

A Bill for an Act Relating to Mechanic's and Materialman's Liens.

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

SECTION 1. The purpose of this Act is to clarify Section 507-49, Hawaii Revised Statutes, as amended by Act 113, Session Laws of Hawaii 1974. Although Section 507-49 was further amended by Act 181, Session Laws of Hawaii 1975, such amendments did not affect the uncertainty which this Act serves to remedy. The legislature, by Act 113, among other things, intended to deny lien rights to contractors required to be licensed under chapter 444, Hawaii Revised Statutes, but who are not so licensed. However, the statute as presently worded may be construed, and has been by at least one court, as denying lien rights to persons who may be general contractors as defined in chapter 507, Hawaii Revised Statutes, and who are exempt from the licensing requirements of that section, e.g., professional engineers and architects. The effect of such an interpretation is to deny lien rights to persons who are not licensed under chapter 444 but who are properly licensed under other appropriate laws. This Act amends section 507-49 to make clear that lien rights are denied only to contractors required to be licensed under chapter 444 and not so licensed and that lien rights are not denied to persons who may meet the definition of a general contractor under chapter 507 but who are exempt from the licensing requirements of chapter 444.

SECTION 2. Section 507-49, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 507-49 Exceptions. (a) Anything contained in this part to the contrary notwithstanding, in connection with any repairs or improvements made or performed on property which before the repairs or improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of

materials to a general contractor as defined in this chapter or his subcontractor either of whom was required to be licensed but was not licensed pursuant to chapter 444 or if unreasonable advancement of credit was given by the furnisher of materials to the general contractor or subcontractor whether such person is licensed, unlicensed or exempted under chapter 444.

The issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section 507-43(c); provided that if a party affected by the lien does not appear at the return day hearing, he may raise the issue of unreasonable advancement of credit at any time prior to the entry of a final or interlocutory decree of foreclosure in the proceeding brought to enforce the lien under section 507-47. For the purposes of this section, if the furnisher of materials has secured a credit application form from the general contractor or the subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of the general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be prima facie reasonable.

The credit application referred to herein shall be current and shall include at least the following information:

- A. For all persons:
 - 1. Name
 - 2. Address
 - 3. Type of business (Example—plumbing subcontractor)
 - 4. Date business started
 - 5. Contractor's license number
 - 6. Bonding companies generally used
 - 7. Banks used
 - 8. List of current creditors
 - 9. Balance sheet
 - 10. Total of all outstanding construction contracts \$_____
 - 11. Incompleted portion of all contracts \$_____
- B. In addition, for corporate accounts:
 - 1. Names of officers
 - 2. Authorized capital
 - 3. Paid in capital
- C. In addition, for noncorporate accounts:
 - 1. Names of partners, co-venturers, etc.

(b) Anything contained in this chapter to the contrary notwithstanding, no general contractor as defined in this chapter or his subcontractor or the subcontractor's subcontractor who is required to be licensed pursuant to chapter 444, shall have lien rights unless such contractor was licensed pursuant to chapter 444 when the improvements to the real property were made or performed, and no subcontractor or subcontractor's subcontractor so licensed shall have lien rights if his work was subcontracted to him by a general contractor as defined in this chapter or his subcontractor who was required to be licensed but was not licensed pursuant to chapter 444."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the

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brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 7, 1976.)

*Edited accordingly.