



# **Report of the Unlicensed Contractor Law Enforcement Task Force**

In Accordance with  
House Concurrent Resolution 286, House Draft 1  
Regular Session 2011

Prepared by the  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII**

November 2011

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## TABLE OF CONTENTS

- I. EXECUTIVE SUMMARY
- II. INTRODUCTION AND MEMBERSHIP
- III. DISCUSSION
- IV. SPECIFIC FINDINGS
- V. RECOMMENDATIONS
- VI. APPENDICES

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## **I. EXECUTIVE SUMMARY**

House Concurrent Resolution 286, House Draft 1, requested that the Director of the Department of Commerce and Consumer Affairs (DCCA) establish a task force to develop a collaborative enforcement strategy concerning unlicensed contractors among civil, criminal, and administrative enforcement agencies. The task force was also requested to evaluate existing laws and propose new laws or revisions to existing laws that apply to unlicensed contractors, where appropriate, to facilitate better enforcement.

House Concurrent Resolution 286, House Draft 1 also requested that the task force report its findings and recommendations and any proposed legislation to the Legislature no later than twenty days prior to the 2012 regular session.

The DCCA Director's designee convened and chaired the Unlicensed Contractor Law Enforcement Task Force (UCLETF). Pursuant to House Concurrent Resolution 286, House Draft 1, members of the UCLETF consisted of representatives from the DCCA's Regulated Industries Complaints Office, Department of Labor and Industrial Relations, Department of Taxation, Department of the Attorney General, and the Department or Office of the Prosecuting Attorney for each county.

The UCLETF convened four times over a four-month period to discuss the issues raised in House Concurrent Resolution, House Draft 1. The UCLETF also created three small working groups to focus on 1) information sharing among the participating agencies; 2) criminal enforcement enhancements; and 3) civil forfeiture. The small working groups met independently of the UCLETF and reported their discussions and recommendations to the UCLETF.

Sections IV and V of this Report detail the UCLETF's findings and recommendations.

## **II. INTRODUCTION AND MEMBERSHIP**

House Concurrent Resolution 286, House Draft 1, requested that the Director of the DCCA establish a task force to work collaboratively to more effectively enforce State civil and criminal laws that apply to unlicensed contractors. Specifically, the task force was asked to develop a cohesive and collaborative enforcement strategy for civil, administrative, and criminal enforcement agencies. The task force also was asked to review and evaluate existing laws and propose revisions or new laws, where appropriate.

As a basis for the resolution, the Legislature found that unlicensed contractors often do not possess the necessary training and experience to obtain a license and rarely maintain workers' compensation and liability insurance. The Legislature also found that unlicensed contractors continue to engage in illegal contracting despite prior judgments, consumer restitution orders, and injunctions, and that their conduct places consumers at

serious risk of faulty construction and financial harm and adversely impacts the legitimate and licensed business operations within the contracting industry.

The DCCA Director's designee convened the Unlicensed Contractor Law Enforcement Task Force (UCLETF). Pursuant to House Concurrent Resolution 286, House Draft 1, the UCLETF consisted of representatives from the DCCA's Regulated Industries Complaints Office, Department of Labor and Industrial Relations, Department of Taxation, Department of the Attorney General, and the Department or Office of the Prosecuting Attorney for each county.

The UCLETF consisted of the following representatives:

Ms. Jo Ann Uchida, Esq.  
Designee of the Director of Commerce and Consumer Affairs, Chair  
Department of Commerce and Consumer Affairs

Ms. Catherine Chun-Hoon, Esq.  
Ms. Daria Loy-Goto, Esq.  
Mr. Sean Kinilau  
Department of Commerce and Consumer Affairs

Mr. Rodney Tam, Esq. Commerce & Economic Development Division  
Mr. Christopher Young, Esq. Criminal Justice Division  
Department of the Attorney General

The Honorable Audrey Hidano  
Ms. Linda Uesato  
Department of Labor and Industrial Relations

Ms. Kathleen Uehara  
Mr. Edward Beal  
Department of Taxation

Mr. Chris Van Marter, Esq.  
Mr. Scott Spallina, Esq.  
Department of the Prosecuting Attorney, County of Honolulu

Ms. Charlene Iboshi, Esq.  
Department of the Prosecuting Attorney, County of Hawaii

Mr. John Kim, Esq.  
Mr. Timothy Tate, Esq.  
Mr. Lewis Littlepage, Esq.  
Department of the Prosecuting Attorney, County of Maui

Ms. Shaylene Iseri-Carvalho, Esq.  
Department of the Prosecuting Attorney, County of Kauai

The UCLETF met on August 11, 2011, September 21, 2011, October 19, 2011, and November 30, 2011.

### **III. DISCUSSION**

#### **Methodology**

To examine the issues raised by H.C.R. 286, H.D. 1, the UCLETF created three small working groups as follows:

1. **Small Working Group on Information Sharing.** This small working group examined some of the challenges to collaborative enforcement and the extent to which those challenges could be overcome through information sharing among enforcement agencies. The members of this working group and the group's findings and recommendations are reflected in the group's report to the UCLETF, a copy of which is attached.
2. **Small Working Group on Enforcement.** This small working group examined how different enforcement agencies address unlicensed contracting, which laws are relied upon, and how enforcement could be tailored to address particular instances of unlicensed activity. The members of this working group and the group's findings and recommendations are reflected in the group's report to the UCLETF, a copy of which is attached.
3. **Small Working Group on Forfeiture.** This small working group examined the practical and legal issues affecting the bringing of civil forfeiture actions by RICO under Haw. Rev. Stat. §444-23.5. The members of this working group and the group's findings and recommendations are reflected in the group's report to the UCLETF, a copy of which is attached.

The small working groups met separately from the UCLETF and from each other.

In addition to the reports from the three small working groups, F.M. Scotty Anderson, Pacific Rim Partners, L.L.C., and Mike Kido, Pacific Resource Partnership, attended the August 11, 2011, meeting of the UCLETF and voiced their support of collaborative enforcement. Mr. Anderson suggested that the UCLETF consider an enforcement model similar to that used by the California State Contractors License Board. Mr. Kido indicated a willingness to support possible educational initiatives by UCLETF.

In addition, on November 7, 2011, Chair Jo Ann Uchida held preliminary discussions with representatives from the DCCA Professional and Vocational Licensing Division regarding the feasibility of using funds from the Contractor Education Fund to support educational initiatives by UCLETF.

## **Brief Description of Enforcement Agencies and Key Enforcement Roles**

**Department of Labor and Industrial Relations (DLIR).** DLIR divisions include the Disability Compensation Division, Unemployment Insurance Division, Occupational Safety and Health Division, and Wage Standards Division.

Disability Compensation Division (DCD) administers the Workers' Compensation (WC) law (HRS Ch. 386), the Temporary Disability Insurance (TDI) law (HRS Ch. 392), and the Prepaid Health Care (PHC) law (HRS Ch. 393). All employers with one or more employees, whether working full-time or part-time, are directly affected.

The Unemployment Insurance Division (UI) administers Hawaii's Unemployment Insurance Law (HRS Chs. 383 and 384).

Occupational Safety and Health Division (HIOSH) administers the Hawaii Occupational Safety and Health Law (HRS Ch. 396) and the Boiler and Elevator Safety Law (HRS. Ch. 397).

The Wage Standards Division administers Wage and Hour on Public Works Constructions Projects (HRS Ch. 104), Lie Detector Tests (HRS. Ch. 378 Part II), Termination or Suspension due to work injury (HRS Ch. 378 Part III), Minimum wage and overtime (HRS Ch. 387), Unpaid wages and timely payment of wages (HRS Ch. 388), Child labor (HRS Ch. 390), and Hawaii Family Leave (HRS Ch. 398).

DLIR, through DCD, UI, and Wage and Standards Divisions, holds important employer information and can verify, for example, if a particular person or business maintains workers' compensation and unemployment insurance. These divisions also make determinations regarding employee versus independent contractor status. In the context of RICO unlicensed activity enforcement, this information is particularly helpful to determine (1) if work at an owner-builder site is being performed by unlicensed contractors (violation) or by employees of the owner-builder (no violation); and (2) if work by a contractor is being performed by unlicensed subcontractors or independent contractors, or by employees of the contractor.

