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# A BILL FOR AN ACT

RELATING TO THE OWNER-BUILDER EXEMPTION.

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

1           SECTION 1. In Hawaii, a contractor's license is required  
2 to obtain a building permit from the various counties, unless  
3 the applicant is an owner-builder. The owner-builder exemption  
4 allows owners to perform their own home improvements and  
5 construction. As an owner-builder, an owner can hire employees  
6 and contract directly with subcontractors to construct  
7 improvements on the owner's property. However, an owner-builder  
8 also takes on all of the responsibilities associated with acting  
9 as a general contractor, including compliance with building  
10 codes, occupational safety and health regulations, wage  
11 standards, and taxes, among other things.

12           Oftentimes, owners are advised by unlicensed contractors to  
13 obtain an owner-builder permit so that the owner can hire or  
14 contract with an unlicensed person. Too often, owners are not  
15 fully aware of the risks and responsibilities they have assumed  
16 until it is too late.

17           The purpose of this Act is to limit the application of the  
18 owner-builder exemption to residential or farm property only, to



1 improve the ability of the regulated industries complaints  
2 office to investigate possible violations of the owner-builder  
3 law, and to offer additional disclosures for owner-builders when  
4 they enter into agreements with licensed subcontractors.

5 SECTION 2. Section 444-2.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§444-2.5 Owner-builder exemption.** (a) This chapter  
8 shall not apply to owners or lessees of property who build or  
9 improve residential[~~7~~] or farm[~~7~~, ~~industrial~~, ~~or commercial~~]  
10 buildings or structures on property for their own use, or for  
11 use by their grandparents, parents, siblings, or children, and  
12 who do not offer the buildings or structures for sale or lease;  
13 provided that:

14 (1) To qualify for an exemption under this section, the  
15 owner or lessee shall register for the exemption as  
16 provided in section 444-9.1; [~~and~~]

17 (2) The exemption under this section shall not apply to  
18 electrical or plumbing work that must be performed  
19 only by persons or entities licensed in accordance  
20 with this chapter, unless the owner or lessee of the  
21 property is licensed for such work under chapter  
22 448E[~~-~~];



- 1        (3) An owner or lessee exempted under this section shall:
- 2            (A) Supervise the construction activity on the exempt
- 3            buildings or structures;
- 4            (B) Hire subcontractors appropriately licensed under
- 5            this chapter to perform any part of the
- 6            construction activity for which a license is
- 7            required;
- 8            (C) Ensure that any electrical or plumbing work is
- 9            performed by persons and entities appropriately
- 10           licensed under this chapter or chapter 448E;
- 11           (D) Deduct Federal Insurance Contributions Act and
- 12           withholding taxes and provide workers'
- 13           compensation insurance for persons working on the
- 14           construction activity who are not licensed under
- 15           this chapter or chapter 448E and who shall be
- 16           considered employees of the owner or lessee; and
- 17           (E) Ensure that the construction activity complies
- 18           with all applicable laws, ordinances, building
- 19           codes, and zoning regulations;
- 20        (4) Until completion of the construction activity, an
- 21        owner or lessee exempted under this section shall make



1           available the following records for immediate  
2           inspection upon request by the department:

3           (A) A copy of the building permit application;  
4           (B) A copy of the issued building permit;  
5           (C) Copies of all contracts with the names of all  
6           persons who performed or are performing work on  
7           the exempt buildings and structures; and  
8           (D) Proof of payment to all persons contracted to  
9           work on the exempt buildings and structures; and

10          (5) Upon completion of the construction activity, an owner  
11          or lessee exempted under this section shall keep and  
12          maintain the records identified in paragraph (4) for a  
13          period of three years from completion of the  
14          construction activity and shall make the records  
15          available for inspection within seven business days  
16          upon request by the department.

