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

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[~~7~~];



- 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 all or part of the
- 6           construction activity;
- 7           (C) Ensure that any electrical or plumbing work is
- 8           performed by persons and entities appropriately
- 9           licensed under this chapter or chapter 448E;
- 10          (D) Deduct Federal Insurance Contributions Act and
- 11          withholding taxes, and provide workers'
- 12          compensation insurance for persons working on the
- 13          construction activity who are not licensed under
- 14          this chapter or chapter 448E and who shall be
- 15          considered employees of the owner or lessee; and
- 16          (E) Ensure that the construction activity complies
- 17          with all applicable laws, ordinances, building
- 18          codes, and zoning regulations;
- 19          (4) Until completion of the construction activity, an
- 20          owner or lessee exempted under this section shall make
- 21          available the following records for immediate
- 22          inspection upon request by the department:



- 1           (A) A copy of the building permit application;
- 2           (B) A copy of the issued building permit;
- 3           (C) Copies of all contracts with the names of all  
4           persons who performed or are performing work on  
5           the exempt buildings and structures; and
- 6           (D) Proof of payment to all persons contracted to  
7           work on the exempt buildings and structures; and
- 8       (5) Upon completion of the construction activity, an owner  
9       or lessee exempted under this section shall keep and  
10       maintain the records identified in paragraph (4) for a  
11       period of three years from completion of the  
12       construction activity and shall make such records  
13       available for inspection within seven business days  
14       upon request by the department.

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

- 20           (1) Residential properties sold or leased to employees of  
21           the owner or lessee;



1           (2) Construction or improvements performed pursuant to an  
2           approved building permit where the estimated valuation  
3           of work to be performed, as reflected in the building  
4           permit, is less than \$10,000; or

5           (3) Any sale or lease caused by an eligible unforeseen  
6           hardship as determined by the board pursuant to  
7           subsection (c).

8           (c) The board shall determine the eligibility of an  
9           unforeseen hardship claimed by an owner under subsection (b);  
10          provided that an alleged unforeseen hardship shall not be deemed  
11          eligible if the board determines that the construction or  
12          improvement of the structure was undertaken for the purpose of  
13          sale or lease. An exemption for an unforeseen hardship shall  
14          not be denied solely because of lack of completion, as the term  
15          is defined in subsection (e). An owner seeking a determination  
16          of eligibility of an unforeseen hardship shall:

17          (1) Be in compliance with the requirements set forth in  
18          the disclosure statement required to be provided under  
19          section 444-9.1; and

20          (2) Submit a written application to the board at any time  
21          prior to selling, leasing, or offering to sell or  
22          lease the property describing the nature of the



1 applicant's unforeseen hardship. The application  
2 shall include supporting documentation detailing the  
3 hardship, such as:

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

11 The board shall communicate its determination to the owner in  
12 writing within ninety days of receiving a completed application  
13 under this subsection.

14 (d) Any owner or lessee of property found to have violated  
15 this section shall not be permitted to engage in any activities  
16 pursuant to this section or to register under section 444-9.1  
17 for a period of three years. There is a rebuttable presumption  
18 that an owner or lessee has violated this section, when the  
19 owner or lessee obtains an exemption from the licensing  
20 requirements of section 444-9 more than once in two years.

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



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

3        (g) This section shall not apply to agricultural  
4 buildings, structures, or appurtenances thereto that do not  
5 require a building permit or are exempted from the building  
6 code."

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

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

13        (1) \$5,000 or [~~forty~~] fifty per cent of the [~~appraised~~]  
14 value of the [~~building~~] construction or improvement as  
15 [~~determined by the county tax appraiser,~~] indicated on  
16 the building permit application, whichever is greater,  
17 for the first offense; and

18        (2) \$10,000 or [~~fifty~~] sixty per cent of the [~~appraised~~]  
19 value of the [~~building~~] construction or improvement as  
20 [~~determined by the county tax appraiser,~~] indicated on  
21 the building permit application, whichever is greater,  
22 for any subsequent offenses."



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

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

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

8 (1) Explain verbally in detail to the homeowner all lien  
9 rights of all parties performing under the contract  
10 including the homeowner, the contractor, any  
11 subcontractor, or any materialman supplying  
12 commodities or labor on the project;

13 (2) Explain verbally in detail the homeowner's option to  
14 demand bonding on the project, how the bond would  
15 protect the homeowner, and the approximate expense of  
16 the bond; and

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

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

21 "(c) For the purpose of this section, "homeowner" means  
22 the owner or lessee of residential real property, including





1 owners or lessees of condominium or cooperative units[-],  
2 notwithstanding owner-builder status."

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act, upon its approval, shall take effect  
6 on July 1, 2013.

7



**Report Title:**

Owner-builders; Owner-builder Exemption; Responsibilities and Protections; Fines

**Description:**

Sets forth specific responsibilities of and protections for owner-builders exempted from licensing and other requirements under chapter 444, Hawaii Revised Statutes. (SD1)

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