In addition, DLIR, through HIOSH, investigates reports of unsafe work conditions, often involving construction sites. HIOSH plays an important role in identifying the persons or entities that were at a jobsite when an injury occurred. While HIOSH's primary responsibility is to enforce worker safety laws, where it encounters jobsites that include unlicensed contractors, the information that HIOSH obtains as part of its investigation can be instrumental in identifying the nature of the work being performed by the unlicensed person or persons for purposes of a RICO investigation.

**Department of Taxation (DoTax).** DoTax divisions include the Tax Services and Processing Division and the Compliance Division (Audit Branch and Collection Branch).

**Tax Enforcement.** Tax enforcement plays a particularly important role in unlicensed contracting enforcement. Most notably, in July 2011, through the collaborative efforts of DoTax's Criminal Investigation Unit, the Department of the Attorney General's Criminal Justice Division, and RICO, long-time unlicensed contractor Tevita Ungounga was sentenced to a one-year jail term based on charges of tax evasion, false returns, failure to file taxes, and unlicensed activity. On a less dramatic level, information obtained through RICO's unlicensed activity investigations can assist DoTax in their tax audits or investigations, particularly when other indicia of revenue-generating activity within the State is lacking.

**Department of Commerce and Consumer Affairs (DCCA).** DCCA divisions include the Professional and Vocational Licensing Division (PVLD) and the Regulated Industries Complaints Office (RICO).

PVLD administers the licensing laws for 25 professional boards and commissions and 22 licensing programs. This division receives all licensing applications and renewals, administers licensee testing and continuing education, and provides administrative support to the professional boards and commissions.

RICO enforces the professional and vocational licensing laws, including Contractors (HRS Ch 444) and the Uniform Professional and Vocational Licensing Act (HRS Ch 436B). Enforcement actions include administrative proceedings involving licensee violations and civil lawsuits and citations for unlicensed activity. RICO has civil and administrative enforcement authority (not criminal).

**RICO Civil Enforcement.** RICO has civil enforcement authority, which means that it prosecutes unlicensed contractors through civil lawsuits that seek injunctions, fines, and restitution. RICO also has authority to issue citations for unlicensed activity. Citations include a cease and desist order and the imposition of fines. In the course of conducting an investigation of unlicensed activity, RICO will generally obtain information about the construction contract, the parties to the contract, the nature of the work to be performed, who performed the work and when it was performed, the amount of agreed upon compensation and the amount actually paid for the work, and the identities of other businesses or individuals involved at the jobsite. This information can and is shared with other law enforcement agencies upon request. RICO initiates between 75-100 legal actions against unlicensed contractors each year. RICO also refers particularly egregious cases involving multiple violations to the Department of the Attorney General and the county prosecutor's office for possible criminal prosecution.

**Department of the Attorney General (AG).** AG divisions include the Criminal Justice Division.

The Criminal Justice Division performs prosecutorial functions in areas such as welfare fraud, tax fraud, and unemployment fraud, and administers the Asset Forfeiture program.

**Office of the Prosecuting Attorney – Kauai, Maui, Honolulu, and Hawaii.** These county agencies have criminal enforcement authority over a wide range of criminal violations.

Criminal law enforcement. The AG's and the county prosecutor's offices have successfully prosecuted unlicensed contractors (see e.g., Tax Enforcement discussion regarding Tevita Ungounga, above). Unlicensed activity is a misdemeanor (HRS 436B-27(b)) and is often coupled with other related charges including but not limited to criminal tax violations, identity theft, and theft by deception.

#### **IV. SPECIFIC FINDINGS**

(1) A collaborative approach, focused on sharing certain identified information, would bolster each division's ability to detect and deter violations by unlicensed contractors. For example, a person engaged in contracting without a license may also operate without unemployment or worker's compensation insurance, and may fail to pay the appropriate state taxes.

(2) Agreements between agencies to share information need to be designed to provide information that is relevant and meaningful in a manner that is not precluded by confidentiality statutes.

- Prior or existing written agreements between agencies, while useful, are either outdated or have not yielded meaningful information with any consistency.
- Federal and state laws prohibit the disclosure of most tax information. In addition, UI and HIOSH statutory provisions preclude disclosure of certain UI and HIOSH information.

(3) Certain information relevant to the participating agencies already is available on agency web sites, upon written request to an agency, or via informal agreements with an agency.

- DoTax provides general excise tax numbers and other tax information on its web site. Other tax information, such as overdue receivables, is public information and available upon written request.
- DCCA also provides business registration information, complaints information, and licensing information on its web site. Final orders in certain types of cases are also available on the DCCA web site.
- Final decisions of the DLIR are available upon written request.
- Informal information-sharing arrangements pursuant to §92F-19, HRS, authorize the disclosure of information between state agencies. RICO routinely utilizes this provision to disclose its complaints information to other state or federal law enforcement agencies and has developed a law enforcement request form for this purpose. Pursuant to an existing informal arrangement, RICO receives law enforcement requests from DoTax and expedites such requests.

(4) Information sharing between the participating agencies could best be achieved through Memoranda of Agreement (MOAs), specifically designed to facilitate the conveyance of information relevant to contracting activity and to the statutory responsibilities and jurisdiction of each participating agency.

(5) The following are examples of information that, when shared, would promote the receiving division's ability to identify and investigate violations by unlicensed contractors:

- WSD case information involving contracting and the names of contractors suspended from working on public works projects under Chapter 104, Hawaii Revised Statutes (HRS). WSD routinely refers such information to its sister divisions and to the State Procurement Office and agreed to extend its referral to RICO. The information disclosed would assist RICO to identify potential contractor respondents.
- DoTax Basic Business Application (BB1). The BB1 is a source of relevant business data that RICO could use to either identify or confirm information during its investigations of unlicensed contracting.
- DCD worker's compensation information, including policy number and insurer name, delinquent employer information, claimant injury data, and employer injury-reporting data. The information disclosed would assist RICO determining the employment status of a particular worker or workers at a jobsite.
- RICO information containing the names and addresses of licensed and unlicensed out-of-state contractors engaging in contracting activity in-state. Such information is relevant for DoTax and UI purposes, but is not compiled in a manner that facilitates easy referral. RICO will modify its complaints database to more readily identify these contractors for referral to DoTax and UI.
- Certain HIOSH investigation records. Such records would identify respondents and facilitate RICO's investigations.

(6) AG-DCCA MOA for Forfeiture. Hawaii Revised Statutes § 444-23.5 provides for the forfeiture of tools and equipment used by an unlicensed contractor. As an agency, RICO has been hindered in its application of the forfeiture law by practical considerations including storage of seized property, preservation, and disposal. The AG's office administers a forfeiture program on Oahu, and can provide assistance to RICO with respect to the practical aspects of a forfeiture action, including but not limited to use of storage facilities, and access to a property manager and auctioneer.

(7) A cooperative arrangement between the AG and RICO relating to RICO's forfeiture actions could best be achieved through a Memorandum of Agreement (MOA).

(8) Public education. An effective unlicensed contracting enforcement strategy should include efforts to educate the consuming public about the pitfalls of hiring an unlicensed contractor. Unlicensed contracting is often perceived by the public as a "victimless" crime involving a willing homeowner trying to find a contractor at the lowest price possible. Few owners are aware of the problems that could result from

hiring an unqualified person. Currently, warnings about unlicensed contracting have come primarily from RICO. It is recommended that RICO explore a joint, coalition message from the Department of Commerce and Consumer Affairs and other law enforcement agencies warning of the risks of hiring unlicensed contractors. In order to fund such an initiative, consideration should be given to use of the Contractor Education Fund administered by the Contractors Licensing Board, as well as funding from private sources.

(9) New legislation. The criminal provisions of Hawaii's contracting law appear in various parts of HRS Chapter 444 and Chapter 436B and have not be revised for a significant period of time. While these existing criminal laws adequately address some types of unlicensed activity, placing the criminal provisions in one, omnibus section within the penal code will assist criminal investigators and other law enforcers in expeditiously determining whether a crime has been committed. In addition, consideration should be given to legislation that would make repeat instances of unlicensed contracting a felony, revise the fine amounts set forth in HRS §436B-27(b) from \$1,000 to \$2,000 to reconcile the language of that section with HRS §706-640(1)(d), provide for criminal sanctions for violating an unlicensed activity cease and desist order, and provide for criminal sanctions for certain types of fraud activity.

