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SENATE BILL 5735

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State of Washington

60th Legislature

2007 Regular Session

By Senators Kohl-Welles, Clements, Franklin, Keiser and Parlette; by request of Department of Labor & Industries

Read first time 01/30/2007. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to the regulation of construction contractors;  
2 amending RCW 18.27.010, 18.27.020, 18.27.030, 18.27.040, 18.27.080,  
3 18.27.090, 18.27.104, 18.27.114, 18.27.200, 18.27.210, 18.27.230,  
4 18.27.240, 18.27.250, 18.27.270, 18.27.290, and 18.27.310; adding a new  
5 section to chapter 18.27 RCW; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 18.27.010 and 2001 c 159 s 1 are each amended to read  
8 as follows:

9 (~~Unless the context clearly requires otherwise,~~) The definitions  
10 in this section apply throughout this chapter unless the context  
11 clearly requires otherwise.

12 (1) "Contractor" (~~means~~) includes any person, firm, or  
13 corporation who or which, in the pursuit of an independent business  
14 undertakes to, or offers to undertake, or submits a bid to, construct,  
15 alter, repair, add to, subtract from, improve, develop, move, wreck, or  
16 demolish(~~, for another,~~) any building, highway, road, railroad,  
17 excavation or other structure, project, development, or improvement  
18 attached to real estate or to do any part thereof including the  
19 installation of carpeting or other floor covering, the erection of

1 scaffolding or other structures or works in connection therewith (~~or~~  
2 ~~who installs or repairs~~), the installation or repair of roofing or  
3 siding, performing tree services, or cabinet or similar installation;  
4 or, who, to do similar work upon his or her own property, employs  
5 members of more than one trade upon a single job or project or under a  
6 single building permit except as otherwise provided (~~herein~~) in this  
7 chapter. "Contractor" includes any person, firm, or corporation who or  
8 which performs construction consulting activities. "Contractor" also  
9 includes any person, firm, corporation, or other entity covered by this  
10 subsection, whether or not registered as required under this chapter or  
11 who are otherwise required to be registered or licensed by law, who  
12 offer to sell their property without occupying or using the structures,  
13 projects, developments, or improvements for more than one year from the  
14 date the structure, project, development, or improvement was  
15 substantially completed or abandoned. The terms "contractor" and  
16 "registrant" are synonymous.

17 (2) "Department" means the department of labor and industries.

18 (3) "Director" means the director of the department of labor and  
19 industries or designated representative employed by the department.

20 (4) "Filing" means delivery of a document that is required to be  
21 filed with an agency to a place designated by the agency.

22 (5) "General contractor" means a (~~contractor~~) person, firm, or  
23 other entity whose business operations require the use of more than  
24 (~~two unrelated~~) one building (~~trades or crafts whose work the~~  
25 contractor shall superintend or do in whole or in part. "General  
26 contractor" shall not include an individual who does all work  
27 personally without employees or other "specialty contractors" as  
28 defined in this section)) trade or craft upon a single job or project  
29 or under a single building permit. A general contractor also includes  
30 one who superintends, in whole or in part, work falling within the  
31 definition of a contractor. The terms "general contractor," (~~and~~)  
32 "builder," and developer are synonymous.

33 (~~+5~~) (6) "Partnership" means a business formed under Title 25  
34 RCW.

35 (~~+6~~) (7) "Registration cancellation" means a written notice from  
36 the department that a contractor's action is in violation of this  
37 chapter and that the contractor's registration has been revoked.

1        ~~((7))~~ (8) "Registration suspension" means either an automatic  
2 suspension as provided in this chapter, or a written notice from the  
3 department that a contractor's action is a violation of this chapter  
4 and that the contractor's registration has been suspended for a  
5 specified time, or until the contractor shows evidence of compliance  
6 with this chapter.

7        ~~((8))~~ (9) "Residential homeowner" means an individual person or  
8 persons owning or leasing real property:

9        (a) Upon which one single-family residence is to be built and in  
10 which the owner or lessee intends to reside upon completion of any  
11 construction; or

12        (b) Upon which there is a single-family residence to which  
13 improvements are to be made and in which the owner or lessee intends to  
14 reside upon completion of any construction.

