

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 444-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately numbered and to read:

“(7) “Director” means the director of the department of commerce and consumer affairs.

“(8) “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.”

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“§444- 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 may contain an order of abatement, and an assessment of civil penalties as provided in section 444-23. 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 of abatement 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 for abatement and 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, he may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which he resides or has his principal place of business or in which the action in question occurred; provided that the operation of an abatement order will 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."

SECTION 3. New statutory material is underscored.¹

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

(Approved May 9, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.