(10) Reporting requirements for contractors on federal construction projects. Pursuant to HRS §237-10.5, all persons who do not possess a valid general excise tax license at the time of a contract award with the federal government are required to report their estimated gross receipts to the Department of Taxation. Since all persons or companies intending to do business in the State must apply and obtain a general excise tax license, this statutory provision may not be providing information to the State in a manner that would generate additional tax revenues (only one entity has filed a §237-10.5 return). While it appears that the federal government is cooperating with the State in sharing contract award information, consideration should be given to measures that would ensure that all persons receiving a contract award from the federal government report and pay taxes that may be owed to the State.

(11) Current Enforcement is a Graduated Approach. Each year, RICO issues numerous citations aimed at curbing unlicensed contracting activity. RICO also files 75-100 civil lawsuits against unlicensed contractors each year. Through its actions, RICO is able to bring many unlicensed persons into compliance. Unlicensed contractors who are unaware of the law become licensed. Others leave contracting or go to work as employees for legitimate licensees. RICO is less successful with repeat offenders for whom judgments are not a significant deterrent, and minimally effectual with unlicensed contractors who are engaged in criminal enterprises. Enforcement of the law in this area requires a collaborative effort between civil and criminal law enforcement agencies. As indicated, instances of unlicensed contracting range from persons with experience who ultimately work toward and obtain licensure, to persons with little or no experience who most likely would not qualify for licensure, to those with little or no intention to complete work for monies received. The latter category, as well as chronic, repeat offenders in the

earlier categories, provides the most challenge for the RICO and would be more appropriate for criminal prosecution.

## V. RECOMMENDATIONS

(1) Memorialize the information sharing identified in IV (3) above in MOAs between the DCCA-RICO and (a) DLIR-UI; (b) DLIR-WSD; (c) DLIR-DCD; (d) DoTax; and (e) HIOSH. In particular, RICO will modify its database to more readily identify contractor case data for referral to DoTax and UI.

(2) Each participating agency shall continue to explore the sharing of contractor information and the feasibility of future MOAs.

(3) The participating agencies shall utilize §92F-19, HRS, to disclose information to each other as law enforcement agencies to the fullest extent possible.

(4) Memorialize an arrangement between DCCA-RICO and the AG for storage and disposal of seized/forfeited items.

(5) Although RICO currently advises law enforcement agencies of its unlicensed activity prosecutions and selectively refers unlicensed contracting cases to criminal law enforcement agencies for prosecution, the process can and should be refined to ensure that the appropriate cases are referred to the appropriate criminal law enforcement agency. It is recommended that RICO work with the Department of the Attorney General and the various county prosecutors' offices to further refine the criteria for case referral for criminal prosecution.

(6) Consumer education. It is recommended that RICO explore a joint, coalition message from the Department of Commerce and Consumer Affairs and other law enforcement agencies warning of the risks of hiring unlicensed contractors with a particular emphasis on the fact that unlicensed contracting is a crime. In conjunction, RICO could provide training for law enforcement officers about the law and risks of unlicensed contracting. To fund these initiatives, DCCA should initiate further discussions with the Contractors License Board as well as private sources.

(7) Proposed legislation. The UCLETF recommends consideration of new legislation which would set forth the crime of unlicensed contracting in one, omnibus section within Title 37 (Penal Code). One enhancement would make repeated unlicensed contracting conduct a felony. Additionally, it is recommended that the fine provision in HRS §436B-27(b) be amended from \$1000 to \$2000, consistent with misdemeanor penalties imposed by law. Furthermore, possible new legislation relating to violations of cease and desist orders and violations relating to unlicensed contracting fraud should be considered.

(8) Information Returns by Contractors on Federal Construction Projects under HRS §237-10.5. UCLETF recommends further review of this provision to determine its efficacy.

## **VI. APPENDICES**

House Concurrent Resolution 286, House Draft 1  
Twenty-Sixth Legislature, 2011

Report of the Small Working Group on Information Sharing

Report of the Small Working Group on Enforcement

Report of the Small Working Group on Forfeiture

Department of Taxation News Release  
July 27, 2011 – Unlicensed Contractor Sentenced to One-Year Jail Term

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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO  
ESTABLISH A TASK FORCE TO WORK COLLABORATIVELY TO FIND WAYS  
TO MORE EFFECTIVELY ENFORCE THE STATE'S CIVIL AND CRIMINAL  
LAWS THAT MAY APPLY TO UNLICENSED CONTRACTORS.

1           WHEREAS, unlicensed contractors often do not possess the  
2 necessary training and experience to obtain a license and rarely  
3 maintain workers' compensation and liability insurance; and  
4

5           WHEREAS, many unlicensed contractors receive or pay wages  
6 in cash, thereby avoiding unemployment, payroll, and personal  
7 tax obligations; and  
8

9           WHEREAS, unlicensed contractors often operate without  
10 regard to worker and workplace safety requirements; and  
11

12           WHEREAS, violations of current licensing, employment, and  
13 tax laws by an unlicensed contractor may subject the unlicensed  
14 contractor to civil and criminal penalties; and  
15

16           WHEREAS, unlicensed contractors continue to engage in  
17 illegal contracting despite prior judgments, consumer  
18 restitution orders, and injunctions that prohibit continued  
19 unlicensed activity; and  
20

21           WHEREAS, criminal prosecutions and forfeiture actions are  
22 underutilized as a means of enforcing laws against unlicensed  
23 activity and deterring unlicensed activity; and  
24

25           WHEREAS, unlicensed contractors place consumers at serious  
26 risk of faulty construction and financial harm and adversely  
27 impact the legitimate and licensed business operations within  
28 the contracting industry; and



1 WHEREAS, the Regulated Industries Complaints Office of the  
2 Department of Commerce and Consumer Affairs is charged with the  
3 enforcement of the contractor licensing laws; and

4  
5 WHEREAS, the Department of Labor and Industrial Relations  
6 enforces the employment laws, including the workers'  
7 compensation insurance laws, the unemployment insurance laws,  
8 and workplace safety laws; and

9  
10 WHEREAS, the Department of Taxation enforces state tax  
11 laws; and

12  
13 WHEREAS, the Department of the Attorney General is the  
14 chief law enforcement agency of the State and, among other  
15 things, enforces laws; and

16  
17 WHEREAS, the Department or Office of the Prosecuting  
18 Attorneys for each county is authorized to enforce the  
19 respective county's laws; and

20  
21 WHEREAS, effective and collaborative civil and criminal  
22 enforcement of licensing, employment, and tax laws that may  
23 apply to unlicensed contractors promotes consumer protection and  
24 a healthy state economy; now, therefore,

25  
26 BE IT RESOLVED by the House of Representatives of the  
27 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
28 of 2011, the Senate concurring, that the Director of Commerce  
29 and Consumer Affairs is requested to establish a task force  
30 consisting of two representatives from the following state and  
31 county agencies:

- 32  
33 (1) Regulated Industries Complaint Office of the  
34 Department of Commerce and Consumer Affairs;  
35  
36 (2) Department of Labor and Industrial Relations;  
37  
38 (3) Department of Taxation;  
39  
40 (4) Department of the Attorney General; and  
41  
42 (5) Department or Office of the Prosecuting Attorney of  
43 each of the counties,



1 to work collaboratively to more effectively enforce the State's  
2 civil and criminal laws that may apply to unlicensed  
3 contractors; and

4  
5 BE IT FURTHER RESOLVED that the task force is specifically  
6 requested to:

7  
8 (1) Develop a cohesive and collaborative enforcement  
9 strategy among the various civil, administrative, and  
10 criminal enforcement agencies; and

11  
12 (2) Evaluate existing laws and, where appropriate, propose  
13 new laws or revisions to existing laws that would  
14 facilitate more effective enforcement;

15  
16 and

17  
18 BE IT FURTHER RESOLVED that the Director of Commerce and  
19 Consumer Affairs is requested to report the task force's  
20 findings and recommendations, together with any proposed  
21 legislation, to the Legislature no later than twenty days prior  
22 to the convening of the Regular Session of 2012; and

23  
24 BE IT FURTHER RESOLVED that certified copies of this  
25 Concurrent Resolution be transmitted to the Director of Commerce  
26 and Consumer Affairs, Director of Labor and Industrial  
27 Relations, Director of Taxation, the Attorney General, and the  
28 Prosecuting Attorney of each respective county.



