

CHAPTER 444
CONTRACTORS

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Cross References

Sunset evaluations modified, see §§26H-4 and 26H-5.
Contractor repair act, see chapter 672E.

Case Notes

Defendant's motion to dismiss denied; because it was feasible that plaintiff's actions constituted that of a "professional engineer acting solely in [its] professional capacity", it was not apparent that [this chapter] barred plaintiff from bringing lawsuit. 216 F. Supp. 2d 1133 (2001).

Applying the ordinary meaning of "incidental and supplemental" to subsection (c), the legislature meant to provide specialty contractors with a limited ability to perform work outside of their licensed specialty area. However, the "incidental and supplemental" work must not make up the majority of the project, and must instead be "subordinate" and in addition to licensed work "of greater importance"; thus, contractors license board's refusal to consider cost and extent of work done by petitioner when determining whether that work qualified as "incidental and supplemental" was plainly erroneous in light of the clear meaning of "incidental and supplemental" in subsection (c). 129 H. 281, 298 P.3d 1045 (2013).

Where plaintiffs had no standing, as a labor union and subcontractor, to invoke the provisions of the procurement code because they were neither contractors nor bidders for the contract in question, and neither the procurement code nor this chapter authorized the circuit court to grant the remedies plaintiffs sought, and the court was presented with no other basis for granting the requested relief, the court correctly dismissed the suit. 121 H. 182 (App.), 216 P.3d 108 (2009).

" **§444-1 Definitions.** As used in this chapter:

"Board" means the contractors license board.

"Chlorofluorocarbon" or "CFC" means any member of the family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, CFC-14, CFC-113, CFC-114, CFC-115, CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds.

"Contractor" means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other

structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

"Contractor", to the extent allowed under federal law includes a subcontractor, a specialty contractor, and any person, general engineering, general building, or specialty contractor who performs any of the activities listed in the previous paragraph directly or indirectly for the federal government.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Hydrochlorofluorocarbon" or "HCFC" means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123 and any combination or mixture containing any of three hydrochlorofluorocarbon compounds.

"Investigator" means any person employed by the department of commerce and consumer affairs to investigate matters relating to any person who furnishes commodities or services for which a license is required from the department or any board or commission thereunder.

"Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs from a device for later reuse.

"RME" means responsible managing employee.

"Sale" means any arrangement between two or more persons as a result of which there is, or is to be, a transfer of property for a consideration.

If any provision of this section, or the application thereof to any person, or circumstances, is held to be invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. [L 1957, c 305, §1(s 1); Supp, §166A-1; HRS §444-1; am L 1969, c 56, §1; am L 1970, c 203, §2; am L 1974, c 112, §1(2); am L 1983, c 274, §2; am L 1984, c 98, §1; gen ch 1985; am L 1989, c 77, §9; am L 1990, c 316, §7; am L 1992, c 202, §62 and c 264, §8; am L 2000, c 286, §3]

Note

Definition of "state resident" for purposes of federal construction employment preferences. L 2000, c 286, §§1, 2.

Cross References

Ozone layer protection; CFCs, see chapter 342C.

Case Notes

Honolulu ordinances setting forth requirements for issuance of electrical contractor's license are invalid under §70-105, since this chapter indicates legislative intent to be the exclusive legislation applicable to contractors. 52 H. 550, 481 P.2d 116 (1971).

- " **§444-2 Exemptions.** This chapter shall not apply to:
- (1) Officers and employees of the United States, the State, or any county while in the performance of their governmental duties;
 - (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
 - (3) A person who sells or installs any finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
 - (4) Any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is not more than \$1,000. This exemption shall not apply in any case where a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts not more than \$1,000 for the purpose of evading this chapter or otherwise;
 - (5) A registered architect or professional engineer acting solely in the person's professional capacity;
 - (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person's sole compensation;
 - (7) Owner-builders exempted under section 444-2.5;
 - (8) Any joint venture if all members thereof hold licenses issued under this chapter;
 - (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that the work does

not pose a potential danger to public health, safety, and welfare; or

- (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency. [L 1957, c 305, §1(s 2); Supp, §166A-2; HRS §444-2; am L 1969, c 163, §1; am L 1974, c 112, §1(3); am L 1975, c 128, §1; am L 1976, c 200, pt of §1; am L 1985, c 215, §1; gen ch 1985; am L 1986, c 182, §1; am L 1989, c 142, §2; am L 1992, c 258, §1 and c 269, §2; am L 1996, c 172, §3; am L 2010, c 44, §3]

Case Notes

Defendant's motion to dismiss denied; because it was feasible that plaintiff's actions constituted that of a "professional engineer acting solely in [its] professional capacity", it was not apparent that [this chapter] barred plaintiff from bringing lawsuit. 216 F. Supp. 2d 1133 (2001).

Promise by defendant to pay plaintiff for work performed and moneys expended established an employment relationship and took matter outside of chapter under paragraph (7). 58 H. 257, 567 P.2d 824 (1977).

While a member of the public who violates the owner-builder exemption under paragraph (7) (1993) by selling or leasing the subject property within one year of completion is subject to the sanctions imposed under paragraph (7), that party is not precluded from enforcing the underlying contract with an unlicensed contractor. 92 H. 117 (App.), 987 P.2d 1015 (1999).

Pursuant to paragraph (7), homeowners did not have the benefit of, and, as to homeowners, contractor was not obligated to comply with, the disclosure provisions of §444-25.5. 109 H. 96 (App.), 123 P.3d 691 (2005).

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

- (1) To qualify for an exemption under this section, the owner or lessee shall register for the exemption as provided in section 444-9.1;
- (2) The exemption under this section shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed in accordance

with this chapter, unless the owner or lessee of the property is licensed for such work under chapter 448E;

- (3) An owner or lessee exempted under this section shall:
 - (A) Supervise the construction activity on the exempt buildings or structures;
 - (B) Hire subcontractors appropriately licensed under this chapter to perform any part of the construction activity for which a license is required;
 - (C) Ensure that any electrical or plumbing work is performed by persons and entities appropriately licensed under this chapter or chapter 448E;
 - (D) Deduct Federal Insurance Contributions Act and withholding taxes and provide workers' compensation insurance for persons working on the construction activity who are not licensed under this chapter or chapter 448E and who shall be considered employees of the owner or lessee; and
 - (E) Ensure that the construction activity complies with all applicable laws, ordinances, building codes, and zoning regulations;
- (4) Until completion of the construction activity, an owner or lessee exempted under this section shall make available the following records for immediate inspection upon request by the department:
 - (A) A copy of the building permit application;
 - (B) A copy of the issued building permit;
 - (C) Copies of all contracts with the names of all persons who performed or are performing work on the exempt buildings and structures; and
 - (D) Proof of payment to all persons contracted to work on the exempt buildings and structures; and
- (5) Upon completion of the construction activity, an owner or lessee exempted under this section shall keep and maintain the records identified in paragraph (4) for a period of three years from completion of the construction activity and shall make the records available for inspection within seven business days upon request by the department.
 - (b) Proof of the sale or lease, or offering for sale or lease, of the structure within one year after completion shall be prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this subsection shall not apply to:
 - (1) Residential properties sold or leased to employees of the owner or lessee;

- (2) Construction or improvements performed pursuant to an approved building permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000; or
- (3) Any sale or lease caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c).

