

ACT 172

H.B. NO. 3102

A Bill for an Act Relating to Contractors.

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

SECTION 1. The legislature finds that there has been an abuse of the exemption from the contractors license requirements under chapter 444, Hawaii Revised Statutes, provided to property owners who build their own homes. While there is a legitimate need to allow property owners to build homes or improve their property for their own use without obtaining a contractors license, this exemption should not extend to individuals who construct and sell several homes over a short period of time since the licensing of contractors is required by law, in part, to ensure the safety of homes constructed for sale.

The legislature further finds that the experiences from Hurricane Iniki and its aftermath demonstrated the need for enhanced statutory protection against unlicensed contractors during natural disasters and in transactions involving elderly citizens.

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§444- Prosecution of criminal violations. The regulated industries complaints office shall report any criminal violation of this chapter, including, but not limited to, criminal contempt of court, to the county prosecuting attorney’s office or the department of the attorney general for prompt prosecution.

§444- State of disaster; acting as a contractor without a license; penalty. Any person who violates section 444-9, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster in a political subdivision for which a state of disaster is proclaimed by the governor, may be punished by a fine of up to \$10,000, or imprisonment up to one year, or both, in addition to all other remedies or penalties.

§444- Enhanced penalties when elderly persons are targeted. If any person is found to have violated section 444-9 and the violation is committed against elderly persons, in addition to any other penalty set forth or imposed, the court may impose a fine of up to \$10,000, or imprisonment up to one year, or both. As used in this section, “elderly person” means a person who is sixty-five years of age or older.”

SECTION 3. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

“§444-2 Exemptions. This chapter shall not apply to:

- (1) Officers and employees of the United States, the State, or any [political subdivision] county while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise [which] that are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is [equal to or less] not more than \$1,000. This exemption shall not apply in any case [wherein] where a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts [equal to or less] not more than \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person’s professional capacity;
- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person’s sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and who do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing

work[, which] that must be performed only by persons or entities licensed under this chapter, or to the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of the structure [within] not more than one year after completion is prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this provision shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1. Any owner or lessee of property found to have violated [the provisions of] this paragraph shall not be permitted to engage in any activities pursuant to this paragraph or to register under section 444-9.1 for a period of three years[;]. There is a presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years;

- (8) Any joint venture if all members thereof hold licenses issued under this chapter;
- (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that [such] the work does not pose a potential danger to public health, safety, and welfare; or
- (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency.”

SECTION 4. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

“§444-9.1 Issuance of building permits; owner-builder registration. (a)

Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant and all specialty contractors are licensed under this chapter, giving the license numbers and stating that the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant’s personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; (4) the approximate dates of construction activity; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

(b) The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor’s duly authorized agent.

(c) To qualify for the exemption under section 444-2(7), the county shall provide the applicant with a disclosure statement in substantially the following form:

“Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section 444-2(7), Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure that subcontractors hired by you have licenses required by state law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building who is not licensed must be your employee which means that you must deduct F.I.C.A. and withholding taxes and provide workers’ compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section 444-2(7) you may be fined \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater for any subsequent offense.”

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form.

(d) A county building inspector or other building official shall report to the regulated industries complaints office the name and address of any person, who, in the opinion of the building inspector or official, has violated this chapter by accepting or contracting to accomplish work which would classify the person as a contractor under this chapter.”

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

“§444-23 Violation; penalties. (a) Any licensee who contracts outside the appropriate scope of classification for which the licensee is licensed shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Any licensee who violates section 444-9.3 or 444-17(17) shall be fined up to \$25,000 or up to the full amount of the contract price for each offense, whichever is greater.

(c) Except as provided in subsections (a) [and], (b), (d), and (e), any person who violates or fails to comply with [any of the provisions of] this chapter shall be fined not less than \$100 [and not] or more than \$5,000 for each violation; provided that [persons who violate] any person who violates section 444-9 shall be fined:

- (1) \$500 or forty per cent of the total contract price, whichever is greater, for the first offense;
- (2) \$1,000 or forty per cent of the total contract price, whichever is greater, for the second offense; and
- (3) \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense.

(d) Any licensee who violates, or whose employee violates, section 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and not less than \$300 [to] or more than \$1,000 for each subsequent offense; provided that each unit serviced in violation of section 444-17(18) or [section] 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.

(e) Any person who violates section 444-2(7), shall be fined:

- (1) \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and
- (2) \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offenses.’’

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

Note

- 1. Edited pursuant to HRS §23G-16.5.