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# A BILL FOR AN ACT

RELATING TO WAGES.

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

1           SECTION 1. Chapter 388, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:  
4           "§388- Contractor liability; unpaid wages. (a) A  
5 general contractor entering into or under a contract in the  
6 State for the erection, construction, alteration, or repair of a  
7 building, structure, or other private work not subject to  
8 chapter 104 shall assume and be liable for any debt owed to a  
9 claimant for wages incurred by a subcontractor at any tier  
10 acting under, by, or for the general contractor, for the  
11 claimant's performance of labor included in the contract between  
12 the general contractor and the owner. The general contractor's  
13 liability under this section shall extend only to unpaid wages  
14 to the claimant, including any interest owed, but shall not  
15 extend to penalties, liquidated damages, or any benefit, fringe  
16 benefit, or contribution claims.



1       A general contractor shall not evade or commit any act that  
2 negates the requirements of this section; provided that this  
3 section does not prohibit a general contractor or subcontractor  
4 from contracting with or enforcing any lawful remedies against a  
5 subcontractor for the liability created by the nonpayment of  
6 wages by the subcontractor or by a subcontractor at any tier  
7 working under another subcontractor.

8       (b) Notwithstanding any law to the contrary, actions to  
9 enforce a general contractor's liability for unpaid wages may  
10 include the following:

11       (1) The director may enforce liability for unpaid wages  
12 established by subsection (a) against a general  
13 contractor; provided that the general contractor's  
14 liability shall be limited to unpaid wages, including  
15 any interest owed; or

16       (2) A joint labor-management cooperation committee  
17 established pursuant to section 175a of the federal  
18 Labor Management Cooperation Act of 1978 (title 29  
19 United States Code section 175a) may bring an action  
20 in any court of competent jurisdiction against a  
21 general contractor or subcontractor at any tier for



1           unpaid wages owed to a claimant by the general  
2           contractor or subcontractor for the performance of  
3           private work not subject to chapter 104, including  
4           unpaid wages owed by the general contractor, pursuant  
5           to subsection (a). The court shall award a prevailing  
6           party in such an action reasonable attorney's fees and  
7           costs, including expert witness fees. As a condition  
8           precedent to any such action against a general  
9           contractor to enforce the liability established by  
10           subsection (a), the committee shall provide written  
11           notice to the general contractor and subcontractor who  
12           employed the claimant, within ninety days from the  
13           last date on which the person performed labor for  
14           which a claim is made, but no later than forty-five  
15           days after the date of completion as defined in  
16           section 507-43, stating with substantial accuracy the  
17           amount claimed and the name of the party for whom the  
18           labor was done or performed. The written notice shall  
19           be served by registered or certified mailing of the  
20           notice to the general contractor and subcontractor at  
21           any place the general contractor or subcontractor



1 maintains an office or conducts their business, or in  
2 any manner authorized by law to serve such notice.

3 The written notice shall not limit the liability of  
4 the general contractor or preclude subsequent  
5 amendments of an action to encompass additional  
6 claimants employed by the subcontractor. No other  
7 party may bring an action against a general contractor  
8 to enforce the liability established in this section.

9 (c) Unless otherwise provided by law, property of the  
10 general contractor may be attached for the payment of any  
11 judgment and pursuant to this section.

12 (d) An action brought pursuant to this section shall be  
13 filed within one year after actual completion of the work  
14 covered by the direct contract between the owner and general  
15 contractor.

16 (e) This section does not apply to work performed by an  
17 employee of the State or any political subdivision of the State.

18 (f) Upon request by a general contractor to a  
19 subcontractor, the subcontractor and any lower tier  
20 subcontractors under contract with the subcontractor shall  
21 provide payroll records, which, at a minimum, shall contain the



1 information set forth in section 387-6 of its employees who are  
2 providing labor on a private work. The payroll records shall be  
3 redacted only to prevent disclosure of an employee's full social  
4 security number, except that the last four digits of the  
5 employee's social security number shall be provided. Upon  
6 request of a general contractor to a subcontractor, the  
7 subcontractor and any lower tier subcontractors under contract  
8 with the subcontractor shall provide the general contractor with  
9 award information that includes the project name, name and  
10 address of the subcontractor, lower-tier subcontractor with whom  
11 the subcontractor is under contract, anticipated start date,  
12 duration, estimated journeyperson and apprentice hours, and  
13 contact information for the subcontractors on the project. A  
14 subcontractor's failure to comply with this subsection shall not  
15 relieve a general contractor from any of the obligations  
16 contained in this section.

17 (g) The obligations and remedies in this section shall be  
18 in addition to any obligations and remedies otherwise provided  
19 by law, except that nothing in this section shall be construed  
20 to impose liability on a general contractor for anything other  
21 than unpaid wages, including any interest owed.



1       (h) Nothing in this section shall alter an owner's  
2 obligation to pay a general contractor, or the general  
3 contractor's obligation to pay a subcontractor, in a timely  
4 manner; provided that a general contractor may withhold all sums  
5 owed to a subcontractor if the subcontractor does not provide  
6 the information requested under subsection (f) in a timely  
7 manner and until such time that the information is provided.

8       (i) For purposes of this section:

9       "General contractor" means a contractor who has a direct  
10 contractual relationship with an owner.

11       "Subcontractor" means a contractor who does not have a  
12 direct contractual relationship with an owner. The term  
13 includes a contractor who has a contractual relationship with a  
14 general contractor or with another subcontractor."

15       SECTION 2. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.



1           SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 4. New statutory material is underscored.

5           SECTION 5. This Act shall take effect on July 1, 2051.



**Report Title:**

Wages; Timely Payment; General Contractors; Subcontractors;  
Liability

**Description:**

Makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner. Effective 7/1/51. (SD2)

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