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

- (1) Be in compliance with the requirements set forth in the disclosure statement required to be provided under section 444-9.1; and
- (2) Submit a written application to the board at any time prior to selling, leasing, or offering to sell or lease the property describing the nature of the applicant's unforeseen hardship. The application shall include supporting documentation detailing the hardship, such as:
 - (A) Evidence of receipt of unemployment compensation;
 - (B) Tax returns;
 - (C) Medical records;
 - (D) Bank statements;
 - (E) Divorce decrees ordering sale of property;
 - (F) Mortgage default letters; or
 - (G) Bankruptcy filings.

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

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

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

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

(g) This section shall not apply to agricultural buildings, structures, or appurtenances thereto that do not require a building permit or are exempt from the building code. [L 2010, c 44, §2; am L 2011, c 115, §1; am L 2013, c 176, §2]

" **§444-3 Contractors license board.** (a) There shall be a contractors license board of thirteen members.

(b) Of the board members:

(1) Ten shall be contractors who have been actively engaged in the contracting business for a period of not less than five years preceding the date of their appointment;

(2) Five shall be general engineering or building contractors, five shall be specialty contractors, and three shall be noncontractors. No member shall receive any compensation for the member's services, but each shall be reimbursed for necessary traveling expenses incurred in the performance of duties.

(c) Each county shall be represented on the board.

(d) No one, except the three noncontractor members, shall be eligible for appointment who does not at the time of the member's appointment hold a valid and unexpired license to operate as a contractor. [L 1957, c 305, §1(s 3); am L Sp 1959 2d, c 1, §§5, 6, 15; am L 1963, c 114, §3; am L 1965, c 279, §1; Supp, §166A-3; HRS §444-3; am L 1982, c 204, §8; am L 1983, c 124, §17 and c 275, §1; am L 1992, c 202, §63; am L 1993, c 322, §5]

" **§444-4 Powers and duties of board.** In addition to any other powers and duties authorized by law, the board shall:

(1) Grant licenses, including conditional licenses, to contractors pursuant to this chapter and rules;

(2) Adopt, amend, or repeal such rules as the board may deem proper fully to effectuate this chapter and carry out the purpose thereof, which is the protection of the general public. All rules shall be approved by the governor and the director, and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules may require contractors to make reports to the board containing any items of information as will better enable the board to enforce this chapter and rules, or as will better enable the board from time to time to amend the rules more fully to effectuate the purposes of this chapter. The rules may require

contractors to furnish reports to owners containing any matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the board's general power to make all rules necessary fully to effectuate the purpose of this chapter;

- (3) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs, including, but not limited to, procedures for the disposal of air conditioning units utilizing CFCs that include mandatory recovery and recycling of CFCs;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant, renew, restore, or reinstate any license for any cause which would be grounds for revocation or suspension of a license;
- (6) Publish and distribute pamphlets and circulars containing any information as the board deems proper to further the accomplishment of the purpose of this chapter;
- (7) Contract for professional testing services to prepare, administer, and grade the examinations for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of the examinations, whether the examinations shall be oral, written, or both, and the score that shall be deemed a passing score;
- (8) Order summary suspension of a license; provided that summary suspensions may be delegated in accordance with section 436B-23;
- (9) Issue informal nonbinding interpretations or declaratory rulings, and conduct contested case proceedings pursuant to chapter 91; and
- (10) Subpoena witnesses and documents, administer oaths, receive affidavits and oral testimony, including telephonic communications. [L 1957, c 305, §1 (pt of §4); am L 1965, c 96, §107; Supp, pt of §166A-4; HRS §444-4; am L 1973, c 117, §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1985, c 160, §1; am L 1989, c 77, §10 and c 268, §1; am L 1990, c 316, §8; am L 1992, c 202, §64; am L 1995, c 20, §1]

Case Notes

Rulemaking authority of the board. 51 H. 673, 466 P.2d 1009 (1970).

" **§444-5 Other assistants.** Subject to chapter 76 the department may employ and remove such administrative and clerical assistants as the contractors license board may require. [L 1957, c 305, §1 (pt of §4); am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; Supp, pt of §166A-4; am L 1967, c 85, §3; HRS §444-5; am L 1974, c 112, §1(4); am L 1982, c 204, §8; gen ch 1985; am L 1992, c 202, §65; am L 2000, c 253, §150]

" **§444-6 REPEALED.** L 1992, c 202, §199.

" **§444-7 Classification.** (a) For the purpose of classification, the contracting business includes any or all of the following branches:

- (1) General engineering contracting;
- (2) General building contracting;
- (3) Specialty contracting.

(b) A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land levelling and earth-moving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works.

(c) A general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

(d) A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill such as, but not limited to, electrical, drywall, painting and decorating, landscaping, flooring, carpet laying by any installation method, plumbing, or roofing work, and others whose principal contracting business involves the use of specialized building trades or crafts. [L 1957, c 305, §1(s 6); Supp, §166A-6; HRS §444-7; am L 1989, c 162, §1]

" **[§444-7.5] Asbestos contractors.** (a) The board shall provide for the licensure or permitted activities as a specialty contractor of any person who engages in any activity involving the application, enclosure, removal, encapsulation, renovation, repair, demolition, or other disturbances of friable asbestos or asbestos-containing material that may become friable during the activity; provided that this section shall not apply to activities such as maintenance, repair, or removal of asbestos pipe or sheets, vinyl asbestos floor materials or asbestos-bituminous or resinous material as well as other activities that the board may exempt which are incidental to the primary purpose for which the contractor holds a license and if they were performed in a manner that no health hazard is posed to the public, the contractor, or the contractor's employees.

(b) No person shall be licensed as an asbestos contractor unless that person meets all requirements of subsection (c) in addition to the requirements in section 444-11.

(c) The licensing requirements and procedures, and the standards of conduct for individuals licensed as an asbestos contractor shall be as provided by rules and shall include, but shall not be limited to, provisions for the following:

- (1) Examination;
- (2) Registration of employees;
- (3) Training, experience, and any other certification standards for contractors and their employees;
- (4) Protective equipment standards;
- (5) Application, enclosure, removal, encapsulation, renovation, repair and demolition procedures;
- (6) Hazardous waste disposal;
- (7) Clean-up procedures;
- (8) Monitoring;
- (9) Health examinations;
- (10) Continuing education;
- (11) Administrative procedures; and
- (12) Fees.

The board shall consult with and shall initiate and maintain cooperative agreements with the departments of health, and labor and industrial relations, or any other state, federal, or county

departments or agencies and the University of Hawaii or their community colleges in the development of these rules, and to develop procedures and methods for the enforcement of any asbestos activity.

(d) The board, the departments of commerce and consumer affairs, labor and industrial relations, and the department of health shall have the right of entry to any job site and access to any records of the licensee for purposes of inspection for health or safety hazards. Each agency shall be empowered to apply to a court of competent jurisdiction for an order restraining any activity at the job site which constitutes an imminent health or safety hazard.

