

ACT 183

H.B. NO. 1874

A Bill for an Act Relating to the Contractors Recovery Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 444-28, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 444-28 Statute of limitations; recovery from fund. (a) No action 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 aggrieved person commences action for a judgment which may result in collection from the contractors recovery fund, the aggrieved person shall notify the contractors license board in writing to this effect at the time of the commencement of such action. The contractors license board shall have the right to intervene in and defend any such action. Nothing in this section shall supersede the statute of limitation as contained in section 657-8.

(b) When any aggrieved person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any 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 aggrieved 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 aggrieved 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 aggrieved person shall be required to show:

- (1) He is not a spouse of debtor, or the personal representative of such spouse.
- (2) He has complied with all the requirements of this section.
- (3) He 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) He 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 he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he 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 aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(e) Should the contractors license board pay from the contractors recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed contractor, the license of the contractor shall be automatically terminated upon the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until he has repaid in full, plus interest at the rate of six per cent a year, the amount paid from the contractors recovery fund on his 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 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 his 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 provision of this section to the contrary, the owner or his 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."

SECTION 2. Section 444-34, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 444-34 Maximum liability.** Notwithstanding any other provision, the liability of the contractors recovery fund shall not exceed \$20,000 for any licensed contractor."

SECTION 3. Section 444-35, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 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."

SECTION 4. Chapter 444, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"**Sec. 444- Disclosure.** Any licensed contractor entering into a contract involving home improvements shall upon or before signing the contract, but before the application for a building permit:

(a) Explain verbally in detail to the owner 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.

(b) Explain verbally in detail the owner's option to demand bonding on the project, how such a bond would protect the owner and the approximate expense of such a bond.

(c) Secure signatures of the owner on a separate form approved by the Contractor's Licensing Board, which shall be printed in at least 12 point type and in the same language in which the contract was negotiated and which shall contain the provisions set out in subsections (a) and (b).

(d) 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.

(e) The Contractor's Licensing Board is authorized and directed to develop the disclosure form pursuant to this section."

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SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved June 2, 1975.)

*Edited accordingly.