**REPORT OF  
THE SMALL WORKING GROUP ON INFORMATION SHARING  
UNLICENSED CONTRACTOR LAW ENFORCEMENT TASK FORCE**

**I. PURPOSE**

The purpose of the small working group of the Unlicensed Contractor Law Enforcement Task Force ("Task Force") was to improve and facilitate the sharing of information among the participating Departments.

**II. MEMBERS**

The small working group was comprised of the following Department representatives:

Audrey Hidano-Deputy Director, Department of Labor and Industrial Relations (DLIR)

Bill Kunstman-Director's Office, DLIR

Pamela Martin-Wage Standards Division (WSD), DLIR

Linda Uesato-Unemployment Insurance Division (UID), DLIR

Miles Yasui-UID, DLIR

Keith Kim-Disability Compensation Division (DCD), DLIR

Kathleen Uehara-Department of Taxation (DoTax)

Edward Beal-DoTax

Sean Kinilau-Regulated Industries Complaints Office (RICO), Department of Commerce and Consumer Affairs (DCCA)

Catherine Chun-Hoon-RICO, DCCA

**III. MEETINGS**

The small working group met on August 23, 2011, September 13, 2011, and October 13, 2011. Members also met via conference call or by telephone as needed.

**IV. FINDINGS**

(1) Agreements between agencies to share information need to be designed to provide information that is relevant and meaningful in a manner that is not precluded by confidentiality statutes.

- Prior or existing written agreements between agencies, while useful, are either outdated or have not yielded meaningful information with any consistency.

- Federal and state laws prohibit the disclosure of most tax information. In addition, UID and Occupational Safety and Health (HIOSH) statutory provisions preclude disclosure of certain UID and HIOSH information.

(2) Certain information relevant to the participating agencies already is available on agency web sites, upon written request to an agency, or via informal agreements with an agency.

- DoTax provides general excise tax numbers and other tax information on its web site. Other tax information, such as overdue receivables, is public information and available upon written request.
- DCCA also provides business registration information, complaints information, and licensing information on its web site. Final orders in certain types of cases are also available on the DCCA web site.
- Final decisions of the DLIR are available upon written request.
- Informal information-sharing arrangements pursuant to §92F-19, HRS, authorize the disclosure of information between state agencies. RICO routinely utilizes this provision to disclose its complaints information to other state or federal law enforcement agencies and has developed a law enforcement request form for this purpose. Pursuant to an existing informal arrangement, RICO receives law enforcement requests from DoTax and expedites such requests. See Attachment A.

(3) Information sharing between the participating agencies could best be achieved through Memoranda of Agreement (MOAs), specifically designed to facilitate the conveyance of information relevant to contracting activity and to the statutory responsibilities and jurisdiction of each participating agency.

The group discussed the issue of unlicensed contracting and its relevance to each division represented. For example, a person engaged in contracting without a license may also operate without unemployment or worker's compensation insurance, and may fail to pay the appropriate state taxes. The group concluded that a collaborative approach, focused on sharing certain identified information, would bolster each division's ability to detect and deter unlicensed contracting.

Each division reviewed the information it routinely compiles to determine what, if any, information would be relevant to other divisions. Examples of the information the group identified that, when shared, would promote the receiving division's ability to identify and investigate unlicensed contracting violations are as follows:

- WSD case information involving contracting and the names of contractors suspended from working on public works projects under Chapter 104, Hawaii Revised Statutes (HRS). WSD routinely refers such information to its sister divisions and to the State Procurement Office and agreed to extend its referral to RICO. See Attachment B. The information disclosed would assist RICO to identify potential contractor respondents.
- DoTax' Basic Business Application (BB1). See Attachment C. The BB1 is a source of relevant business data that RICO could use to either identify or confirm information during its investigations of unlicensed contracting.
- DCD worker's compensation information, including policy number and insurer name, delinquent employer information, claimant injury data, and employer injury-reporting data. See Attachment D.
- RICO information containing the names and addresses of licensed and unlicensed out-of-state contractors engaging in contracting activity in-state. Such information is relevant for DoTax and UID purposes, but is not compiled in a manner that facilitates easy referral. RICO will modify its complaints database to more readily identify these contractors for referral to DoTax and UID.
- Certain HIOSH investigation records. Such records would identify respondents and facilitate RICO's investigations.

## V. RECOMMENDATIONS

(1) Memorialize the information sharing identified in IV (3) above in MOAs between the DCCA-RICO and:

1. DLIR-UID;
2. DLIR-WSD;
3. DLIR-DCD;
4. DoTax; and
5. HIOSH.

(2) Each participating agency shall continue to explore the sharing of contractor information and the feasibility of future MOAs.

(3) The participating agencies shall utilize §92F-19, HRS, to disclose information to each other as law enforcement agencies to the fullest extent possible.



NEIL ABERCROMBIE  
GOVERNOR  
  
BRIAN SCHATZ  
LIEUTENANT GOVERNOR  
  
KEALI'I S. LOPEZ  
DIRECTOR  
DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS  
  
JO ANN M. UCHIDA  
COMPLAINTS AND  
ENFORCEMENT OFFICER

STATE OF HAWAII  
REGULATED INDUSTRIES COMPLAINTS OFFICE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
LEIOPAPA A KAMEHAMEHA BUILDING  
235 SOUTH BERETANIA STREET, NINTH FLOOR  
HONOLULU, HAWAII 96813  
TELEPHONE: (808) 586-2666  
FAX: (808) 586-2670  
www.hawaii.gov/dcca

HILO OFFICE  
345 KEKUANAOA STREET, SUITE 12  
HILO, HAWAII 96720

KONA OFFICE  
HUALALAI CENTER  
75-170 HUALALAI ROAD, ROOM C-308  
KAILUA-KONA, HAWAII 96740

MAUI OFFICE  
1063 LOWER MAIN STREET, SUITE C-216  
WAILUKU, HAWAII 96793

KAUAI OFFICE  
3060 EWA STREET, SUITE 204  
LIHUE, HAWAII 96766

Date:

To: Regulated Industries Complaints Office (RICO)  
Attention: Catherine Chun-Hoon

From:

Address:

Telephone:

Fax:

RE: Request for Disclosure of RICO Records to Agency for Civil or Criminal Law  
Enforcement Activity

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Pursuant to §92F-19(a)(3), Hawaii Revised Statutes (HRS), the above-named  
requester hereby requests information from the following government records for  
law enforcement purposes:

Complaint Number(s):

Name(s) of Respondent:

Identify records:

**I WOULD LIKE:** (please check one or more of the options below)

- To inspect the government record.
- A copy of the government record: **(Please check one of the options below.)**
- Pick up at Agency (**date and time**) (agency has ten business days to respond to request): \_\_\_\_\_
- Mail
- Fax \_\_\_\_\_
- Other

I understand that the receiving agency has the same restrictions on disclosure as the originating agency pursuant to §92F-19(b), HRS.

\_\_\_\_\_  
Signature of Requester

ATTACHMENT B

TO: The Honorable , Director  
Department of  
FROM: Dwight Takamine, Director  
Department of Labor and Industrial Relations  
SUBJECT: Possible Violation of Law Indicated Below

---

Employer Name:

Address:

Phone Number:

Applicable Law:

- Employment Security Law
- Fair Labor Standards Act
- Davis-Bacon Act
- Workers' Compensation Law
- Temporary Disability Insurance
- Other: \_\_\_\_\_

Possible Violation:

- Not registered
- No insurance
- Other: \_\_\_\_\_
- Minimum Wage
- Overtime

Remarks:

Investigated by:

Case / Docket No.:

FORM BB-1 (Rev. 2010)

This Space For Office Use Only

02

STATE OF HAWAII BASIC BUSINESS APPLICATION

TYPE OR PRINT LEGIBLY

Identification number

- 1. Type of application (Check the appropriate box(es) that best describes your purpose in filing this application)
General Excise, Use Tax Only, Seller's Collection, Liquor, Transient Accommodations, Employer's Withholding, GE One-Time Event, Rental Motor Vehicle & Tour Vehicle, Liquid Fuel Distributor, Cigarette and Tobacco (Non-Retail), Unemployment Insurance, Liquid Fuel Retail Dealer, Retail Tobacco Permit