(e) Any person who knowingly hinders or delays the board or the above departments in the performance of their duties, who knowingly fails to obtain the licenses or registrations required by this section, or otherwise knowingly violates this section shall be guilty of a misdemeanor.

(f) The board may, in addition to any other remedies provided by law, and after a hearing conducted pursuant to chapter 91, assess a fine not to exceed \$5,000 for each violation of this section. For purposes of this subsection, each day's violation shall constitute a separate violation. [L 1987, c 157, §2]

Cross References

Asbestos pollution control, see chapter 342P.

" **§444-8 Powers to classify and limit operations.** (a) The contractors license board may adopt rules and regulations necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which the contractor is classified and qualified to engage, as defined in section 444-7.

(b) A licensee may make application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications. For qualifying or classifying in additional classifications, the licensee shall pay the appropriate application fee but shall not be required to pay any additional license fee.

(c) This section shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor

is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed. [L 1957, c 305, §1(s 7); am L 1965, c 241, §1; Supp, §166A-7; HRS §444-8; gen ch 1985]

Cross References

Rulemaking, see chapter 91.

Case Notes

Classifications; consistency with established usage and procedure and the public safety as provided in §444-4(2). 51 H. 673, 466 P.2d 1009 (1970).

" **§444-9 Licenses required.** No person within the purview of this chapter shall act, or assume to act, or advertise, as general engineering contractor, general building contractor, or specialty contractor without a license previously obtained under and in compliance with this chapter and the rules and regulations of the contractors license board. [L 1957, c 305, §1(s 8); Supp, §166A-8; HRS §444-9]

Case Notes

Pursuant to this section, a general engineering or building contractor is prohibited from doing any work that would require it to act as a specialty contractor in an area the general contractor was not licensed to operate; where project required plumbing work classified as C-37 specialty work, general contractor, which did not hold a C-37 specialty license, could not do work in that area; court thus erred in holding that project did not require work in the C-37 classification and that general contractor did not have to engage a specialty contractor holding a C-37 specialty license. 97 H. 450, 40 P.3d 73 (2002).

" **§444-9.1 Issuance of building permits; owner-builder registration.** (a) Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant and all specialty contractors are licensed in accordance with this chapter, giving the license numbers and stating that the licenses are in full force and effect, or, if

the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2.5, the applicant shall certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information:

- (1) The name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2.5;
- (2) The address of the property where exempt building or improvement activity is to occur;
- (3) A description of the type of building or improvement activity to occur;
- (4) The approximate dates of construction activity; and
- (5) Whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work.

The absence of such registration is prima facie evidence that the exemption in section 444-2.5 does not apply.

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

(c) The county shall provide applicants for the exemption under section 444-2.5 with a disclosure statement in substantially the following form:

"Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section 444-2.5, Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure that subcontractors hired by you have licenses required by state

law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building who is not licensed must be your employee which means that you must deduct F.I.C.A. and withholding taxes and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section 444-2.5 or fail to comply with the requirements set forth in this disclosure statement, you may be fined \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offense."

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form.

(d) A county building inspector or other building official shall report to the regulated industries complaints office the name and address of any person, who, in the opinion of the building inspector or official, has violated this chapter by accepting or contracting to accomplish work which would classify the person as a contractor under this chapter. [L 1974, c 112, pt of §1(1); am L 1978, c 147, §1; am L 1985, c 215, §2; gen ch 1985; am L 1989, c 142, §3; am L 1992, c 258, §2; am L 1996, c 172, §4; am L 2010, c 44, §4]

" **§444-9.2 Advertising.** (a) It is a misdemeanor for any person, including a person who is exempt by section 444-2 from this chapter, to advertise with or without any limiting qualifications as a contractor unless such person holds a valid license under this chapter for the goods and services advertised. "Advertise" as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person; the causing, permitting, or allowing of any sign or marking on or in any building, vehicle or structure; or advertising in any newspaper or magazine; any listing or advertising in any directory under a classification or heading that includes the word "contractor"; or commercials broadcast by airwave transmission.

(b) A contractor may advertise in print or broadcast medium, as defined in subsection (a) only if the contractor includes in the advertisement or listing the contractor's

applicable and current license number, and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a contractor who does not comply with the provisions of this subsection. A publisher or producer who obtains a signed statement from the contractor which states that the contractor has read the text of the advertisement or listing, has an applicable and current contractors license for the goods and services advertised, has included all applicable and current license numbers in the advertisement or listing, and is aware of civil and criminal penalties for advertising as a contractor without a valid license, shall be entitled to a rebuttable presumption of compliance with this subsection.

(c) Upon entry of either a final order of the contractors license board pursuant to chapter 91 or a judgment by a court of competent jurisdiction finding that a contractor has advertised in violation of either section 444-9 or 444-9.2(a), the public utility furnishing telephone service to the contractor shall disconnect the telephone number contained in the advertisement or listing.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against it arising from the termination of telephone service. [L 1974, c 112, pt of §1(1); am L 1984, c 132, §1; am L 1988, c 247, §1]

" **§444-9.3 Aiding or abetting.** Aiding or abetting an unlicensed person to evade this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person, with the intent to evade this chapter, shall be a misdemeanor and may subject the licensee to additional discipline by the board. [L 1974, c 112, pt of §1(1); am L 2014, c 29, §2]

" **§444-9.5 Licensing of electrical or plumbing workers.** (a) At least half of all individuals performing electrical or plumbing work employed on a construction job site by an electrical or plumbing contractor shall be licensed in accordance with chapter 448E. The board may waive this requirement in any county when there are insufficient licensed

electrical or plumbing workers in that county to comply with this section.

(b) All individuals employed on a construction job site by an electrical or plumbing contractor who are licensed in accordance with chapter 448E shall visibly display their license on their person while on the construction job site. Only individuals displaying their license at the time of a site inspection shall be counted as a licensee to determine compliance with this section. [L 1971, c 183, §2; gen ch 1985; am L 2006, c 274, §2; am L 2010, c 28, §2]

" **§444-10 Investigation permitted.** The contractors license board may investigate, classify, and qualify applicants for contractors licenses. [L 1957, c 305, §1(s 9); Supp, §166A-9; HRS §444-10]

" **§444-10.5 Citation for unlicensed activity.** (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in the business of a contractor within the State, without having a license previously obtained under and in compliance with this chapter and the rules promulgated thereunder. If the investigator determines that a person is acting in the capacity of, or engaging in the business of, a contractor within this State without having a license to so act or engage, the investigator may issue a citation to such person.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and shall contain an order to cease and desist from the violation, and an assessment of civil penalties as provided in section 444-23. The citation shall also include notice of the sanctions for violating the cease and desist order. All penalties collected under this section shall be deposited in the special fund established under section 26-9.

(c) Service of a citation issued under this section shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(d) Any person served with a citation under this section may submit a written request to the director for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order to cease and desist, and the amount of the civil penalties assessed.

(e) If the person cited under this section timely notifies the director of the request for a hearing, the director shall

afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and issue a final order.

(f) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(g) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provisions to cease and desist and for civil penalties imposed. In any proceeding to enforce the provisions of the final order of the director or designated hearings officer, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, and a certified copy of the final order of the director or designated hearings officer.

(h) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(i) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The director may adopt rules under chapter 91 as may be necessary to fully effectuate this section.