15        ~~((9))~~ (10) "Service," except as otherwise provided in RCW  
16 18.27.225 and 18.27.370, means posting in the United States mail,  
17 properly addressed, postage prepaid, or personal service. Service by  
18 mail is complete upon deposit in the United States mail to the last  
19 known address provided to the department.

20        (11) "Specialty contractor" means a contractor whose operations do  
21 not fall within the definition of "general contractor". A specialty  
22 contractor may only subcontract work to others within its own  
23 specialty.

24        ~~((10))~~ (12) "Substantial completion" means the state of  
25 completion reached when an improvement on real property may be used or  
26 occupied for its intended use.

27        (13) "Unregistered contractor" means a person, firm, corporation,  
28 or other entity doing work as a contractor without being registered in  
29 compliance with this chapter. "Unregistered contractor" includes  
30 contractors whose registration is expired, revoked, or suspended.  
31 "Unregistered contractor" does not include a contractor who has  
32 maintained a valid bond and the insurance or assigned account required  
33 by RCW 18.27.050, and whose registration has lapsed for thirty or fewer  
34 days.

35        ~~((11))~~ (14) "Unsatisfied final judgment" means a judgment or  
36 administrative warrant that has not been satisfied either through  
37 payment, court approved settlement, discharge in bankruptcy, or  
38 assignment under RCW 19.72.070.

1           (~~(12)~~) (15) "Verification" means the receipt and duplication by  
2 the city, town, or county of a contractor registration card that is  
3 current on its face, checking the department's contractor registration  
4 data base, or calling the department to confirm that the contractor is  
5 registered.

6           **Sec. 2.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read  
7 as follows:

8           (1) Every contractor shall register with the department.

9           (2) It is a gross misdemeanor for any contractor to:

10          (a) Advertise, offer to do work, submit a bid, or perform any work  
11 as a contractor without being registered as required by this chapter;

12          (b) Advertise, offer to do work, submit a bid, or perform any work  
13 as a contractor when the contractor's registration is suspended or  
14 revoked;

15          (c) Use a false or expired registration number in purchasing or  
16 offering to purchase an advertisement for which a contractor  
17 registration number is required; (~~(or)~~)

18          (d) Transfer a valid registration to an unregistered contractor or  
19 allow an unregistered contractor to work under a registration issued to  
20 another contractor; or

21          (e) Subcontract to or employ an unregistered contractor.

22          (3) It is not unlawful for a (~~(general)~~) registered contractor to  
23 employ an unregistered contractor who was registered at the time he or  
24 she entered into a contract with the (~~(general)~~) registered contractor,  
25 unless the (~~(general)~~) registered contractor or his or her  
26 representative has been notified in writing by the department of labor  
27 and industries that the contractor has become unregistered.

28          (4) All gross misdemeanor actions under this chapter shall be  
29 prosecuted in the county where the infraction occurs.

30          (5) A person is guilty of a separate gross misdemeanor for each day  
31 worked if, after the person receives a citation from the department,  
32 the person works while unregistered, or while his or her registration  
33 is suspended or revoked, or works under a registration issued to  
34 another contractor. A person is guilty of a separate gross misdemeanor  
35 for each worksite on which he or she violates subsection (2) of this  
36 section. Nothing in this subsection applies to a registered  
37 contractor.

1 (6) The director by rule shall establish a two-year audit and  
2 monitoring program for a contractor not registered under this chapter  
3 who becomes registered after receiving an infraction or conviction  
4 under this chapter as an unregistered contractor. The director shall  
5 notify the departments of revenue and employment security of the  
6 infractions or convictions and shall cooperate with these departments  
7 to determine whether any taxes or registration, license, or other fees  
8 or penalties are owed the state.

9 **Sec. 3.** RCW 18.27.030 and 2001 c 159 s 2 are each amended to read  
10 as follows:

11 (1) An applicant for registration as a contractor shall submit an  
12 application under oath upon a form to be prescribed by the director and  
13 which shall include the following information pertaining to the  
14 applicant:

15 (a) Employer social security number.

16 (b) Unified business identifier number, if required by the  
17 department of revenue.

