venture which is not exempt under section
17 444-2(8) unless the contracting business thereof is
18 under the direct management of a member or employee
19 thereof, and unless the member or employee holds an
20 appropriate license;
- 21 (7) Any individual who is unable to qualify as a
22 contractor or any partnership or corporation, unless



1 the contracting business of the individual,
2 partnership, or corporation is under the direct
3 management of an employee, partner, or officer thereof
4 who holds an appropriate license;

5 (8) Any person unless the person submits satisfactory
6 proof to the board that the person has obtained
7 workers' compensation insurance, or has been
8 authorized to act as a self-insurer under chapter 386
9 or is excluded from the requirements of chapter 386;

10 (9) Any person unless the person submits satisfactory
11 proof to the board that the person has obtained
12 liability insurance; or

13 (10) Any person unless the person submits a bond if
14 required by the board under section 444-16.5."

15 SECTION 5. Section 444-17, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§444-17 Revocation, suspension, and renewal of licenses.**

18 In addition to any other actions authorized by law, the board
19 [~~may~~] shall revoke any license issued pursuant to this section,
20 or suspend the right of a licensee to use a license, or refuse
21 to renew a license for any cause authorized by law, including
22 but not limited to the following:



- 1 (1) Any dishonest, fraudulent, or deceitful act as a
2 contractor that causes substantial damage to another;
- 3 (2) Engaging in any unfair or deceptive act or practice as
4 prohibited by section 480-2;
- 5 (3) Abandonment of any construction project or operation
6 without reasonable or legal excuse;
- 7 (4) Wilful diversion of funds or property received for
8 prosecution or completion of a specific construction
9 project or operation, or for a specified purpose in
10 the prosecution or completion of any construction
11 project or operation, and the use thereof for any
12 other purpose;
- 13 (5) Wilful departure from, or wilful disregard of plans or
14 specifications in any material respect without consent
15 of the owner or the owner's duly authorized
16 representative, that is prejudicial to a person
17 entitled to have the construction project or operation
18 completed in accordance with those plans and
19 specifications;
- 20 (6) Wilful violation of any law of the State, or any
21 county, relating to building, including any violation



- 1 of any applicable rule of the department of health, or
2 of any applicable safety or labor law;
- 3 (7) Failure to make and keep records showing all
4 contracts, documents, records, receipts, and
5 disbursements by a licensee of all the licensee's
6 transactions as a contractor for a period of not less
7 than three years after completion of any construction
8 project or operation to which the records refer or to
9 permit inspection of those records by the board;
- 10 (8) When the licensee being a partnership or a joint
11 venture permits any partner, member, or employee of
12 the partnership or joint venture who does not hold a
13 license to have the direct management of the
14 contracting business thereof;
- 15 (9) When the licensee being a corporation permits any
16 officer or employee of the corporation who does not
17 hold a license to have the direct management of the
18 contracting business thereof;
- 19 (10) Misrepresentation of a material fact by an applicant
20 in obtaining a license;

- 1 (11) Failure of a licensee to complete in a material
2 respect any construction project or operation for the
3 agreed price if the failure is without legal excuse;
- 4 (12) Wilful failure in any material respect to comply with
5 this chapter or the rules adopted pursuant thereto;
- 6 (13) Wilful failure or refusal to prosecute a project or
7 operation to completion with reasonable diligence;
- 8 (14) Wilful failure to pay when due a debt incurred for
9 services or materials rendered or purchased in
10 connection with the licensee's operations as a
11 contractor when the licensee has the ability to pay or
12 when the licensee has received sufficient funds
13 therefor as payment for the particular operation for
14 which the services or materials were rendered or
15 purchased;
- 16 (15) The false denial of any debt due or the validity of
17 the claim therefor with intent to secure for a
18 licensee, the licensee's employer, or other person,
19 any discount of the debt or with intent to hinder,
20 delay, or defraud the person to whom the debt is due;
- 21 (16) Failure to secure or maintain workers' compensation
22 insurance, unless the licensee is authorized to act as



- 1 a self-insurer under chapter 386 or is excluded from
2 the requirements of chapter 386;
- 3 (17) Entering into a contract with an unlicensed contractor
4 involving work or activity for the performance of
5 which licensing is required under this chapter;
- 6 (18) Performing service on a residential or commercial air
7 conditioner, utilizing CFCs, without using refrigerant
8 recovery and recycling equipment;
- 9 (19) Performing service on any air conditioner [~~after~~
10 ~~January 1, 1994,~~] without successful completion of an
11 appropriate training course in the recovery and
12 recycling of CFC and HCFC refrigerants, which included
13 instruction in the proper use of refrigerant recovery
14 and recycling equipment that is certified by
15 Underwriters Laboratories, Incorporated;
- 16 (20) Violating chapter 342C; [~~and~~]
- 17 (21) Failure to pay delinquent taxes, interest, and
18 penalties assessed under chapter 237 that relate to
19 the business of contracting, or to comply with the
20 terms of a conditional payment plan with the
21 department of taxation for the payment of such
22 delinquent taxes, interest, and penalties[-];



- 1 (22) Failure to supervise the artisanship of subcontractors
- 2 or employees to ensure compliance with any material
- 3 manufacturer's specifications or instructions so as
- 4 not to void any manufacturer's warranties; and
- 5 (23) Gross negligence with regard to acts undertaken on a
- 6 construction project that would call into question the
- 7 requisite knowledge, skill, qualification, or fitness
- 8 of a contractor for licensure."

9 SECTION 6. Section 444-26, Hawaii Revised Statutes, is
 10 amended by amending subsection (a) to read as follows:

11 "(a) The board [~~is authorized to~~] may establish and
 12 maintain a contractors recovery fund from which any person
 13 injured by an act, representation, transaction, or conduct of a
 14 duly licensed contractor, which is in violation of this chapter
 15 or the rules adopted pursuant thereto, may recover by order of
 16 the circuit court or district court of the judicial circuit
 17 where the violation occurred, an amount of not more than
 18 [~~\$12,500~~] \$25,000 per contract, regardless of the number of
 19 persons injured under the contract, for damages sustained by the
 20 act, representation, transaction, or conduct. Recovery from the
 21 fund shall be limited to the actual damages suffered by the
 22 claimant, including court costs and fees as set by law, and



1 reasonable attorney fees as determined by the court; provided
2 that recovery from the fund shall not be awarded to persons
3 injured by an act, representation, transaction, or conduct of a
4 contractor whose license was suspended, revoked, forfeited,
5 terminated, or in an inactive status at the time the claimant
6 entered into the contract with the contractor."

7 SECTION 7. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before its effective date.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval.

13

INTRODUCED BY: 

Report Title:

Contractors; Financial Responsibility; Complaints Database

Description:

Establishes complaints database on contractors; authorizes contractors license board to award attorneys fees in proceedings for violation of chapter, the law regulating contractors; requires board to revoke a license for certain violations of chapter 444; requires license revocation for a contractor's failure to properly supervise employees and subcontractors and for gross negligence.