(j) The director may apply to the appropriate court for injunctive or any other relief the court deems appropriate, including a fine of not less than \$10,000 for each offense, against any person who violates a cease and desist order. Each day's violation or failure to comply with a cease and desist order shall be deemed a separate offense. The allegations in the citation shall be deemed conclusively established for purposes of a proceeding for permanent or temporary relief to enforce the cease and desist order. [L 1984, c 98, §2; gen ch 1985; am L 2005, c 230, §1]

Cross References

Unlicensed contracting in door-to-door sales, see §481C-2.5.

" **§444-10.6 State of emergency or disaster; emergency licensure; penalties.** (a) Notwithstanding any other provision of law to the contrary, the board may issue emergency contractor's licenses during a state of emergency or disaster duly declared by the governor under chapter 209 upon a determination by the board that a shortage of Hawaii licensed contractors exists.

(b) To qualify for an emergency contractor's license, an applicant shall:

- (1) Provide proof of licensure as a contractor in another state with similar contractor licensing requirements as those in this State, that the license is current, and that it has been in good standing for the past two years;
- (2) Provide proof of liability and property damage insurance, obtained through an insurer authorized to do business in this State or other insurer acceptable to the board;
- (3) Submit proof of workers' compensation insurance as specified in the board's rules;
- (4) Submit a current financial statement prepared by a certified public accountant and applicable credit reports as specified in the board's rules;
- (5) Pay all applicable application and license fees, including recovery fund and education fund fees;
- (6) Submit a state tax clearance statement; and
- (7) Provide proof of bond in the amount and in such form as set forth in section 444-16.5.

(c) The classifications of emergency contractor's licenses issued and the duration of the emergency contractor's licenses shall be determined by the board based on the nature and duration of the state of emergency or disaster, and the needs and best interests of the public.

(d) The board may delegate the issuance of emergency contractor's licenses to its administrative staff; provided that the applicant shall be required to meet all of the requirements specified in this section before the issuance of the license.

(e) Any person who violates section 444-9, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster in a political subdivision for which a state of emergency or disaster is proclaimed by the governor, may be punished by a fine of up to \$10,000, imprisonment up to one year, or both, in

addition to all other remedies or penalties. [L 1996, c 172, pt of §2; am L 2007, c 81, §1]

" **§444-10.7 Enhanced penalties when elderly persons are targeted.** If any person is found to have violated section 444-9 and the violation is committed against elderly persons, in addition to any other penalty set forth or imposed, the court may impose a fine of up to \$20,000, or imprisonment up to one year, or both. As used in this section, "elderly person" means a person who is sixty-five years of age or older. [L 1996, c 172, pt of §2; am L 2014, c 32, §1]

Cross References

Some other actions or penalties for violations committed against elders, see §§28-94, 412:3-114.5, 480-13, 480-13.5, 485A-603.5, 485A-604.5, and 487-14.

" **§444-11 No license issued when.** (a) No license hereunder shall be issued to:

- (1) Any person unless the person has filed an application and paid the applicable fees;
- (2) Any person unless the person meets the experience requirements as prescribed in the board's rules; provided that the board may accept experience acquired on a self-employed or unlicensed basis if the experience can be verified;
- (3) Any person who does not possess a history of honesty, truthfulness, financial integrity, and fair dealing; provided that any person who during the six years prior to application has failed to satisfy an undisputed debt or a judgment relating to services or materials rendered in connection with operations as a contractor shall be presumed not to possess a history of financial integrity;
- (4) Any person unless the person has successfully passed a written examination as prescribed by the board;
- (5) Any individual unless the individual is age eighteen years or more;
- (6) Any joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a member or employee thereof, and unless the member or employee holds an appropriate license;
- (7) Any individual who is unable to qualify as a contractor or any partnership or corporation, unless the contracting business of the individual,

partnership, or corporation is under the direct management of an employee, partner, or officer thereof who holds an appropriate license;

- (8) Any person unless the person submits satisfactory proof to the board that the person has obtained workers' compensation insurance, or has been authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
- (9) Any person unless the person submits satisfactory proof to the board that the person has obtained liability insurance; or
- (10) Any person unless the person submits a bond if required by the board under section 444-16.5.

(b) Any license issued hereunder shall not be renewed if the licensee no longer meets any of the foregoing qualifications.

(c) An application shall be considered abandoned if the application is not completed and the required documents or other information are not submitted to the board within two years from the last date the documents or information were requested. [L 1957, c 305, §1(s 10); Supp, §166A-10; HRS §444-11; am L 1969, c 56, §2 and c 163, §2; am L 1971, c 191, §1; am L 1972, c 2, §18; am L 1975, c 41, §1; am L 1983, c 201, §2; am L 1985, c 67, §1; gen ch 1985; am L 1986, c 319, §1; am L 1992, c 258, §3 and c 269, §3; am L 1995, c 20, §2]

" **§444-11.1 Requirements to maintain license.** (a) A licensed contractor shall have and maintain in full force and effect the following:

- (1) Workers' compensation insurance; unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
- (2) Liability insurance from an insurance company or agency for comprehensive personal injury and property damage liability; and
- (3) Bond when required by the board, under section 444-16.5.

(b) Failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the automatic forfeiture of the license of the contractor effective as of the date of expiration or cancellation of the contractor's workers' compensation insurance, liability insurance, or bond.

(c) The board shall not restore the forfeited license until satisfactory proof of continuous insurance and bond coverages is submitted to the board as required by this section.

(d) Failure to restore a license within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the person to apply as a new applicant.

(e) The board may assess a fee not to exceed \$1,000, impose a bond, or restrict the license as a condition for the restoration of a license forfeited pursuant to this section.

(f) A licensee may, within sixty days after receipt of the notification of the forfeiture, request an administrative hearing to review the forfeiture pursuant to chapter 91. [L 1982, c 175, §1; am L 1995, c 20, §3]

Case Notes

No violation of public policy where plaintiff's insurance policy did not satisfy defendant general contractor's statutory coverage requirements pursuant to this section; this section regulates only the insurance coverage general contractors must maintain and not the coverage insurance companies must provide. 725 F. Supp. 2d 1219 (2010).

" **§444-12 Application; fees.** (a) Every applicant for a license under this chapter shall complete and file an application provided by the board and shall furnish any additional information bearing upon the issuance of the license as the board shall require. In the case of a partnership, joint venture, or corporation, any partner, member, or officer thereof may sign the application on behalf of the applicant.

(b) Every applicant who is required by the board to be examined shall pay, directly to the testing agency, an examination fee.

(c) These fees shall be as provided in rules adopted by the director pursuant to chapter 91. [L 1957, c 305, §1(s 11); am L 1965, c 241, §2; Supp, §166A-11; HRS §444-12; am L 1983, c 201, §3; am L 1985, c 160, §2; am L 1988, c 109, §1; am L 1992, c 202, §66; am L 1995, c 20, §4; am L 1997, c 40, §10]

Cross References

Modification of fee, see §92-28.

" **§444-13 Form for licenses.** The form of every license shall be prescribed by the contractors license board and shall be issued in the name of the board. [L 1957, c 305, §1(s 12); Supp, §166A-12; HRS §444-13]

" **§444-14 Place of business and posting of license.** (a) A licensed contractor shall have, maintain, and operate from a definite place of business in the State and shall display therein his or her contractor's license.