18 (c) Evidence of workers' compensation coverage for the applicant's  
19 employees working in Washington, as follows:

20 (i) The applicant's industrial insurance account number issued by  
21 the department;

22 (ii) The applicant's self-insurer number issued by the department;  
23 or

24 (iii) For applicants domiciled in a state or province of Canada  
25 subject to an agreement entered into under RCW 51.12.120(7), as  
26 permitted by the agreement, filing a certificate of coverage issued by  
27 the agency that administers the workers' compensation law in the  
28 applicant's state or province of domicile certifying that the applicant  
29 has secured the payment of compensation under the other state's or  
30 province's workers' compensation law.

31 (d) Employment security department number.

32 (e) State excise tax registration number.

33 (f) Unified business identifier (UBI) account number may be  
34 substituted for the information required by (c) of this subsection if  
35 the applicant will not employ employees in Washington, and by (d) and  
36 (e) of this subsection.

1 (g) Type of contracting activity, whether a general or a specialty  
2 contractor and if the latter, the type of specialty.

3 (h) The name and address of each partner if the applicant is a firm  
4 or partnership, or the name and address of the owner if the applicant  
5 is an individual proprietorship, or the name and address of the  
6 corporate officers and statutory agent, if any, if the applicant is a  
7 corporation or the name and address of all members of other business  
8 entities. The information contained in such application is a matter of  
9 public record and open to public inspection.

10 (2) The department may verify the workers' compensation coverage  
11 information provided by the applicant under subsection (1)(c) of this  
12 section, including but not limited to information regarding the  
13 coverage of an individual employee of the applicant. If coverage is  
14 provided under the laws of another state, the department may notify the  
15 other state that the applicant is employing employees in Washington.

16 (3)(a) The department shall deny an application for registration  
17 if: (i) The applicant has been previously performing work subject to  
18 this chapter as a sole proprietor, partnership, corporation, or other  
19 entity and the department has notice that the applicant has an  
20 unsatisfied final judgment against him or her in an action based on  
21 work performed subject to this chapter or the applicant owes the  
22 department money for penalties assessed or fees due under this chapter  
23 as a result of a final judgment; (ii) the applicant was ((a)) an owner,  
24 principal, or officer of a partnership, corporation, or other entity  
25 that either has an unsatisfied final judgment against it in an action  
26 that was incurred for work performed subject to this chapter or owes  
27 the department money for penalties assessed or fees due under this  
28 chapter as a result of a final judgment; or (iii) the applicant does  
29 not have a valid unified business identifier number, if required by the  
30 department of revenue.

31 (b) The department shall suspend an active registration if (i) the  
32 department has notice that the registrant has an unsatisfied final  
33 judgment against it for work within the scope of this chapter; (ii) the  
34 department has notice that the registrant is a sole proprietor or ((a))  
35 an owner, principal, or officer of a registered contractor that has an  
36 unsatisfied final judgment against it for work within the scope of this  
37 chapter; or ((+ii)) (iii) the ((applicant)) registrant does not

1 maintain a valid unified business identifier number, if required by the  
2 department of revenue.

3 (c) The department may suspend an active registration if the  
4 department has notice that an owner, principal, partner, or officer of  
5 the registrant was an owner, principal, or officer of a previous  
6 partnership, corporation, or other entity that has an unsatisfied final  
7 judgment against it.

8 (4) The department shall not deny an application or suspend a  
9 registration because of an unsatisfied final judgment if the  
10 applicant's or registrant's unsatisfied final judgment was determined  
11 by the director to be the result of the fraud or negligence of another  
12 party.