W \_\_\_\_\_
UI Registration Number

2. Taxpayer's/Employer's Name (Individuals, enter Last, First, Middle Initial) 3. Doing business as (DBA) name

4. FEIN 5. Type of ownership (Sole Proprietorship, Corporation, S Corporation, Other, Federal Agency, General Partnership, Limited Partnership, LLC, Single-Member LLC)

6. Date Business Began in Hawaii (MM/DD/YYYY) 7. Date of Organization (MM/DD/YYYY) 8. State of Organization

9. Accounting period, check only one (Calendar Year, Fiscal Year ending) 10. Accounting method, check only one (Cash, Accrual) 11. NAICS(See Instructions) and business activity

12. Mailing address C/O Street address or P.O. Box City State Postal/Zip Code + 4

13. Physical location of business in Hawaii Street address City State Postal/Zip Code + 4

14. If no physical business location in Hawaii, provide the name, address, and telephone number of the individual performing services in Hawaii

15. Phone Number Business Residential Fax E-mail address

16. For GE One-Time Event applicants ONLY: Name of the Event (See Instructions)

17. Does all or part of this business qualify for a disability exemption? (See Instructions) Yes No

18. Name of Parent Corporation 19. Parent Corp's FEIN 20. Parent Corporation's Mailing Address

21. List all sole proprietors, partners, members, or corporate officers (See Instructions) ATTACH A SEPARATE SHEET OF PAPER IF MORE SPACE IS REQUIRED.

Table with 5 columns: SSN, Name (Last, First, Middle Initial), Title, Residential Address, Contact Phone No.

22. (a) Did you acquire an existing business? (b) If yes, was all or part of the business acquired? (c) When was it acquired? (d) Previous owner's/business' name, dba, address, Hawaii Tax I.D. No., and UI Account No. 23. No. of establishments or branches in Hawaii 24. Date employment began in Hawaii 25. No. of employees on date employment began 26. Date first wages paid in Hawaii 27. If no employees, when do you anticipate hiring employees?

28. How many Retail Tobacco Permits are you applying for? Attach a list of (1) the name and address of each retail location you are obtaining a permit for, and (2) for those retail locations that are vehicles, include the Vehicle Identification Number (VIN) of each vehicle. Have you ever been cited for either a tobacco and/or liquor violation? Yes No

29. Attach a list, by island, of the address(es) of your rental real property, noting TA, if transient accommodations, and/or the address(es) of your rental motor vehicle or tour vehicle (RVST) and your Liquid Fuel Retail Dealer's Permit (Fuel) business locations, noting the location as either RVST, or Fuel.

30. (a) How many TA units are you registering for? (b) Date TA activity began in Hawaii 33. Enter the amount from line i. of the registration fee worksheet on the back of the form here and on the Total Payment line for Form VP-1, Tax Payment Voucher. Attach Form VP-1 to this form. \$

31. Date RVST activity began in Hawaii 34. Enter the amount from line o. of the registration fee worksheet on the back of the form here and on the Total Payment line for Form VP-2, Miscellaneous Fee Payment Voucher. Attach Form VP-2 to this form. \$

32. Filing period, Check 1 box for each tax type applicable Tax Type Mo Qtr Semi a) GE b) GE One-Time Event c) TA d) RVST e) WH 35. TOTAL REGISTRATION FEE DUE Add lines 33 and 34. Attach a check or money order made payable to "HAWAII STATE TAX COLLECTOR" in U.S. dollars drawn on any U. S. Bank \$

CERTIFICATION: The above statements are hereby certified to be correct to the best of the knowledge and belief of the undersigned who is duly authorized to sign this application.

ATTACH CHECK OR MONEY ORDER AND FORMS VP-1 AND VP-2 HERE

Mail the completed application to: HAWAII DEPARTMENT OF TAXATION

Signature of Owner, Partner or Member, Officer, or Agent

**ATTACHMENT D**



STATE OF HAWAII  
 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
 DISABILITY COMPENSATION DIVISION  
 Princess Keelikolani Building, 830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813

**FORM WC-5  
 EMPLOYEE'S CLAIM FOR WORKERS' COMPENSATION BENEFITS**

**Injured Person**

Name	
Address	
Occupation	
Telephone No. ( )	Social Security No.

**Employer**

Name	
Address	
Nature of Business	Telephone No. ( )

**Insurance Carrier**

Name
Address

**Injury**

Date of Accident	Time of Injury a.m. p.m.	Date Disability Began
If not on employer's premises, indicate place where accident occurred		
Describe how accident occurred		
Describe injury/illness		
Reason for filing: <input type="checkbox"/> Employer has not filed WC-1 <input type="checkbox"/> Reopening of old claim <input type="checkbox"/> Insurance carrier has not paid benefits <input type="checkbox"/> Others (explain)		

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**REPORT OF  
THE SMALL WORKING GROUP ON ENFORCEMENT  
UNLICENSED CONTRACTOR LAW ENFORCEMENT TASK FORCE**

**I. PURPOSE**

The purpose of the small working group of the Unlicensed Contractor Law Enforcement Task Force ("Task Force") was to (1) discuss current enforcement efforts, and (2) collaborate on recommendations for improving enforcement.

**II. MEMBERS**

Ms. Daria Loy-Goto, Esq.  
Department of Commerce and Consumer Affairs

Mr. Christopher Young, Esq. Criminal Justice Division  
Department of the Attorney General

Mr. Chris Van Marter, Esq.  
Mr. Scott Spallina, Esq.  
Department of the Prosecuting Attorney, County of Honolulu

Ms. Charlene Iboshi, Esq.  
Department of the Prosecuting Attorney, County of Hawaii

Mr. John Kim, Esq.  
Mr. Timothy Tate, Esq.  
Mr. Lewis Littlepage, Esq.  
Department of the Prosecuting Attorney, County of Maui

Ms. Shaylene Iseri-Carvalho, Esq.  
Department of the Prosecuting Attorney, County of Kauai

**III. FINDINGS**

Summary of Potential Ramifications for Unlicensed Contractors in Hawaii

1. Civil penalties.

Hawaii Revised Statutes ("HRS") § 444-23 (c)(1), (2) and (3), sets for fine to be assessed against persons who violates or fails to comply with HRS § 444-9. The fines range from \$2,500 to forty percent of a contract price for a first offense; \$3,500 to forty percent of a contract price for a second offense; and \$5,000 to forty percent of a contract price for subsequent offenses.

HRS § 436B-27(b) imposes a fine of \$1,000 against any person who engages in an activity requiring a license issued by the licensing authority and who fails to obtain a license, or who uses any word, title, or representation to induce a false belief that the person is licensed. The provision makes this violation a misdemeanor.

2. Injunctive Relief.

HRS § 444-24 also gives the State the right to seek the extraordinary remedy known as an injunction against an unlicensed contractor. The State may apply for an injunction restraining an unlicensed contractor from acting, assuming to act, or advertising as a contractor without a license.

3. Forfeiture.

HRS § 444-23.5 provides for the forfeiture of tools and implements after the Regulated Industries Complaints Office (RICO) has initiated a case alleging unlicensed contracting. The law requires notice to be given, provides a process for remission, and allows for the disposal of forfeited property.

4. Restrictions on unlicensed contractors' rights to collect compensation.

HRS § 444-22 prevents an unlicensed contractor from recovering in a civil action for work done or for materials or supplies furnished, either based on the contract or on basis of reasonable value.

This provision represents the Legislature's determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any perceived harshness between the parties and that deterrence can be realized by denying unlicensed contractors the right to sue for compensation.

The law does not prevent a person who utilizes the services of an unlicensed contractor from bringing a lawsuit to recover monies paid to an unlicensed contractor.

5. Criminal penalties.

A. Misdemeanors generally.

Under Hawaii law, a crime is a misdemeanor if it is designated in HRS § 701-107 (the Hawaii Penal Code), designated in a statute, or defined in any other statute as providing for a term of imprisonment of 1 year.

B. Contracting without a license generally.

HRS § 444-9 prohibits acting, assuming to act, and advertising without a license. Engaging in unlicensed activity or using any word, title, or representation to induce the false belief that the person is licensed, is a misdemeanor, subject to a fine of \$1,000

and imprisonment of up to one year. Each day's violation is deemed a separate offense. (HRS § 436B-27(b)).