(b) The licensed contractor shall report any change of address or telephone number to the contractors license board within ten business days from such change. [L 1957, c 305, §1(s 13); Supp, §166A-13; HRS §444-14; am L 1975, c 129, §1]

" **§444-15 Fees; biennial renewals; inactive license.** (a) The biennial renewal fee or inactive license fee, and the recovery fund, education fund, and compliance resolution fund fees shall be paid to the board on or before September 30 of each even-numbered year. These fees shall be as provided in rules adopted by the director pursuant to chapter 91. Failure, neglect, or refusal of any licensee to pay these fees and to submit all documents required by the board on or before September 30 of each even-numbered year shall constitute a forfeiture of the licensee's license.

(b) Any forfeited license may be restored upon submittal of all required documents and fees, plus a penalty fee, within sixty days from September 30 of the even-numbered year.

(c) Upon written request of a licensee, the board may place that person's active license in an inactive status. The licensee, upon payment of the inactive license fee, may continue inactive for the biennial period. Failure, neglect, or refusal of any licensee in inactive status to pay the inactive license fee shall constitute a forfeiture of the license. The license may be reactivated at any time during the biennial period by making written request to the board and by fulfilling all the requirements, including the payment of the appropriate fees. While in an inactive status, a licensee shall not engage in contracting; a licensee who violates this prohibition shall be subject to discipline under this chapter and the board's rules.

(d) For purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements. [L 1957, c 305, §1(s 14); am L 1961, c 184, §2(a); am L 1965, c 241, §3; Supp, §166A-14; HRS §444-15; am L 1969, c 56, §3; am L 1975, c 118, §9; am L 1977, c 152, §1; am L 1980, c 30, §1; gen ch 1985; am L 1988, c 109, §2; am L 1992, c 202, §67; am L 1994, c 132, §1; am L 1995, c 20, §5; am L 1997, c 7, §1]

" **§444-16 Action on applications.** Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the board shall

(1) conduct an investigation of the applicant, and in that investigation may post pertinent information, including but not limited to, the name and address of the applicant, and if the applicant is associated in any partnership, corporation, or other entity, the names, addresses, and official capacities of the applicant's associates; and (2) either issue a license to the applicant or notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify the applicant of the applicant's right to submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the board's decision. The hearing shall be conducted in accordance with chapter 91. [L 1957, c 305, §1(s 15); am L 1965, c 37, §1; Supp, §166A-15; HRS §444-16; am L 1973, c 116, §1; gen ch 1985; am L 1992, c 202, §68 and c 258, §4]

Cross References

Mailing notice, see §1-28.

Case Notes

Where application for license was not acted upon within time specified, denial was defective. 51 H. 673, 466 P.2d 1009 (1970).

" **§444-16.5 Bond.** The contractors license board may require each licensee, applicant, individual or corporate, who is a specialty contractor to put up bond in the sum of not less than \$5,000 executed by the licensee or applicant as principal and by a surety company authorized to do business in the State as surety.

The board may require each licensee, applicant, individual or corporate, who is a general contractor to put up a bond in the sum of not less than \$5,000 executed by the licensee or applicant as principal and by a surety company authorized to do business in the State as surety.

The board, in exercising its discretion, shall take into consideration the licensee's or applicant's financial condition and experience in the field.

The bond shall be in a form as the board may prescribe, conditioned upon the payment of wages, as defined in section 104-1, to the employees of the contractor or any other person or entity entitled to wages when due, and giving employees or any other person or entity entitled to wages who have not been paid a right of action on the bond in their own names; and upon the honest conduct of the business of the licensee, and upon the

right of any person injured or damaged by any wrongful act of the licensee to bring an action on the bond; provided that any claim for wages shall have priority over all other claims. [L 1969, c 234, §1; gen ch 1985; am L 1986, c 319, §2; ree L 1988, c 141, §50; am L 2015, c 165, §3]

" **§444-17 Revocation, suspension, and renewal of licenses.**

In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including:

- (1) Any dishonest, fraudulent, or deceitful act as a contractor that causes substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, that is prejudicial to a person entitled to have the construction project or operation completed in accordance with those plans and specifications;
- (6) Wilful violation of any law of the State, or any county, relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of those records by the board;
- (8) When the licensee being a partnership or a joint venture permits any partner, member, or employee of the partnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;

- (9) When the licensee being a corporation permits any officer or employee of the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for a licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
- (17) Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
- (18) Performing service on a residential or commercial air conditioner using CFCs without using refrigerant recovery and recycling equipment;
- (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriters Laboratories, Incorporated;
- (20) Violating chapter 342C;
- (21) Failure to pay delinquent taxes, interest, and penalties assessed under chapter 237 that relate to the business of contracting, or to comply with the

terms of a conditional payment plan with the department of taxation for the payment of such delinquent taxes, interest, and penalties; and

(22) Knowingly or intentionally employing a person to perform work under a contract subject to chapter 104 who is not eligible to work in the United States under federal law. [L 1957, c 305, §1(s 16); am L Sp 1959 2d, c 1, §19; am L 1965, c 36, §1; Supp, §166A-16; HRS §444-17; am L 1969, c 64, §1 and c 163, §3; am L 1974, c 205, §2(12); am L 1975, c 41, §1; gen ch 1985; am L 1989, c 77, §11; am L 1990, c 316, §9; am L 1992, c 202, §69, c 264, §9, and c 269, §4; am L 1995, c 20, §6; am L 1996, c 43, §1; am L 2009, c 145, §1; am L 2010, c 185, §§1, 3]

Attorney General Opinions

Par. (15): Liability to pay moneys into employees' trust funds is within coverage of this paragraph. Att. Gen. Op. 68-7.

Case Notes

A material misrepresentation in violation of paragraph (10) need not be either fraudulent or intentional. 88 H. 264, 965 P.2d 806 (1998).

Misrepresentation was "material" for purposes of license suspension under paragraph (10) where contractor's answers on license application regarding past debts and bankruptcy were false, and which, if correctly answered, may have caused contractors license board to request applicant to appear before board, provide additional information, and issue only a conditional license or deny the issuance of a license. 88 H. 264, 965 P.2d 806 (1998).

" **§§444-18 to 444-20 REPEALED.** L 1992, c 202, §§200 to 202.

" **§444-21 Death or dissociation.** No copartnership, joint venture, or corporation shall be deemed to have violated any provision of this chapter by acting or assuming to act as a contractor after the death or dissociation of a licensee who had the direct management of the contracting business thereof prior to final disposition by the contractors license board of an application for a license made within thirty days from the date of the death or dissociation. [L 1957, c 305, §1(s 20); Supp, §166A-20; HRS §444-21]

" **§444-22 Civil action.** The failure of any person to comply with any provision of this chapter shall prevent such person from recovering for work done, or materials or supplies furnished, or both on a contract or on the basis of the reasonable value thereof, in a civil action, if such person failed to obtain a license under this chapter prior to contracting for such work. [L 1957, c 305, §1(s 21); Supp, §166A-21; HRS §444-22; am L 1969, c 56, §4]

Case Notes

Defendant's motion to dismiss denied; because it was feasible that plaintiff's actions constituted that of a "professional engineer acting solely in [its] professional capacity", it was not apparent that [this chapter] barred plaintiff from bringing lawsuit. 216 F. Supp. 2d 1133 (2001).