13 **Sec. 4.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read  
14 as follows:

15 (1) Each applicant shall file with the department a surety bond  
16 issued by a surety insurer who meets the requirements of chapter 48.28  
17 RCW in the sum of twelve thousand dollars if the applicant is a general  
18 contractor and six thousand dollars if the applicant is a specialty  
19 contractor. If no valid bond is already on file with the department at  
20 the time the application is filed, a bond must accompany the  
21 registration application. The bond shall have the state of Washington  
22 named as obligee with good and sufficient surety in a form to be  
23 approved by the department. The bond shall be continuous and may be  
24 canceled by the surety upon the surety giving written notice to the  
25 director. A cancellation or revocation of the bond or withdrawal of  
26 the surety from the bond automatically suspends the registration issued  
27 to the ~~((registrant))~~ contractor until a new bond or reinstatement  
28 notice has been filed and approved as provided in this section. The  
29 bond shall be conditioned that the applicant will pay all persons  
30 performing labor, including employee benefits, for the contractor, will  
31 pay all taxes and contributions due to the state of Washington, and  
32 will pay all persons furnishing ~~((labor or))~~ material or renting or  
33 supplying equipment to the contractor and will pay all amounts that may  
34 be adjudged against the contractor by reason of breach of contract  
35 including ~~((negligent or))~~ improper work in the conduct of the  
36 contracting business. A change in the name of a business or a change

1 in the type of business entity shall not impair a bond for the purposes  
2 of this section so long as one of the original applicants for such bond  
3 maintains partial ownership in the business covered by the bond.

4 (2) At the time of initial registration or renewal, the contractor  
5 shall provide a bond or other security deposit as required by this  
6 chapter and comply with all of the other provisions of this chapter  
7 before the department shall issue or renew the contractor's certificate  
8 of registration. Any contractor registered as of July 1, 2001, who  
9 maintains that registration in accordance with this chapter is in  
10 compliance with this chapter until the next renewal of the contractor's  
11 certificate of registration.

12 (3) Any person, firm, or corporation having a claim against the  
13 contractor for any of the items referred to in this section may bring  
14 suit (~~upon~~) against the contractor and the bond or deposit in the  
15 superior court of the county in which the work was done or of any  
16 county in which jurisdiction of the contractor may be had. The surety  
17 issuing the bond shall be named as a party to any suit upon the bond.  
18 Action upon the bond or deposit brought by a residential homeowner for  
19 breach of contract by a party to the construction contract shall be  
20 commenced by filing the summons and complaint with the clerk of the  
21 appropriate superior court within two years from the date the claimed  
22 contract work was completed, substantially completed, or abandoned,  
23 whichever occurred first. Action upon the bond or deposit brought by  
24 any other authorized party shall be commenced by filing the summons and  
25 complaint with the clerk of the appropriate superior court within one  
26 year from the date the claimed labor was performed and benefits  
27 accrued, taxes and contributions owing the state of Washington became  
28 due, materials and equipment were furnished, or the claimed contract  
29 work was completed, substantially completed, or abandoned, whichever  
30 occurred first. Service of process in an action filed under this  
31 chapter against the contractor(~~(τ)~~) and the contractor's bond(~~(τ)~~) or  
32 the deposit shall be exclusively by service upon the department. Three  
33 copies of the summons and complaint and a fee adopted by rule of not  
34 less than (~~(twenty)~~) fifty dollars to cover the costs shall be served  
35 by registered or certified mail, or other delivery service requiring  
36 notice of receipt, upon the department at the time suit is started and  
37 the department shall maintain a record, available for public  
38 inspection, of all suits so commenced. Service is not complete until



1 the department receives the fee and three copies of the summons and  
2 complaint. The service shall constitute service and confer personal  
3 jurisdiction on the (~~registrant~~) contractor and the surety for suit  
4 (~~upon the~~) on claimant's claim against the contractor and the bond or  
5 deposit and the department shall transmit the summons and complaint or  
6 a copy thereof to the (~~registrant~~) contractor at the address listed  
7 in the (~~registrant's~~) contractor's application and to the surety  
8 within two days after it shall have been received.

