

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO OWNER-BUILDERS.

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

- 1           SECTION 1. 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;



1           (4) Any project or operation for which the aggregate  
2           contract price for labor, materials, taxes, and all  
3           other items is not more than \$1,000. This exemption  
4           shall not apply in any case where a building permit is  
5           required regardless of the aggregate contract price,  
6           nor where the undertaking is only a part of a larger  
7           or major project or operation, whether undertaken by  
8           the same or a different contractor or in which a  
9           division of the project or operation is made in  
10          contracts of amounts not more than \$1,000 for the  
11          purpose of evading this chapter or otherwise;

12          (5) A [~~registered~~] licensed architect or professional  
13          engineer acting solely in the person's professional  
14          capacity;

15          (6) Any person who engages in the activities regulated in  
16          this chapter as an employee with wages as the person's  
17          sole compensation;

18          (7) Owners or lessees of property who build or improve  
19          residential, farm, industrial, or commercial buildings  
20          or structures on property for their own use, or for  
21          use by their grandparents, parents, siblings, or  
22          children and who do not offer the buildings or



1 structures for sale or lease; provided that this  
2 exemption shall not apply to electrical or plumbing  
3 work that must be performed only by persons or  
4 entities licensed under this chapter, or to the owner  
5 or lessee of the property if the owner or lessee is  
6 licensed under chapter 448E. In all actions brought  
7 under this paragraph, proof of the sale or lease, or  
8 offering for sale or lease, of the structure not more  
9 than ~~[one year]~~ two years after ~~[completion is]~~  
10 closing of the building permit, unless the sale was  
11 caused by any of the following unforeseen  
12 circumstances:  
13 (A) The death of the owner's spouse or home co-owner;  
14 (B) The owner becoming eligible to receive  
15 unemployment compensation; or  
16 (C) The divorce of the owner;  
17 shall be prima facie evidence that the construction or  
18 improvement of the structure was undertaken for the  
19 purpose of sale or lease; provided that this provision  
20 shall not apply to residential properties sold or  
21 leased to employees of the owner or lessee; provided  
22 further that in order to qualify for this exemption



1 the owner or lessee must register for the [exemptions]  
2 exemption as provided in section 444-9.1. Any owner  
3 or lessee of property found to have violated this  
4 paragraph shall not be permitted to engage in any  
5 activities pursuant to this paragraph or to register  
6 under section 444-9.1 for a period of three years.

7 There is a presumption that an owner or lessee has  
8 violated this section, when the owner or lessee  
9 obtains an exemption from the licensing requirements  
10 of section 444-9 more than once in [~~two~~] three years;

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

13 (9) Any project or operation where it is determined by the  
14 board that less than ten persons are qualified to  
15 perform the work in question and that the work does  
16 not pose a potential danger to public health, safety,  
17 and welfare; or

18 (10) Any public works project that requires additional  
19 qualifications beyond those established by the  
20 licensing law and which is deemed necessary and in the  
21 public interest by the contracting agency."



1 SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) To qualify for the exemption under section 444-2(7),  
4 the county shall provide the applicant with a disclosure  
5 statement in substantially the following form:

6 "Disclosure Statement

7 State law requires construction to be done by licensed  
8 contractors. You have applied for a permit under an  
9 exemption to that law. The exemption provided in section  
10 444-2(7), Hawaii Revised Statutes, allows you, as the owner  
11 or lessee of your property, to act as your own general  
12 contractor even though you do not have a license. You must  
13 supervise the construction yourself. You must also hire  
14 licensed subcontractors. The building must be for your own  
15 use and occupancy. It may not be built for sale or lease.  
16 If you sell or lease a building you have built yourself  
17 within [~~one year~~] two years after the [~~construction is~~  
18 ~~complete,~~] closing of the building permit, unless the sale  
19 was caused by any of the following unforeseen  
20 circumstances:

21 (A) The death of the owner's spouse or home co-owner;



1        (B) The owner becoming eligible to receive unemployment  
2                    compensation; or

3        (C) The divorce of the owner;

4            the law will presume that you built it for sale or lease,  
5            which is a violation of the exemption, and you may be  
6            prosecuted for this. It is your responsibility to make  
7            sure that subcontractors hired by you have licenses  
8            required by state law and by county licensing ordinances.  
9            Electrical or plumbing work must be performed by  
10           contractors licensed under chapters 448E and 444, Hawaii  
11           Revised Statutes. Any person working on your building who  
12           is not licensed must be your employee which means that you  
13           must deduct F.I.C.A. and withholding taxes and provide  
14           workers' compensation for that employee, all as prescribed  
15           by law. Your construction must comply with all applicable  
16           laws, ordinances, building codes, and zoning regulations.  
17           If you violate section 444-2(7) or fail to comply with the  
18           requirements set forth in this disclosure statement, you  
19           may be fined \$5,000 or forty per cent of the appraised  
20           value of the building as determined by the county tax  
21           appraiser, whichever is greater, for the first offense; and  
22           \$10,000 or fifty per cent of the appraised value of the



1 building as determined by the county tax appraiser,  
2 whichever is greater for any subsequent offense."  
3 The county shall not issue a building permit to the owner-  
4 applicant until the applicant signs a statement that the  
5 applicant has read and understands the disclosure [~~form~~]  
6 statement."

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY: Norman Sabornie



**Report Title:**

Contractors; Owner-Builders

**Description:**

Increases period prohibiting sale or lease by owner-builder from 1 to 2 years, and requires that an exemption from licensing requirements is given no more than once in 3 years.

