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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 shall be prima facie  
11 evidence that the construction or improvement of the  
12 structure was undertaken for the purpose of sale or  
13 lease[~~+~~], unless the sale or lease is due to  
14 circumstances beyond the control of the owner or  
15 lessee, as determined by the board; provided that this  
16 provision shall not apply to residential properties  
17 sold or leased to employees of the owner or lessee;  
18 provided further that in order to qualify for this  
19 exemption the owner or lessee must register for the  
20 [~~exemptions~~] exemption as provided in section 444-9.1.  
21 Any owner or lessee of property found to have violated  
22 this paragraph shall not be permitted to engage in any

1 activities pursuant to this paragraph or to register  
2 under section 444-9.1 for a period of three years.

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

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

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

14 (10) Any public works project that requires additional  
15 qualifications beyond those established by the  
16 licensing law and which is deemed necessary and in the  
17 public interest by the contracting agency."

18 SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§444-9.1 Issuance of building permits; owner-builder**

21 **registration.** (a) Each county or other local subdivision of  
22 the State which requires the issuance of a permit as a condition

1 precedent to the construction, alteration, improvement,  
2 demolition, or repair of any building or structure shall also  
3 require that each applicant for such a permit file as a  
4 condition to the issuance of a permit a statement that the  
5 applicant and all specialty contractors are licensed under this  
6 chapter, giving the license numbers and stating that the  
7 licenses are in full force and effect, or, if the applicant is  
8 exempt from this chapter, the basis for the claimed exemption;  
9 provided that if the applicant claims an exemption under section  
10 444-2(7), the applicant shall also be required to certify that  
11 the building or structure is for the applicant's personal use  
12 and not for use or occupancy by the general public. Each county  
13 or local subdivision of the State shall maintain an owner-  
14 builder registration list which shall contain the following  
15 information: (1) the name of any owner or lessee who claims an  
16 exemption from this chapter as provided in section 444-2(7); (2)  
17 the address of the property where exempt building or improvement  
18 activity is to occur; (3) a description of the type of building  
19 or improvement activity to occur; (4) the approximate dates of  
20 construction activity; and (5) whether any electrical or  
21 plumbing work is to be performed and if so, the name and license  
22 number of the person or entity who will do the work. The

1 absence of such registration is prima facie evidence that the  
2 exemption in section 444-2(7) does not apply.

3 (b) The county shall verify the license against a list of  
4 licensed contractors provided by the state contractors licensing  
5 board, which list shall be updated at least quarterly. The  
6 county shall also verify that the applicant is in fact the  
7 contractor so licensed or the contractor's duly authorized  
8 agent.

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

12 "Disclosure Statement

13 State law requires construction to be done by licensed  
14 contractors. You have applied for a permit under an  
15 exemption to that law. The exemption provided in section  
16 444-2(7), Hawaii Revised Statutes, allows you, as the owner  
17 or lessee of your property, to act as your own general  
18 contractor even though you do not have a license. You must  
19 supervise the construction yourself. You must also hire  
20 licensed subcontractors. The building must be for your own  
21 use and occupancy. It may not be built for sale or lease.

22 If you sell or lease a building you have built yourself

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

1 cent of the appraised value of the building as determined  
2 by the county tax appraiser, whichever is greater for any  
3 subsequent offense."

4 The county shall not issue a building permit to the owner-  
5 applicant until the applicant signs a statement that the  
6 applicant has read and understands the disclosure [~~form.~~]  
7 statement.

8 (d) A county building inspector or other building official  
9 shall report to the regulated industries complaints office the  
10 name and address of any person, who, in the opinion of the  
11 building inspector or official, has violated this chapter by  
12 accepting or contracting to accomplish work which would classify  
13 the person as a contractor under this chapter.

14 (e) Any person who obtains a permit under section 444-2(7)  
15 shall comply with all of the requirements specified in the  
16 disclosure statement in subsection (c). Failure to comply is a  
17 violation of section 444-2(7)."

18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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



**Report Title:**

Contractors; Owner-Builders

**Description:**

Increases period prohibiting sale or lease by owner-builder from 1 to 2 years unless due to circumstances beyond control of the owner or lessee as determined by the contractors licensing board; requires that an exemption from licensing requirements is given no more than once in 3 years; clarifies violation provisions. (SD1)