9 (4) The surety upon the bond shall not be liable in an aggregate  
10 amount in excess of the amount named in the bond nor for any monetary  
11 penalty assessed pursuant to this chapter for an infraction. The  
12 liability of the surety shall not cumulate where the bond has been  
13 renewed, continued, reinstated, reissued or otherwise extended. The  
14 surety upon the bond may, upon notice to the department and the  
15 parties, tender to the clerk of the court having jurisdiction of the  
16 action an amount equal to the claims thereunder or the amount of the  
17 bond less the amount of judgments, if any, previously satisfied  
18 therefrom and to the extent of such tender the surety upon the bond  
19 shall be exonerated but if the actions commenced and pending and  
20 provided to the department as required in subsection (3) of this  
21 section, at any one time exceed the amount of the bond then unimpaired,  
22 claims shall be satisfied from the bond in the following order:

23 (a) Employee labor and claims of laborers, including employee  
24 benefits;

25 (b) Claims for breach of contract by a party to the construction  
26 contract;

27 (c) Registered or licensed subcontractors, material, and equipment;

28 (d) Taxes and contributions due the state of Washington;

29 (e) Any court costs, interest, and (~~attorney's [attorneys']~~)  
30 attorneys' fees plaintiff may be entitled to recover. The surety is  
31 not liable for any amount in excess of the penal limit of its bond.

32 Any person having filed and served a summons and complaint as  
33 required by subsection (3) of this section having an unsatisfied final  
34 judgment against a contractor with security other than a bond, and that  
35 security has not already been tendered to the court under this  
36 subsection (4), may execute upon the security by serving upon the  
37 department a certified copy of the unsatisfied final judgment by  
38 registered or certified mail within ten days following entry of the

1 judgment. Upon the receipt of the certified copy of the final  
2 judgment, the department shall order paid from the security the amount  
3 of the unsatisfied judgment.

4 A payment made by the surety in good faith exonerates the bond to  
5 the extent of any payment made by the surety.

6 (5) The total amount paid from a bond or deposit required of a  
7 general contractor by this section to claimants other than residential  
8 homeowners must not exceed one-half of the bond amount. The total  
9 amount paid from a bond or deposit required of a specialty contractor  
10 by this section to claimants other than residential homeowners must not  
11 exceed one-half of the bond amount or four thousand dollars, whichever  
12 is greater. At the expiration of the time specified in subsection (3)  
13 of this section, if no residential homeowner has provided a copy of a  
14 summons and complaint to the department for an action under this  
15 chapter, the reserved amount may be used to pay any unsatisfied  
16 judgments to claimants other than residential homeowners. The priority  
17 of payment is the order of receipt of the request by the surety on the  
18 bond or the department for other security beginning after the  
19 expiration of the time specified in subsection (3) of this section, the  
20 presumed date for which must be specified in a declaration with any  
21 supporting documentation. Requests must be received within sixty days  
22 of the expiration of the time specified in subsection (3) of this  
23 section.

24 (6) The prevailing party in an action filed under this section  
25 against the contractor and contractor's bond or deposit, for breach of  
26 contract by a party to ((a)) the construction contract involving a  
27 residential homeowner, is entitled to costs, interest, and reasonable  
28 attorneys' fees. The surety upon the bond or deposit is not liable in  
29 an aggregate amount in excess of the amount named in the bond or  
30 deposit nor for any monetary penalty assessed pursuant to this chapter  
31 for an infraction.

32 (7) If a final judgment impairs the liability of the surety upon  
33 the bond or deposit so furnished that there is not in effect a bond or  
34 deposit in the full amount prescribed in this section, the registration  
35 of the contractor is automatically suspended until the bond or deposit  
36 liability in the required amount unimpaired by unsatisfied judgment  
37 claims is furnished.

1 (8) In lieu of the surety bond required by this section the  
2 contractor may file with the department (~~a deposit consisting of cash~~  
3 ~~or other security acceptable to~~) an assigned savings account, upon  
4 forms provided by the department.

5 (9) Any person having filed and served a summons and complaint as  
6 required by this section having an unsatisfied final judgment against  
7 the registrant for any items referred to in this section may execute  
8 upon the security held by the department by serving a certified copy of  
9 the unsatisfied final judgment by registered or certified mail upon the  
10 department within one year of the date of entry of such judgment. Upon  
11 the receipt of service of such certified copy the department shall pay  
12 or order paid from the deposit, through the registry of the superior  
13 court which rendered judgment, towards the amount of the unsatisfied  
14 judgment. The priority of payment by the department shall be the order  
15 of receipt by the department, but the department shall have no  
16 liability for payment in excess of the amount of the deposit.