6. Specific conduct is also illegal.

A. Advertising rules.

It is a misdemeanor under HRS 444-9.2 for a person to advertise as a contractor without a license or limiting qualifications.

B. Theft.

An unlicensed contractor may be charged with the crime of theft. A person commits the crime of theft by obtaining or exerting unauthorized control over property or by exerting control over property through deception. (HRS § 708.830).

C. Fraudulent use of another's license.

An unlicensed contractor may be charged with the crime of identity theft. A person who transmits any personal information with the intent to commit the offense of theft is guilty of identity theft. (HRS § 708-839.6 to § 708-839.7). Personal information can include a license number, a pocket card (e.g. proof of licensure issued by the Contractors Licensing Board), or insurance information.

7. Particular fields have additional penalties

A. State of emergency or disaster.

HRS § 444-10.6 provides that any person who violates HRS § 444-9 in connection with the offer or performance of repairs for damages caused by a natural disaster may be punished by a fine of up to \$10,000 and/or imprisonment up to one year.

B. Elderly persons

HRS § 444-10.7 provides violations committed against elderly persons are also punishable by a fine of up to \$10,000 and/or imprisonment up to one year.

C. Additional provisions relating to asbestos and chlorofluorocarbons.

8. Other considerations.

RICO reports criminal violations of HRS chapter 444 to county prosecuting attorney office and the department of the attorney general. (HRS § 444-36)

### Current enforcement is a graduated approach.

The Regulated Industries Complaints Office, a civil law enforcement agency, issues citations for unlicensed activity and files civil lawsuits in the Circuit Courts. The citations impose fines and order offenders to cease and desist. The citation appeal process is administrative. (HRS § 444-10.5) Each year, RICO issues dozens of citations aimed at curbing unlicensed contracting activity. RICO also files over 100 civil lawsuits against unlicensed contractors each year. The civil lawsuits seek fines, restitution and permanent injunctions prohibiting future conduct. RICO may also pursue civil contempt actions against unlicensed persons who continue to engage in unlicensed activity in violation of a permanent injunction.

Through its actions, RICO is able to bring many unlicensed persons into compliance. Unlicensed contractors who are unaware of the law become licensed. Others leave contracting or go to work as employees for legitimate licensees. RICO is less successful with repeat offenders for whom judgments are not a significant deterrent, and minimally effectual with unlicensed contractors who are engaged in criminal enterprises. Enforcement of the law in this area requires a collaborative effort between civil and criminal law enforcement agencies. As indicated, instances of unlicensed contracting range from persons with experience who ultimately work toward and obtain licensure, to persons with little or no experience who most likely would not qualify for licensure, to those with little or no intention to complete work for monies received. The latter category, as well as chronic, repeat offenders in the earlier categories, provides the most challenge for the Regulated Industries Complaints Office. It is agreed that the goal is to address the worst offenders in all categories.

Over the years, RICO has developed strong relationships with the Department of the Attorney General and county prosecutors' offices, working with these agencies to refer the most egregious cases for possible criminal prosecution. All criminal law enforcement offices currently review unlicensed contracting referrals made by RICO. The offices, however, are currently unable to review all cases, and must take into consideration the dollar amounts involved, the victims at risk, the repeat status of the offenders, and any associated activity which may be criminal, to determine whether cases will be accepted for prosecution. RICO is willing to share tips and leads and to collaborate on criminal prosecutions of mutual interest. Therefore, it is recommended that RICO work with the Department of the Attorney General and the various county prosecutors' offices to develop criteria for identifying appropriate cases for referral.

### Consumer education

Consumer education was also discussed and the Working Group considers consumer education to be a key factor in deterring unlicensed contracting activity. RICO has long been committed to improving consumer protection and leveling the playing field for legitimate contractors by informing and educating consumers. The Department of Commerce and Consumer Affairs provides two timely and focused services for consumers. Firstly, current licensing information is available so that consumers can

verify licensure. Secondly, prior complaint history is provided which includes information about complaints filed and legal actions taken against unlicensed contractors. Both pieces of information are available by telephone and on the State's website. Consumers are encouraged to review the information before hiring a licensed contractor. Currently, the unlicensed contracting message has come only from RICO. It is recommended that RICO explore a joint, coalition message from the Department of Commerce and Consumer Affairs and law enforcement agencies warning of the risks of hiring unlicensed contractors. In conjunction, RICO could provide training for law enforcement officers about the law and risks of unlicensed contracting.

### Proposals for new legislation

The need for a concerted civil and criminal effort is clear, and the current laws appropriately address the different scenarios that unlicensed contracting presents. While administrative penalties adequately address most scenarios, including persons who are unaware of the law and persons who ultimately become compliant, criminal prosecution may be the most effective deterrent for flagrant violators whose conduct is repetitive, fraudulent, and targeted. The Committee believes existing laws are working to address unlicensed contracting conduct, but believes better organization of the various laws would make it easier for law enforcement to prosecute cases. Therefore, the Committee recommends consideration of new legislation which would set forth all penalties related to unlicensed contracting in one, omnibus section. The new, omnibus section would make clear that administrative prosecution does not bar criminal prosecution and illustrate how civil and criminal enforcement efforts are designed to work together. One enhancement would make repeated unlicensed contracting conduct a felony. Additionally, it is recommended that the fine provision in HRS § 436B-27(b) be amended from \$1000 to \$2000, consistent with misdemeanor penalties imposed by law. Additionally, consideration for a new provision relating to unlicensed contracting fraud.

### Concerns

Lastly, while all law enforcement offices participating recognize the need for enforcement, some participating members cited concerns about funding and limited resources. The Committee recommends exploring additional funding for enforcement with the Contractors Licensing Board to determine whether funds may be designated for enforcement of unlicensed contracting cases.

## **V. RECOMMENDATIONS**

- (1) Criteria for referral. It is recommended that RICO work with the Department of the Attorney General and the various county prosecutors' offices to develop criteria for identifying appropriate cases for referral.
- (2) Consumer education. It is recommended that RICO explore a joint, coalition message from the Department of Commerce and Consumer Affairs and law enforcement agencies warning of the risks of hiring unlicensed contractors. In

conjunction, RICO could provide training for law enforcement officers about the law and risks of unlicensed contracting.

(3) Proposed legislation. The committee recommends consideration of new legislation which would set forth all penalties related to unlicensed contracting in one, omnibus section. The new, omnibus section would make clear that administrative prosecution does not bar criminal prosecution and illustrate how civil and criminal enforcement efforts are designed work together. One enhancement would make repeated unlicensed contracting conduct a felony. Additionally, it is recommended that the fine provision in HRS § 436B-27(b) be amended from \$1000 to \$2000, consistent with misdemeanor penalties imposed by law. Furthermore, possible new legislation relating to violations of cease and desist orders and violations relating to unlicensed contracting fraud should be considered.

## ATTACHMENT A

hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order.

(g) 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.

(h) 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 provision for abatement and civil penalties imposed.

(i) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred. The operation of an abatement order shall 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).

(j) 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.

(k) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section.

**§436B-27 Civil and criminal sanctions for unlicensed activity; fines; injunctive relief; damages; forfeiture.** (a) Any licensee aiding or abetting an unlicensed person to directly or indirectly evade this chapter or the applicable licensing laws, or combining or conspiring with an unlicensed person, or permitting one's license to be used by an unlicensed person, or acting as agent, partner, associate, or otherwise, of an unlicensed person with the intent to evade this chapter or the applicable licensing laws may be fined up to \$1,000 for the first offense; up to \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense; and up to \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense. For purposes of this section, "contract price" means the total monetary consideration offered by the consumer for the provision of goods and services.

(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license, shall be guilty of a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both, and each day's violation shall be deemed a separate offense.

(c) The department, licensing authority, or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by law, and if injured thereby, for the recovery of damages. The department may also seek the imposition of fines provided by subsection (a). The plaintiff or petitioner in a suit for an injunction need not allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional or vocational services without a license required by law shall be declared forfeited to the State by the court and turned over to the department for disposition as it deems appropriate.

**§436B-28 Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

**§436B-29 Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provision of this chapter are severable.

**ATTACHMENT B****PART III. FINES AND RESTITUTION****Note**

Part heading amended by L 1998, c 269, §3; L 2000, c 205, §5.