17          (b) Proof of the sale or lease, or offering for sale or  
18 lease, of the structure within one year after completion shall  
19 be prima facie evidence that the construction or improvement of  
20 the structure was undertaken for the purpose of sale or lease;  
21 provided that this subsection shall not apply to:



- 1           (1) Residential properties sold or leased to employees of  
2           the owner or lessee;
- 3           (2) Construction or improvements performed pursuant to an  
4           approved building permit where the estimated valuation  
5           of work to be performed, as reflected in the building  
6           permit, is less than \$10,000; or
- 7           (3) Any sale or lease caused by an eligible unforeseen  
8           hardship as determined by the board pursuant to  
9           subsection (c).
- 10          (c) The board shall determine the eligibility of an  
11 unforeseen hardship claimed by an owner under subsection (b);  
12 provided that an alleged unforeseen hardship shall not be deemed  
13 eligible if the board determines that the construction or  
14 improvement of the structure was undertaken for the purpose of  
15 sale or lease. An exemption for an unforeseen hardship shall  
16 not be denied solely because of lack of completion, as the term  
17 is defined in subsection (e). An owner seeking a determination  
18 of eligibility of an unforeseen hardship shall:
- 19          (1) Be in compliance with the requirements set forth in  
20          the disclosure statement required to be provided under  
21          section 444-9.1; and



1           (2) Submit a written application to the board at any time  
2           prior to selling, leasing, or offering to sell or  
3           lease the property describing the nature of the  
4           applicant's unforeseen hardship. The application  
5           shall include supporting documentation detailing the  
6           hardship, such as:

- 7           (A) Evidence of receipt of unemployment compensation;
- 8           (B) Tax returns;
- 9           (C) Medical records;
- 10          (D) Bank statements;
- 11          (E) Divorce decrees ordering sale of property;
- 12          (F) Mortgage default letters; or
- 13          (G) Bankruptcy filings.

14 The board shall communicate its determination to the owner in  
15 writing within ninety days of receiving a completed application  
16 under this subsection.

17           (d) Any owner or lessee of property found to have violated  
18 this section shall not be permitted to engage in any activities  
19 pursuant to this section or to register under section 444-9.1  
20 for a period of three years. There is a rebuttable presumption  
21 that an owner or lessee has violated this section[7] when the



1 owner or lessee obtains an exemption from the licensing  
2 requirements of section 444-9 more than once in two years.

3 (e) For the purposes of this section, "completion" means  
4 the date of final inspection approval by the county.

5 (f) An owner or lessee exempted under this section shall  
6 not be eligible to recover from the contractors recovery fund.

7 (g) This section shall not apply to agricultural  
8 buildings, structures, or appurtenances thereto that do not  
9 require a building permit or are exempt from the building code."

10 SECTION 3. Section 444-23, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12 "(e) Any person who violates section 444-2.5 [~~or fails to~~  
13 ~~comply with the requirements set forth in the disclosure~~  
14 ~~statement required to be provided under section 444-9.1]~~ shall  
15 be fined:

16 (1) Up to \$5,000 or [forty] fifty per cent of the  
17 [appraised] value of the [building] construction or  
18 improvement as [determined by the county tax  
19 appraiser,] indicated on the building permit  
20 application, whichever is greater, and as determined  
21 based on a review of the circumstances of each case,  
22 for the first offense; and



1           (2) \$10,000 or [~~fifty~~] sixty per cent of the [~~appraised~~  
2           value of the [~~building~~] construction or improvement as  
3           ~~[determined by the county tax appraiser,~~] indicated on  
4           the building permit application, whichever is greater,  
5           for any subsequent offenses."

6           SECTION 4. Section 444-25.5, Hawaii Revised Statutes, is  
7 amended as follows:

8           1. By amending subsection (a) to read:

9           "(a) Prior to entering into a contract with a homeowner,  
10 or at the time a homeowner signs a contract, involving home  
11 construction or improvements [~~and prior to the application for a~~  
12 ~~building permit~~], licensed contractors shall:

13           (1) Explain verbally in detail to the homeowner all lien  
14           rights of all parties performing under the contract,  
15           including the homeowner, the contractor, any  
16           subcontractor, or any materialman supplying  
17           commodities or labor on the project;

18           (2) Explain verbally in detail the homeowner's option to  
19           demand bonding on the project, how the bond would  
20           protect the homeowner, and the approximate expense of  
21           the bond; and





1 (3) Disclose all information pertaining to the contract  
2 and its performance and any other relevant information  
3 that the board may require by rule."

4 2. By amending subsection (c) to read:

5 "(c) For the purpose of this section, "homeowner" means  
6 the owner or lessee of residential real property, including  
7 owners or lessees of condominium or cooperative units[-],  
8 notwithstanding owner-builder status."

9 SECTION 5. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 2013.



**Report Title:**

Owner-builders; Owner-builder Exemption; Fines

**Description:**

Sets forth specific responsibilities of and protections for owner-builders exempted from contractor licensing and other requirements; amends the fine schedule to be based on the circumstances of each case. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