17 (10) Within ten days after resolution of the case, a certified copy  
18 of the final judgment and order, or any settlement documents where a  
19 case is not disposed of by a court trial, a certified copy of the  
20 dispositive settlement documents must be provided to the department by  
21 the prevailing party. Failure to provide a copy of the final judgment  
22 and order or the dispositive settlement documents to the department  
23 within ten days of entry of such an order constitutes a violation of  
24 this chapter and a penalty adopted by rule of not less than two hundred  
25 fifty dollars must be assessed against the prevailing party.

26 (11) The director may require an applicant applying to renew or  
27 reinstate a registration or applying for a new registration to file a  
28 bond of up to three times the normally required amount, if the director  
29 determines that an applicant, or a previous registration of a corporate  
30 officer, owner, or partner of a current applicant, has had in the past  
31 five years a total of six final judgments in actions under this chapter  
32 involving a residential single-family dwelling on two or more different  
33 structures.

34 (~~(11)~~) (12) The director may adopt rules necessary for the proper  
35 administration of the security.

36 **Sec. 5.** RCW 18.27.080 and 1988 c 285 s 2 are each amended to read  
37 as follows:

1 No person engaged in the business or acting in the capacity of a  
2 contractor may bring or maintain any action in any court of this state  
3 for the collection of compensation for the performance of any work or  
4 for breach of any contract for which registration is required under  
5 this chapter without alleging and proving that he was a duly registered  
6 contractor and held a current and valid certificate of registration at  
7 the time he contracted for the performance of such work or entered into  
8 such contract. For the purposes of this section, the court shall not  
9 find a contractor in substantial compliance with the registration  
10 requirements of this chapter unless: (1) The department has on file  
11 the information required by RCW 18.27.030; (2) the contractor has at  
12 all times had in force a current bond or other security as required by  
13 RCW 18.27.040; and (3) the contractor has at all times had in force  
14 current insurance as required by RCW 18.27.050. In determining under  
15 this section whether a contractor is in substantial compliance with the  
16 registration requirements of this chapter, the court shall take into  
17 consideration the length of time during which the contractor did not  
18 hold a valid certificate of registration.

19 **Sec. 6.** RCW 18.27.090 and 2003 c 399 s 401 are each amended to  
20 read as follows:

21 The registration provisions of this chapter do not apply to:

22 (1) An authorized representative of the United States government,  
23 the state of Washington, or any incorporated city, town, county,  
24 township, irrigation district, reclamation district, or other municipal  
25 or political corporation or subdivision of this state;

26 (2) Officers of a court when they are acting within the scope of  
27 their office;

28 (3) Public utilities operating under the regulations of the  
29 utilities and transportation commission in construction, maintenance,  
30 or development work incidental to their own business;

31 (4) Any construction, repair, or operation incidental to the  
32 discovering or producing of petroleum or gas, or the drilling, testing,  
33 abandoning, or other operation of any petroleum or gas well or any  
34 surface or underground mine or mineral deposit when performed by an  
35 owner or lessee;

36 (5) The sale (~~or installation~~) of any finished products,

1 materials, or articles of merchandise that are not ((~~actually~~))  
2 fabricated into and do not become a ((~~permanent-fixed~~)) part of a  
3 structure under the common law of fixtures;

4 (6) Any construction, alteration, improvement, or repair of  
5 personal property performed by the registered or legal owner, or by a  
6 mobile/manufactured home retail dealer or manufacturer licensed under  
7 chapter 46.70 RCW who shall warranty service and repairs under chapter  
8 46.70 RCW;

9 (7) Any construction, alteration, improvement, or repair carried on  
10 within the limits and boundaries of any site or reservation under the  
11 legal jurisdiction of the federal government. The exemption prescribed  
12 in this subsection does not apply when the department is requested to  
13 come onto the property by such site or reservation or householder  
14 thereon;

15 (8) Any person who only furnished materials, supplies, or equipment  
16 without fabricating them into, or consuming them in the performance of,  
17 the work of the contractor;

