

ACT 20

H.B. NO. 1943

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 444-4, Hawaii Revised Statutes, is amended to read as follows:

“§444-4 Powers and duties of board. In addition to any other powers and duties authorized by law, the [contractors license] board shall:

- (1) Grant licenses, including conditional licenses, to contractors pursuant to this chapter and rules;
- (2) Adopt, amend, or repeal such rules as [it] 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 [such] 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 [such] 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 [ground] grounds for revocation or suspension of a license;
- (6) Publish and distribute pamphlets and circulars containing [such] any information as [it] the board deems proper to further the accomplishment of the purpose of this chapter; [and]
- (7) Contract for professional testing services to prepare, administer, and grade the examinations [and tests] for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of [such] the examinations [and tests], whether [they] 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.”

SECTION 2. Section 444-11, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Any person unless the person has filed an application [therefor;] 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 [partner] member or employee thereof, and unless [such partner] 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 [such] the individual, partnership, or corporation is under the direct management of an employee, partner, or officer [or employee] thereof[, and unless such officer or employee] who holds an appropriate license; [or]
- (8) Any person unless the person submits satisfactory proof to the [contractors license] board that the person has obtained workers’ compensation insurance, or has been authorized to act as a self-insurer [as required by] 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.

[In addition, any] (b) Any license issued hereunder shall not be renewed if the licensee no longer meets any [one or more] 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.”

SECTION 3. Section 444-11.1, Hawaii Revised Statutes, is amended to read as follows:

“§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 [when]; unless the licensee is [not] 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 [suspension] forfeiture of the license of the contractor effective as of the date of expiration or cancellation of [its] the contractor’s workers’ compensation insurance, liability insurance, or bond.

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

(d) Failure to [effect a reinstatement of] restore a [suspended] license within sixty days [of the expiration of the requirements of licensing] after the date of forfeiture shall [cause it to be terminated, thereby forfeiting all license, biennial renewal and recovery fund] 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 [reinstatement] restoration of a license [suspended] forfeited pursuant to this section.

(f) A licensee may, within [fifteen] sixty days after receipt of the notification of the [license suspension,] forfeiture, request an administrative hearing to review the [suspension] forfeiture pursuant to chapter 91.”

SECTION 4. Section 444-12, Hawaii Revised Statutes, is amended to read as follows:

“§444-12 Application; fees. (a) Every applicant for a license under this chapter shall complete and file an application [with] provided by the board [in such form and setting forth such information as may be prescribed or required by the board,] and shall furnish [such] any additional information bearing upon the issuance of the license as the board shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a partnership, joint venture, or corporation, any partner, member, or officer thereof may sign the application and verify the same 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 [as provided in rules adopted by the director pursuant to chapter 91].

(c) These fees shall be as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 5. Section 444-15, Hawaii Revised Statutes, is amended to read as follows:

“§444-15 Fees; biennial renewals[.]; inactive license. (a) The biennial renewal fee or inactive license fee, and the recovery [and] fund, education fund, and compliance resolution fund fees [as provided in rules adopted by the director pursuant to chapter 91,] shall be paid to the board on or before April 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 [the

biennial renewal fee] these fees and to submit all documents [requested] required by the board before [that date] April 30 of each even-numbered year shall constitute a forfeiture of the licensee's license.

(b) Any forfeited license may be restored upon [written application therefor] submittal of all required documents and fees, plus a penalty fee, within sixty days from [that date and the payment of the required fee plus an amount equal to ten per cent thereof.] April 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 [license,] 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."

SECTION 6. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

"§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 but not limited to the following:

- (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 [when not], 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, utilizing 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 Underwriter Laboratories, Incorporated; and
- (20) Violating chapter 342C."

SECTION 7. Section 444-25.5, Hawaii Revised Statutes, is amended to read as follows:

"§444-25.5 Disclosure[.]; contracts. [Any licensed contractor] (a) Prior to entering into a contract with a homeowner involving home construction or improvements [shall upon or before signing the contract, but before] and prior to the application for a building permit[.]; licensed contractors shall:

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

- [(3) Secure signatures of the owner on a separate form, the language of which shall be approved by the contractors license 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 paragraphs (1) and (2); provided that at the contractor's option, a separate form need not be used, so long as the disclosures required by this section are in the first page of the contractor's written contract and printed in at least 14-point type.]
- (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) Be signed by the contractor and the homeowner; and
 - (3) 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.
- [(4) Violation] (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.
- [(5) The contractors license board is authorized and directed to develop the disclosure language pursuant to this section.]”

SECTION 8. Section 444-26, Hawaii Revised Statutes, is amended to read as follows:

“§444-26 Contractors recovery fund; use of fund; person injured; fees.

(a) The [contractors license] board is authorized [and directed] 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 [of the injury.] 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 [their] 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 [their] the owners’ or lessees’ own private residences on [their] 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

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provided in rules adopted by the director pursuant to chapter 91. In the event that the [contractors license] board does not issue the license, these fees shall be returned to the applicant.’’

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved April 20, 1995.)