**§706-640 Authorized fines.** (1) A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (a) \$50,000, when the conviction is of a class A felony, murder in the first or second degree, or attempted murder in the first or second degree;
- (b) \$25,000, when the conviction is of a class B felony;
- (c) \$10,000, when the conviction is of a class C felony;
- (d) \$2,000, when the conviction is of a misdemeanor;
- (e) \$1,000, when the conviction is of a petty misdemeanor or a violation;
- (f) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
- (g) Any higher or lower amount specifically authorized by statute.

(2) Notwithstanding section 706-641, the court shall impose a mandatory fine upon any defendant convicted of theft in the first or second degree committed by receiving stolen property as set forth in section 708-830(7). The fine imposed shall be the greater of double the value of the stolen property received or \$25,000 in the case of a conviction for theft in the first degree; or the greater of double the value of the stolen property received or \$10,000 in the case of a conviction for theft in the second degree. The mandatory fines imposed by this subsection shall not be reduced except and only to the extent that payment of the fine prevents the defendant from making restitution to the victim of the offense, or that the defendant's property, real or otherwise, has been forfeited under chapter 712A as a result of the same conviction for which the defendant is being fined under this subsection. Consequences for nonpayment shall be governed by section 706-644; provided that the court shall not reduce the fine under section 706-644(4) or 706-645. [L 1972, c 9, pt of §1; am L 1986, c 314, §33; am L 1987, c 181, §5; am L 1997, c 149, §4]

**Cross References**

Unauthorized removal of shopping carts, see §633-16.

**COMMENTARY ON §706-640**

This section sets forth the maximum fine authorized for any offense according to grade and class. The maximum amount provided should be sufficient for both deterrent and correctional purposes; discretion in imposing a fine within the set maximum should be guided by the criteria set forth in §706-641.

The most significant use of the fine as a means of penalizing the offender is in offenses involving pecuniary gain. When the amount of pecuniary gain is proven, subsection (5) subordinates the stated amounts and authorizes a greater fine in an amount equal to double the pecuniary gain.

The third paragraph of the commentary appearing in the main volume is reproduced to correct a printing error:

"Subsection (6) acknowledges that other higher or lower fines may be authorized with respect to specific offenses when deemed necessary or appropriate to the situation. Subsection (6) also preserves and recognizes higher and lower limits for offenses which are set by provisions of law not within the Penal Code."

Because of the questionable wisdom and constitutionality of authorizing the disposition of assessing costs against convicted defendants in criminal cases, the Code departs from prior Hawaii law and does not authorize such a sentence. As a practical matter, costs are almost never imposed in criminal cases. The departure is from previous statutory language rather than practice.

#### SUPPLEMENTAL COMMENTARY ON §706-640

Act 314, Session Laws 1986, increased the maximum amounts of fines to allow a sentencing court discretion to impose severe fines, especially when the offender derives great financial gain from the criminal activity. Conference Committee Report No. 51-86.

Act 181, Session Laws 1987, added language to this section to reflect the recently created statutory murder and attempted murder crimes. These crimes are murder in the first and second degree and attempted murder in the first and second degree. Senate Standing Committee Report No. 1130.

Act 149, Session Laws 1997, amended this section to impose mandatory fines upon persons convicted of receiving stolen property. With the property crime rate continuing to escalate at a dramatic rate, the legislature supported the imposition of severe penalties for those who are in receipt of stolen property, in an effort to deter the criminal activity. Senate Standing Committee Report No. 1600.

[Previous](#)

[Vol14\\_Ch0701-0853](#)

[Next](#)

	Workplace safety issues	Workers Compensation: Temporary Disability Insurance, Health care coverage issues	Unemployment Insurance (employers file quarterly reports and make unemployment fund payments)	Wage Standards	Violations of tax laws	Unlicensed contracting	Issues building permits
Hawaii Occupational Safety & Health Division (HIOSH) (DLIR)	Ensures safe working environment; Enforces Occupational and Health Law (HRS 396) and Boiler and Elevator Safety Law (HRS 397); limited to Employers with over 10 employees						
Disability Compensation Division (DCD) (DLIR)		Administers Worker's Compensation law (HRS 386), Temporary Disability Insurance Law (HRS 392), and Prepaid Health Care Law (HRS 393); Audits and investigates employers					
Unemployment Insurance Division (UID) (DLIR)			Administers State Unemployment Insurance Law; Registers Companies with one or more employees; ensures employers make unemployment fund payments and investigates unemployment fraud				
Wage standards	Enforces the following State labor laws: HRS 104 (wages and hours on						

	public construction projects); HRS 378 (lie detector testing)(termination or suspension due to work injury); HRS 387 (minimum wage and overtime); HRS 388 (unpaid or late wages); HRS 390 (child labor); HRS 398 (family leave)					
Special Enforcement Unit, Dept. of Tax (DOTax)				Investigates violations of state tax laws with emphasis on underground economy		

	Workplace safety issues	Workers Compensation, Temporary Disability Insurance, Health care coverage issues	Unemployment Insurance (employers file quarterly reports and make unemployment fund payments)	Wage Standards	Violations of tax laws	Unlicensed contracting	Issues building permits
Regulated Industries Complaints Office (RICO) (DCCA)	May pursue action against licensed contractors for violation of State laws relating to contracting	May pursue action against licensed contractors for violation of State laws relating to contracting	May pursue action against licensed contractors for violation of State laws relating to contracting	May pursue action against licensed contractors for violation of State laws relating to contracting	May pursue action against licensed contractors for violation of State laws relating to contracting	Civil prosecution unlicensed persons, seeking permanent injunctions, fines, and restitution, as appropriate	May pursue action against licensed contractors for violation of State laws relating to contracting
County Planning and Permitting Offices							May issue citations to property owners for noncompliance
Criminal Law Enforcement Agencies including County Prosecutors and AG's Criminal Enforcement Division						Criminal prosecution of unlicensed contracting. May charge Theft, theft by deception, identity theft, etc. as appropriate	

Other collaborative agencies:

Contractors Licensing Board - Licensing agency; issues informal opinions re: scope; decision maker in disciplinary actions involving licensed contractors

Prepared by Unlicensed Contractor Law Enforcement Task Force (11/2011)

**REPORT OF  
THE SMALL WORKING GROUP ON FORFEITURE  
UNLICENSED CONTRACTOR LAW ENFORCEMENT TASK FORCE**

**I. PURPOSE**

The purpose of the small working group of the Unlicensed Contractor Law Enforcement Task Force ("Task Force") was to explore options for civil forfeiture by the Regulated Industries Complaints Office ("RICO").

**II. MEMBERS**

Ms. Daria Loy-Goto, Esq.  
Department of Commerce and Consumer Affairs

Mr. Christopher Young, Esq. Criminal Justice Division  
Department of the Attorney General

Mr. Chris Van Marter, Esq.  
Mr. Scott Spallina, Esq.  
Department of the Prosecuting Attorney, County of Honolulu

Ms. Charlene Iboshi, Esq.  
Department of the Prosecuting Attorney, County of Hawaii

Mr. John Kim, Esq.  
Mr. Timothy Tate, Esq.  
Mr. Lewis Littlepage, Esq.  
Department of the Prosecuting Attorney, County of Maui

**III. FINDINGS**

Hawaii Revised Statutes ("HRS") § 444-23.5 provides for the forfeiture of tools and implements after the Regulated Industries Complaints Office (RICO) has initiated a case alleging unlicensed contracting. The law requires notice to be given, provides a process for remission, and allows for the disposal of forfeited property. A copy of § 444-23.5 is attached.

As an agency, RICO had explored implementation of the existing forfeiture law in the past, but was hindered by practical considerations including storage of seized property, preservation, and disposal. Currently, the Department of the Attorney General operates storage facilities on Oahu incident to its forfeiture responsibilities. Seized items are held and maintained by a property master who is employed by that agency. That office also has an existing agreement with an auctioneer for auction of forfeited items.

The group discussed whether revisions to 444-23.5 were necessary in order to implement the section and determined that if RICO's practical concerns could be addressed, no revisions to 444-23.5 would be necessary at this time.

Regarding RICO's practical concerns, the Department of the Attorney General is open to working with RICO to explore a memorandum of agreement/understanding whereby the Department of the Attorney General would assist RICO with the storage, preservation and disposal of forfeited items. Such an agreement would include indemnification by the Department of Commerce and Consumer Affairs for loss to seized property and reasonable storage and disposal costs.