Action to recover under this section not barred when circumstances take matter outside applicability of this chapter. 58 H. 257, 567 P.2d 824 (1977).

Applicable even if party has knowledge that contractor has no license. 71 H. 175, 785 P.2d 1324 (1990).

Section permits a contractor, who performs both licensed and unlicensed work, to bring an action to recover payment for the licensed portion of the work. 86 H. 137 (App.), 948 P.2d 558 (1997).

A contract with an unlicensed contractor is not void ab initio and this section does not bar a member of the public, who is a party to such contract, from bringing suit to recover breach of contract damages from an unlicensed contractor. 92 H. 117 (App.), 987 P.2d 1015 (1999).

Where genuine issues of material fact existed as to: the services plaintiff provided to defendant that would be a basis for plaintiff's quantum meruit claim; whether plaintiff was required to be licensed under chapter 444 to provide such services; and whether such services that plaintiff rendered would be barred from recovery under this section, summary judgment was not warranted as to plaintiff's claim based on quantum meruit. 126 H. 190 (App.), 268 P.3d 443 (2011).

" **§444-23 Violation; penalties.** (a) Any licensee who contracts outside the appropriate scope of classification for which the licensee is licensed shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Any licensee who violates section 444-9.3 or 444-17(17) shall be fined up to \$25,000 or up to the full amount of the contract price for each offense, whichever is greater.

(c) Except as provided in subsections (a), (b), (d), and (e), any person who violates or fails to comply with this chapter shall be fined not less than \$100 or more than \$5,000 for each violation; provided that any person who violates section 444-9 shall be fined:

- (1) \$2,500 or forty per cent of the total contract price, whichever is greater, for the first offense;
- (2) \$3,500 or forty per cent of the total contract price, whichever is greater, for the second offense; and
- (3) \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense,

and when the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, all tools, implements, documents, materials, or any other property used by the person in activities violating section 444-9 shall be subject to forfeiture as provided by section 444-23.5 and shall be turned over to the department for disposition under that section.

(d) Any licensee who violates, or whose employee violates, section 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and not less than \$300 or more than \$1,000 for each subsequent offense; provided that each unit serviced in violation of section 444-17(18) or 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.

(e) Any person who violates section 444-2.5 shall be fined:

- (1) Up to \$5,000 or fifty per cent of the value of the construction or improvement as indicated on the building permit application, whichever is greater, and as determined based on a review of the circumstances of each case, for the first offense; and
- (2) \$10,000 or sixty per cent of the value of the construction or improvement as indicated on the building permit application, whichever is greater, for any subsequent offenses. [L 1957, c 305, §1(s 22); Supp, §166A-22; HRS §444-23; am L 1975, c 127, §1; am L 1980, c 102, §1; am L 1984, c 216, §1; am L 1986, c 23, §1; am L 1989, c 77, §12; am L 1990, c 244, §1; am L 1992, c 264, §10 and c 269, §5; am L 1996, c 172, §5; am L 2000, c 291, §3; am L 2009, c 195, §1; am L 2010, c 44, §5 ; am L 2013, c 176, §3]

" **§444-23.5 Forfeiture of property for unlicensed activity.**

(a) If an investigator finds that a person has acted in the capacity of, or engaged in the business of a contractor within

this State without having a current license as required by this chapter to so act or engage, and the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, the investigator may issue a notice of forfeiture of property used by the person in the unlicensed activity, and the property that is the subject of the notice of forfeiture shall be turned over to the department for disposition in accordance with this chapter.

(b) Each notice of forfeiture shall be in writing and shall describe the tools, implements, documents, materials, or any other property used by any person in unlicensed activity that violates section 444-9.

(c) The department shall make good faith efforts to locate and notify within a reasonable period of time all owners or interest-holders of property subject to a notice of forfeiture.

(d) Service of a notice of forfeiture issued under this section shall be made:

(1) If the name and current address of the unlicensed person, owner, or interest-holder is known:

(A) By personal service; or

(B) By mailing a copy of the notice to the unlicensed person, owner, or interest-holder by certified mail to the last address on record with a state agency; or

(2) If the address of the unlicensed person, owner, or interest-holder is not known or is not on record with a state agency, by public notice once as provided in section 1-28.5.

(e) An unlicensed person served with a notice of forfeiture under this section may submit a written request to the director for a hearing:

(1) Within twenty days of receipt of the notice of forfeiture, if the person is served personally or by mail; or

(2) Within twenty days of public notice of forfeiture.

If a request for a hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(f) An owner or interest-holder served with a notice of forfeiture, other than the unlicensed person, may file a petition for remission of forfeiture with the department within twenty days of service by personal service or mail, or within twenty days of the date of public notice, if service is by public notice. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:

- (1) A reasonably complete description of the property subject to forfeiture; and
- (2) A statement of the interest of the petitioner in the property subject to forfeiture, with supporting documentary evidence.

If a petition for remission of forfeiture is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(g) The department shall review the petition for remission of forfeiture and, if remission is warranted, return the property subject to forfeiture to the petitioner within thirty days of receipt of the petition. If the department determines that remission is not warranted, the department shall issue a written decision to the petitioner within thirty days of receipt of the petition.

(h) A petitioner whose petition for remission has been denied may file with the director a written request for a hearing as provided under subsections (i) and (j). The written request shall be filed within twenty days of receipt of the written decision denying the petition for remission. If a request for hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(i) Hearings shall be subject to chapter 91 and shall be conducted by the director or a hearings officer designated by the director. The director or designated hearings officer may issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order of forfeiture. The department shall have the burden to show by clear and convincing evidence that the property is subject to forfeiture. In determining whether the property is subject to forfeiture, the director or hearings officer shall consider evidence of ownership, the description of the property, and any other relevant evidence.

(j) Any person aggrieved by the decision of the director or designated hearings officer may appeal the decision in the manner provided in chapter 91, to the circuit court of the circuit in which:

- (1) The person resides;
- (2) The person's principal place of business is located;
or
- (3) The activity in question occurred.

(k) The director may file an action in the circuit court for a judgment to enforce any final order issued by the director or designated hearings officer pursuant to this section. A judgment enforcing the final order shall issue upon a showing by the director either that notice was given and a hearing was

held, or, that the time granted for requesting a hearing has run without the timely filing of a request.

(1) The department may dispose of all property forfeited in accordance with this chapter by:

- (1) Transferring property to any local or state government entity, municipality, or law enforcement agency within the State;
- (2) Selling property to the public by public sale; or
- (3) Using any other means of disposition authorized by law.

(m) All proceeds of a forfeiture action conducted pursuant to this section, after payment of expenses of administration and sale, shall be deposited in the compliance resolution fund established under section 26-9(o). Moneys in the fund shall be appropriated for the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this section or any other necessary expenses incident to the seizure, detention, or forfeiture of such property.

(n) Forfeiture under this section shall be separate from and in addition to all other applicable remedies, either civil or criminal. This section shall not apply to the violations set forth in section 444-23(a) and (b).

