

HB 1202, HD1

Measure Title: RELATING TO BUSINESS.

Report Title: Unlicensed Contracting Offenses; Unlicensed Activity

Description: For unlicensed activity offenses pertaining to professional, vocational, and contractors licenses, excepts from criminal liability a licensee who corrects, with no lapse in licensure, the inadvertent failure to maintain licensing requirements. Effective January 1, 2100. (HB1202 HD1)

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): ITO, HAR, OSHIRO



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

TUESDAY, MARCH 19, 2013
9:30 A.M.

TESTIMONY ON HOUSE BILL NO. 1202 H.D.1
RELATING TO BUSINESS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1202 H.D.1, Relating to Business. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments in support of the bill.

House Bill No. 1202 H.D.1 clarifies that: (1) a licensee who inadvertently fails to maintain licensing requirements but who subsequently corrects the failure

Testimony on House Bill No. 1202 H.D.1
March 19, 2013
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so that there was no lapse in licensure shall not be guilty of a misdemeanor under §436B-27, Hawaii Revised Statutes ("HRS"); and (2) a contractor who inadvertently fails to maintain the licensing requirements in chapter 444, HRS, and who subsequently corrects the failure so that there was no lapse in licensure shall not be guilty of the offense of unlicensed contracting activity under §708-8300, HRS. The bill also has a defective effective date.

No hearing was held on the Senate companion bill, Senate Bill No. 1282.

RICO supports House Bill No. 1202 H.D.1, subject to a valid effective date. The amendment in Section 1 of the bill is the result of the collaborative efforts between RICO and the proponents of the bill. The revision in Section 2 of the bill on page 2, lines 5-8, represents language previously agreed upon among RICO, the Contractors' Board, and the proponents during the 2012 Legislative Session with regard to House Bill No. 1295 (Act 244).

Thank you for this opportunity to testify on House Bill No. 1202 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

BIA-HAWAII

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Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, March 19, 2013
9:30 a.m.
State Capitol - Conference Room 229

RE: H.B. 1202, H.D. 1, RELATING TO BUSINESS

Dear Chair Baker, Vice-Chair Galuteria, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **supports** H.B. 1202, H.D. 1, which, regarding to unlicensed activity offenses pertaining to professional, vocation, and contractors licenses, excepts from criminal liability a licensee who corrects, with no lapse in licensure, the inadvertent failure to maintain licensing requirements.

This bill amends language contained in Act 244, SLH 2012, and further clarifies that those who have inadvertently forgotten to renew their licenses, and who subsequently renew their licenses, are not treated as unlicensed contractors.

Thank you for the opportunity to express our views on this matter.

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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol website

March 19, 2013

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **SUPPORT OF H.B. 1202, HD1, RELATING TO BUSINESS.** For unlicensed activity offenses pertaining to professional, vocational, and contractors licenses, excepts from criminal liability a licensee who corrects, with no lapse in licensure, the inadvertent failure to maintain licensing requirements. Effective January 1, 2100. (HB1202 HD1)

HEARING

DATE: Tuesday, March 19, 2013
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Galuteria and Members of the Committee,

The General Contractors Association (GCA) is an organization comprised of over six hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA **strongly supports** the passage of H.B. 1202, HD1, Relating to Business to further clarify the language relating to Unlicensed Contractors. In 2012, the Legislature passed H.B. 1295, HD3, SD1, CD1, which was enacted as Act 244, SLH 2012. Act 244, SLH 2012 was passed to provide the Office of Consumer Protection with the ability to prosecute habitual unlicensed contracting activity and unlicensed contracting fraud.

H.B. 1202, HD1 amends the language of Act 244, SLH 2012 to clarify that individuals and firms licensed by the state under both Chapters 436B and 444, Hawaii Revised Statutes are not wrongfully penalized. This bill amends these sections to clarify that those who have inadvertently forgotten to renew their licenses, and who subsequently renew their licenses are not treated as unlicensed contractors. This amendment is important to further clarify what would not be included as a penalty, especially because any penalty to section 708-8300 would result in criminal penalties. The GCA supports the proposed amendment, to clarify the intent of Act 244, SLH 2012, and recommends that H.B. 1202, HD1 be passed by this Committee with an effective date of upon approval.

The GCA has been working closely with the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs and other parties on this bill.

Thank you for this opportunity to present our views on this measure.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

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March 19, 2013

Testimony To: House Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: H.B. 1202, HD 1 - RELATING TO BUSINESS

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association of Hawaii represents the following nine separate and distinct associations.

HAWAII FLOORING ASSOCIATION
ROOFING CONTRACTORS ASSOCIATION OF HAWAII
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION
TILE CONTRACTORS PROMOTIONAL PROGRAM
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII
PAINTING AND DECORATING CONTRACTORS ASSOCIATION
PACIFIC INSULATION CONTRACTORS ASSOCIATION
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

We support this bill but feels that it needs an amendment in order to avoid a technicality.

The purpose of the bill is to excuse the inadvertent acts of a licensed contractor so that they are not subjected to unlicensed contractor penalties. This might occur where a contractor mails in their general liability or workers' compensation insurance premiums but not necessarily in time for it to be timely processed. Should anyone along the way make an error, whether that is the contractor's own staff, the post office or their insurance carrier, it is entirely possible that the contractor will technically have a "lapse" in their licensure.

The problem comes when this proposed bill is read in conjunction with existing law in Chapter 444-11.1(c) which mandates that the board cannot restore a forfeited license unless there is satisfactory proof of continuous insurance and bond coverage. We are informed by two (2) different insurance agencies which quite commonly write policies for contractors that should the contractor miss the renewal date by even a day, they are not inclined to go back and provide for "continuous coverage". They will of course, pick up the coverage as of the time of payment. Exceptions may be made for good accounts, timely payers and longtime customers but not everyone gets that kind of treatment and as a result, it is entirely feasible that an otherwise legitimate contractor could have a "lapse in their coverage".

The next Subsection of Chapter 444-11.1 allows that if a licensee restores their license within sixty (60) days, they are not subject to re-application. With this section then, we would propose that in this bill additional wording be added so that a lapse in licensure of less than sixty (60) days would also fall in the category of an excusable error. The language in both Section 1 and Section 2 should be changed to read that this applies for a licensee "... who subsequently corrects the failure so that there was a lapse of no more than sixty (60) days in licensure;".

Again, we fully support the law to pursue unlicensed contractors however, we think it would be a real shame to have otherwise legitimate licensed contractors "caught up" in the bureaucratic system and charged as an unlicensed contractor for the inadvertent failure of an insurance renewal premium arriving on time. We would like to remind the Committee that contractors pay very large workers' compensation premiums and we think it is totally understandable that in some cases they may have to make extra arrangements for financing which might take a few extra days thus pushing the renewal date to the limit.

Based on the above and with our suggest amendment, we have no problem with the bill and recommend its adoption.

Thank you.