## **V. RECOMMENDATIONS**

- (1) Memorandum of Agreement for storage and disposal of seized/forfeited items. It is recommended that RICO work with the Department of the Attorney General on a Memorandum of Agreement for the storage and disposal of seized/forfeited items.
- (2) Continued discussion of how 444-23.5 can be implemented on the neighbor islands.

## ATTACHMENT A

(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), (b), (d), and (e), any person who violates or fails to comply with this chapter shall be fined not less than \$100 or more than \$5,000 for each violation; provided that any person who violates section 444-9 shall be fined:

- (1) \$2,500 or forty per cent of the total contract price, whichever is greater, for the first offense;
- (2) \$3,500 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,

and when the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, all tools, implements, documents, materials, or any other property used by the person in activities violating section 444-9 shall be subject to forfeiture as provided by section 444-23.5 and shall be turned over to the department for disposition under that section.

(d) Any licensee who violates, or whose employee violates, sections 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 or more than \$1,000 for each subsequent offense; provided that each unit serviced in violation of section 444-17(18) or 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 444-2.5, or fails to comply with the requirements set forth in the disclosure statement required to be provided under section 444-9.1 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.

**§444-23.5 Forfeiture of property for unlicensed activity.** (a) If an investigator finds that a person has acted in the capacity of, or engaged in the business of a contractor within this State without having a current license as required by this chapter to so act or engage, and the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, the investigator may issue a notice of forfeiture of property used by the person in the unlicensed activity, and the property that is the subject of the notice of forfeiture shall be turned over to the department for disposition in accordance with this chapter.

(b) Each notice of forfeiture shall be in writing and shall describe the tools, implements, documents, materials, or any other property used by any person in unlicensed activity that violates section 444-9.

(c) The department shall make good faith efforts to locate and notify within a reasonable period of time all owners or interest-holders of property subject to a notice of forfeiture.

(d) Service of a notice of forfeiture issued under this section shall be made:

- (1) If the name and current address of the unlicensed person, owner, or interest-holder is known:
    - (A) By personal service; or
    - (B) By mailing a copy of the notice to the unlicensed person, owner, or interest-holder by certified mail to the last address on record with a state agency; or
  - (2) If the address of the unlicensed person, owner, or interest-holder is not known or is not on record with a state agency, by public notice once as provided in section 1-28.5.
- (e) An unlicensed person served with a notice of forfeiture under this section may submit a written request to the director for a hearing:
- (1) Within twenty days of receipt of the notice of forfeiture, if the person is served personally or by mail; or
  - (2) Within twenty days of public notice of forfeiture. If a request for a hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.
- (f) An owner or interest-holder served with a notice of forfeiture, other than the unlicensed person, may file a petition for remission of forfeiture with the department within twenty days of service by personal service or mail, or within twenty days of the date of public notice, if service is by public notice. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:
- (1) A reasonably complete description of the property subject to forfeiture; and
  - (2) A statement of the interest of the petitioner in the property subject to forfeiture, with supporting documentary evidence.

If a petition for remission of forfeiture is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(g) The department shall review the petition for remission of forfeiture and, if remission is warranted, return the property subject to forfeiture to the petitioner within thirty days of receipt of the petition. If the department determines that remission is not warranted, the department shall issue a written decision to the petitioner within thirty days of receipt of the petition.

(h) A petitioner whose petition for remission has been denied may file with the director a written request for a hearing as provided under subsections (i) and (j). The written request shall be filed within twenty days of receipt of the written decision denying the petition for remission. If a request for hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(i) Hearings shall be subject to chapter 91 and shall be conducted by the director or a hearings officer designated by the director. The director or designated hearings officer may issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order of forfeiture. The department shall have the burden to show by clear and convincing evidence that the property is subject to forfeiture. In determining whether the property is subject to forfeiture, the director or hearings officer shall consider evidence of ownership, the description of the property, and any other relevant evidence.

(j) Any person aggrieved by the decision of the director or designated hearings officer may appeal the decision in the manner provided in chapter 91, to the circuit court of the circuit in which:

- (1) The person resides;
- (2) The person's principal place of business is located; or
- (3) The activity in question occurred.

(k) The director may file an action in the circuit court for a judgment to enforce any final order issued by the director or designated hearings officer pursuant to this section. A judgment enforcing the final order shall issue upon a showing by the director either that notice was given and a hearing was held, or, that the time granted for requesting a hearing has run without the timely filing of a request.

(l) The department may dispose of all property forfeited in accordance with this chapter by:

- (1) Transferring property to any local or state government entity, municipality, or law enforcement agency within the State;
- (2) Selling property to the public by public sale; or
- (3) Using any other means of disposition authorized by law.

(m) All proceeds of a forfeiture action conducted pursuant to this section, after payment of expenses of administration and sale, shall be deposited in the compliance resolution fund established under section 26-9(o). Moneys in the fund shall be appropriated for the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this section or any other necessary expenses incident to the seizure, detention, or forfeiture of such property.

(n) Forfeiture under this section shall be separate from and in addition to all other applicable remedies, either civil or criminal. This section shall not apply to the violations set forth in section 444-23(a) and (b).

(o) The director may adopt rules as necessary to fully effectuate this section.

**§444-24 Injunction.** The contractors license board may, in addition to any other remedies available, apply to a circuit judge for a preliminary or permanent injunction restraining any person from acting, or assuming to act, or advertising, as general engineering contractor, general building contractor, or specialty contractor, without a license previously obtained under and in compliance with this chapter and the rules and regulations of the board, and upon hearing and for cause shown, the judge may grant the preliminary or permanent injunction.

**§444-25 Payment for goods and services.** A contractor shall pay the contractor's subcontractor for any goods and services rendered within sixty days after receipt of a proper statement by the subcontractor that the goods have been delivered or services have been performed. The subcontractor shall be entitled to receive interest on the unpaid principal amount at the rate of one per cent per month commencing on the sixtieth day following receipt of the statement by the contractor, provided that this section shall not apply if the delay in payment is



DEPARTMENT OF TAXATION

**News Release**

**NEIL ABERCROMBIE**  
GOVERNOR

**FRED PABLO**  
DIRECTOR

**For Immediate Release:**  
July 27, 2011

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**UNLICENSED CONTRACTOR SENTENCED TO ONE-YEAR JAIL TERM**

HONOLULU – The Department of Taxation's Criminal Investigation Unit has secured another conviction of a taxpayer failing to pay his fair share of taxes. Tevita Ungounga, an unlicensed contractor, was sentenced to a one-year jail term on July 5, 2011 by Judge Richard W. Pollack. After serving his jail term, Ungounga will be on probation and has been ordered to not perform any unlicensed activity and report his wage earnings to his probation officer twice a month.

Ungounga was #1 on the State's Regulated Industries Complaints Office's ("RICO") top 10 list of unlicensed contractors. He has a history with RICO that dates back to 1998. Despite numerous civil judgments/injunctions, including a previous conviction for failing to file his general excise tax return and unlicensed activity, he continued to operate as an unlicensed contractor, often times representing himself to be a licensed contractor.

In September 2009, a complaint was filed against Ungounga for tax evasion, false returns, failure to file, and unlicensed activity (15 counts in total). Ungounga was ordered to stop all unlicensed activity as a condition of bail. Despite these charges, Ungounga proceeded to steal the personal information of a licensed contractor and registered with an online referral service pretending to be the licensed contractor; he ultimately deceived a homeowner into hiring him. An Oahu Grand Jury indicted Ungounga for Identity Theft in the Second Degree, Theft in the Second Degree, and Unauthorized Possession of Confidential Information.

In March 2011, a jury found Ungounga guilty of Identity Theft in the Second Degree, Theft in the Second Degree, and Unauthorized Possession of Confidential Information. Subsequently in May 2011, Judge Pollack found Ungounga guilty of all tax-related charges: four counts of Attempt to Evade or Defeat Tax, three counts of False and Fraudulent Statements, four counts of Wilful Failure to File, and four counts of Unlicensed Activity.

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For more information, contact:  
Stephen Hironaka  
Criminal Tax Investigator  
Phone: (808) 587-1795  
Email: Stephen.T.Hironaka@hawaii.gov