(o) The director may adopt rules as necessary to fully effectuate this section. [L 2000, c 291, §2; am L 2003, c 3, §15]

" **§444-24 Injunction.** The contractors license board may, in addition to any other remedies available, apply to a circuit judge for a preliminary or permanent injunction restraining any person from acting, or assuming to act, or advertising, as general engineering contractor, general building contractor, or specialty contractor, without a license previously obtained under and in compliance with this chapter and the rules and regulations of the board, and upon hearing and for cause shown, the judge may grant the preliminary or permanent injunction. [L 1965, c 13, §1; Supp, §166A-23; HRS §444-24]

Rules of Court

Injunctions, see HRCP rule 65.

" **§444-25 Payment for goods and services.** A contractor shall pay the contractor's subcontractor for any goods and services rendered within ten days after receipt of an invoice by the subcontractor that includes any supporting documents as required by the terms of the subcontract and after receipt by

the contractor of payment from the owner for the subcontractor's work, whichever occurs later. The subcontractor shall be entitled to receive interest on the unpaid amount at the rate of one and one-half per cent per month from the date payment is due; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the contractor and the subcontractor concerning the goods and services contracted for.

If payment is contingent upon receipt of funds held in escrow or trust, the contractor shall clearly state this fact in the contractor's solicitation of bids. If the solicitation for bids contains the statement that the time of payment is contingent upon the receipt of funds held in escrow or trust and a contract is awarded in response to the solicitation, interest shall not begin to accrue upon any unpaid balance until after the tenth day following receipt by the contractor of an invoice by the subcontractor that includes any supporting documents as required by the terms of the subcontract and receipt of the escrow or trust funds, whichever occurs later; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the subcontractor and the contractor concerning the goods and services contracted for.

This section shall not apply to chapter 103 or any section affecting public contracts. [L 1969, c 147, §2; am L 1971, c 92, §1; gen ch 1985; am L 2012, c 260, §2]

Note

L 2012, c 260, §3 provides:

"This Act [amending §444-25] shall not apply to the payment terms of previously binding written private contracts entered into, construction bids opened, or request for proposals solicited prior to July 1, 2012."

" **§444-25.5 Disclosure; contracts.** (a) Prior to entering into a contract with a homeowner, or at the time a homeowner signs a contract, involving home construction or improvements, licensed contractors shall:

- (1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract, including the homeowner, the contractor, any subcontractor, or any materialman supplying commodities or labor on the project;
- (2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner, and the approximate expense of the bond; and

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

(b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:

(1) Contain the information provided in subsection (a) and any other relevant information that the board may require by rule;

(2) Contain notice of the contractor's right to resolve alleged construction defects prior to commencing any litigation in accordance with section 672E-11;

(3) Be signed by the contractor and the homeowner; and

(4) Be executed prior to the performance of any home construction or improvement.

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

(d) Any violation of this section shall be deemed an unfair or deceptive practice and shall be subject to provisions of chapter 480, as well as the provisions of this chapter. [L 1975, c 183, §4; am L 1984, c 95, §8; am L 1989, c 306, §1; am L 1995, c 20, §7; am L 2004, c 119, §3; am L 2013, c 176, §4]

Case Notes

Where plaintiff did not provide to homeowners the lien disclosure notices before or upon signing of the contract or prior to the commencement of the work as required by subsection (a), plaintiff's conduct was an unfair or deceptive practice that rendered its contract void and unenforceable at law or in equity under §480-12; thus, plaintiff was not entitled to a lien upon homeowners' property under §507-42, and trial court did not err in dismissing its lien application. 111 H. 349, 141 P.3d 996 (2006).

As §480-12 voided the contract between homeowner and contractor, §§507-42 and 480-12 precluded the imposition of a §507-42 lien upon the homeowner's property by contractor who failed to comply with the requirements of this section. 96 H. 365 (App.), 31 P.3d 222 (2001).

In light of the purpose of this section and the specific duties it explicitly imposes on "any licensed contractor entering into a contract involving home improvements", the law does not permit a homeowner to waive his or her rights specified therein. 96 H. 365 (App.), 31 P.3d 222 (2001).

Subsection (d) and §480-12 do not preclude some recovery in quantum meruit from a homeowner by a contractor who fails to comply with the requirements of this section; the amount cannot exceed the amount that would have been due the general contractor under the contract had the contract not been void, less the amount previously paid the contractor and the total of the amount paid and owed to all subcontractors and materialmen. 96 H. 365 (App.), 31 P.3d 222 (2001).

Pursuant to §444-2(7), homeowners did not have the benefit of, and, as to homeowners, contractor was not obligated to comply with, the disclosure provisions of this section. 109 H. 96 (App.), 123 P.3d 691 (2005).

" **[§444-25.7] Roofing contractors guarantee bond.** (a) Every contract executed for the purpose of constructing, repairing or improving a roof covering, which contract states a guarantee for workmanship for a period in excess of seven years, shall be accompanied by a bond, executed by the licensee as principal and by a surety company authorized to do business in the State as a surety, for the replacement value of such roof covering; provided that no surety company shall be compelled to issue a bond for any guarantee pursuant to a contract under this section which it would not ordinarily bond or consider to be a bondable project.

(b) Such bond shall be for the exclusive benefit of, and be limited to, an owner or lessee of a private residence, including a condominium or cooperative unit, who has contracted with a duly licensed contractor for the construction of a roof covering to the owner's or lessee's own private residence and who has filed an appropriate claim for the replacement value of a roof covering which has become faulty or defective within the stated guarantee period.

(c) The surety bond shall be continuous in form and the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond irrespective of the number of years the bond is in force.

(d) Any claim or subsequent action to make a claim against the bond shall be brought not later than one year after the expiration of the guarantee period for which the bond has been provided. Claims against the bond, as provided in this section, shall not in any way supersede or prevent claims made under section 444-26 or any other appropriate statute or law.

(e) Every contractor licensed to perform under this chapter shall, prior to entering into a contract covered by this section, provide to the owner appropriate information to evidence the existence of the bond and its conditions in writing.

(f) Bonds required under this section shall be in addition to any other bond required by this chapter or any other bond required or executed between a contractor and an owner or other contracting agency.

(g) Any violation by any contractor of any provision of this section or failure to maintain in full force and effect any bond required by this section, shall be deemed to be an unfair and deceptive act or practice. [L 1980, c 289, §1; gen ch 1985]

" **§444-26 Contractors recovery fund; use of fund; person injured; fees.** (a) The board is authorized to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of this chapter or the rules adopted pursuant thereto, may recover by order of the circuit court or district court of the judicial circuit where the violation occurred, an amount of not more than \$12,500 per contract, regardless of the number of persons injured under the contract, for damages sustained by the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was suspended, revoked, forfeited, terminated, or in an inactive status at the time the claimant entered into the contract with the contractor.

(b) For purposes of this chapter, "person injured" or "injured person" means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to the owners' or lessees' own private residences and owners or lessees of real property who have contracted with a duly licensed contractor for the construction of the owners' or lessees' own private residences on the owners' or lessees' real property.

(c) When any person applies for a contractors license, the person shall pay, in addition to the person's original license fee, a fee of \$150 for deposit in the contractors recovery fund, and a fee for deposit in the contractors education fund as provided in rules adopted by the director pursuant to chapter 91. In the event that the board does not issue the license, these fees shall be returned to the applicant. [L 1973, c 170, pt of §1; am L 1976, c 144, §1; am L 1977, c 127, §1 and c 152, §2; am L 1983, c 201, §4; gen ch 1985; am L 1989, c 209, §1; am L 1994, c 132, §2; am L 1995, c 20, §8]

" **§444-27 Additional payments to fund.** (a) At any time when the balance remaining in the contractors recovery fund is less than \$250,000, the board may assess every contractor a fee not to exceed \$500 annually for deposit in the contractors recovery fund.

(b) The failure of any contractor to pay the assessment within sixty days from the date of assessment shall constitute a forfeiture of the contractor's license. The board may impose other penalties or requirements as a condition of restoration of the license. [L 1973, c 170, pt of §1; am L 1977, c 127, §2; am L 1983, c 201, §5; gen ch 1985; am L 1994, c 132, §3]

" **§444-28 Statute of limitations; recovery from fund.** (a) No action for an arbitration award or for a judgment which may subsequently result in an order for collection from the contractors recovery fund shall be commenced later than six years from the accrual of the cause of action thereon. When any injured person commences action for an arbitration award or for a judgment which may result in collection from the contractors recovery fund, the injured person shall notify the board in writing to this effect at the time of the commencement of such action. The board shall have the right to intervene in and defend any such action. Nothing in this section shall supersede the statute of limitations as contained in section 657-8.

(b) When any injured person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any licensed contractor for such act, representation, transaction, or conduct which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, which occurred on or after June 1, 1974, the injured person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the contractors license board, may apply to the court for an order directing payment out of the contractors recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. Before proceeding against the contractors recovery fund, the injured person must first proceed against any existing bond covering the licensed contractor.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing thereof, the injured person shall be required to show:

- (1) The injured person is not a spouse of debtor, or the personal representative of such spouse.

- (2) The injured person has complied with all the requirements of this section.
- (3) The injured person has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.
- (4) The injured person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.
- (5) That by such search the injured person has discovered no personal or real property or other assets liable to be sold or applied, or that the injured person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the injured person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the contractors license board requiring payment from the contractors recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the injured person by subsection (c) of this section and that the injured person has fully pursued and exhausted all remedies available to the injured person for recovering the amount awarded by the judgment of the court.

(e) The license of the contractor shall be automatically terminated upon execution of a settlement agreement requiring payment from the contractors recovery fund or the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until the contractor has repaid in full, plus interest at the rate of ten per cent a year, the amount paid from the contractors recovery fund on the contractor's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(f) If, at any time, the money deposited in the contractors recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the contractors license board shall, when sufficient money has been deposited in the contractors recovery fund, satisfy such unpaid claims or

portions thereof, in the order that such claims or portions thereof were originally filed.

(g) With respect to the repair or alteration of an existing residential building or structure or any appurtenance thereto, including but not limited to swimming pools, retaining walls, garages or sprinkling systems, initial construction of such appurtenances, and landscaping of private residences, including condominium or cooperative units, pursuant to a contract between the owner and a licensed contractor for which the owner has paid the contractor in full, should, because of the contractor's default, a mechanic's or materialman's lien be enforced against the property pursuant to section 507-47, the court hearing the action shall award such an owner or the owner's assigns a valid judgment against the contractor in an amount equal to the amount of the lien together with reasonable attorney's fees as determined by the court. The judgment shall include an order directing payment out of the contractors recovery fund. Notwithstanding any other provisions of this section to the contrary, the owner or the owner's assigns need not meet any other requirement to secure payment from the contractors recovery fund, except that notice of the lien enforcement hearing shall be given to the contractors license board so it may appear pursuant to section 444-31. [L 1973, c 170, pt of §1; am L 1975, c 183, §1; am L 1977, c 127, §3; gen ch 1985; am L 1992, c 258, §§5, 6]

Case Notes

Building material supplier could recover from fund where action against contractor began prior to 1977 amendments. 63 H. 540, 632 P.2d 649 (1981).

" **[§444-29] Management of fund.** The sums received by the contractors license board for deposit in the contractors recovery fund shall be held by the contractors license board in trust for carrying out the purposes of the contractors recovery fund. The contractors license board, as trustee of the recovery fund, shall be authorized to retain private legal counsel to represent the board in any action which may result in collection from the contractors recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system, and the interest from these investments shall be deposited to the credit of the contractors education fund, and which shall be available to the contractors license board for educational purposes, which is hereby created. [L 1973, c 170, pt of §1]

Attorney General Opinions

Governs hiring of attorneys for board; compliance with §103-3 unnecessary. Att. Gen. Op. 86-9.

" **[\$444-30] False statement.** It shall constitute a misdemeanor for any person or the person's agent to file with the contractors license board any notice, statement, or other document required under the provisions of this chapter, which is false or untrue or contains any material misstatement of fact. [L 1973, c 170, pt of §1; gen ch 1985]

" **[\$444-31] The contractors license board has standing in court.** When the contractors license board receives notice, as provided in section 444-28(a), the contractors license board may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action it may deem appropriate. The contractors license board or its legal representative shall be served with all pleadings in an action which may result in a recovery from the contractors recovery fund.

Settlement of any claim against the contractors recovery fund shall be made only with the unanimous agreement of the contractors license board, director of commerce and consumer affairs and attorney general that settlement is in the best interest of the contractors recovery fund. [L 1973, c 170, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17]

" **[\$444-32] Subrogation to rights of creditor.** When, upon the order of the court, the contractors license board has paid from the contractors recovery fund any sum to the judgment creditor, the contractors license board shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all the judgment creditor's right, title and interest in the judgment to the contractors license board and any amount and interest so recovered by the contractors license board on the judgment shall be deposited to the credit of said fund. [L 1973, c 170, pt of §1; gen ch 1985]

" **§444-33 Waiver of rights.** The failure of an injured person to comply with all of the provisions of this chapter relating to the contractors recovery fund shall constitute a waiver of any right hereunder. [L 1973, c 170, pt of §1; am L 1977, c 127, §4]

" **§444-34 Maximum liability.** Notwithstanding any other provision, the liability of the contractors recovery fund shall

not exceed \$25,000 for any licensed contractor. [L 1973, c 170, pt of §1; am L 1975, c 183, §2; am L 1983, c 201, §6]

" **§444-35 Disciplinary action against licensee.** Nothing contained herein shall limit the authority of the contractors license board to take disciplinary action against any licensee for a violation of any of the provisions of chapter 444, or of the rules and regulations of the contractors license board; nor shall the repayment in full of all obligations to the contractors recovery fund by any licensed contractor nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 444 or the rules and regulations. [L 1973, c 170, pt of §1; am L 1975, c 183, §3]

" **[\$444-36] Prosecution of criminal violations.** The regulated industries complaints office shall report any criminal violation of this chapter, including, but not limited to, criminal contempt of court, to the county prosecuting attorney's office or the department of the attorney general for prompt prosecution. [L 1996, c 172, pt of §2]