18 (9) Any work or operation on one undertaking or project by one or  
19 more contracts, the aggregate contract price of which for labor and  
20 materials and all other items is less than five hundred dollars, such  
21 work or operations being considered as of a casual, minor, or  
22 inconsequential nature. The exemption prescribed in this subsection  
23 does not apply in any instance wherein the work or construction is only  
24 a part of a larger or major operation, whether undertaken by the same  
25 or a different contractor, or in which a division of the operation is  
26 made into contracts of amounts less than five hundred dollars for the  
27 purpose of evasion of this chapter or otherwise. The exemption  
28 prescribed in this subsection does not apply to a person who advertises  
29 or puts out any sign or card or other device which might indicate to  
30 the public that he or she is a contractor, or that he or she is  
31 qualified to engage in the business of contractor;

32 (10) Any construction or operation incidental to the construction  
33 and repair of irrigation and drainage ditches of regularly constituted  
34 irrigation districts or reclamation districts; or to farming, dairying,  
35 agriculture, viticulture, horticulture, or stock or poultry raising; or  
36 to clearing or other work upon land in rural districts for fire  
37 prevention purposes; except when any of the above work is performed by  
38 a registered contractor;

1 (11) An owner who contracts for a project with a registered  
2 contractor, except that this exemption shall not deprive the owner of  
3 the protections of this chapter against registered and unregistered  
4 contractors. The exemption prescribed in this subsection does not  
5 apply to a person who performs the activities of a contractor for the  
6 purpose of leasing or selling the improved property;

7 (12) Any person working on his or her own property, whether  
8 occupied by him or her or not, and any person working on his or her  
9 personal residence, whether owned by him or her or not but this  
10 exemption shall not apply to any person (~~otherwise covered by this~~  
11 ~~chapter who constructs an improvement~~) who performs the activities of  
12 a contractor on his or her own property (~~with the intention and~~) for  
13 the purpose of selling, demolishing, or leasing the (~~improved~~)  
14 property;

15 (13) Owners of commercial properties who use their own employees to  
16 do maintenance, repair, and alteration work in or upon their own  
17 properties;

18 (14) A licensed architect or civil or professional engineer acting  
19 solely in his or her professional capacity, an electrician (~~licensed~~)  
20 certified under the laws of the state of Washington, or a plumber  
21 (~~licensed~~) certified under the laws of the state of Washington or  
22 licensed by a political subdivision of the state of Washington while  
23 operating within the boundaries of such political subdivision. The  
24 exemption provided in this subsection is applicable only when the  
25 (~~licensee~~) person certified is operating within the scope of his or  
26 her (~~license~~) certification;

27 (15) Any person who engages in the activities herein regulated as  
28 an employee of a registered contractor with wages as his or her sole  
29 compensation or as an employee with wages as his or her sole  
30 compensation;

31 (16) Contractors on highway projects who have been prequalified as  
32 required by RCW 47.28.070, with the department of transportation to  
33 perform highway construction, reconstruction, or maintenance work;

34 (17) A mobile/manufactured home dealer or manufacturer who  
35 subcontracts the installation, set-up, or repair work to actively  
36 registered contractors. This exemption only applies to the  
37 installation, set-up, or repair of the mobile/manufactured homes that

1 were manufactured or sold by the mobile/manufactured home dealer or  
2 manufacturer;

3 (18) An entity who holds a valid electrical contractor's license  
4 under chapter 19.28 RCW that employs a certified journeyman  
5 electrician, a certified residential specialty electrician, or an  
6 electrical trainee meeting the requirements of chapter 19.28 RCW to  
7 perform plumbing work that is incidentally, directly, and immediately  
8 appropriate to the like-in-kind replacement of a household appliance or  
9 other small household utilization equipment that requires limited  
10 electric power and limited waste and/or water connections. An  
11 electrical trainee must be supervised by a certified electrician while  
12 performing plumbing work.

13 **Sec. 7.** RCW 18.27.104 and 1997 c 314 s 10 are each amended to read  
14 as follows:

15 (1) If, upon investigation, the director or the director's designee  
16 has probable cause to believe that a person holding a registration, an  
17 applicant for registration, or a person acting in the capacity of a  
18 contractor who is not otherwise exempted from this chapter, has  
19 violated RCW 18.27.100 by unlawfully advertising for work covered by  
20 this chapter, the department may issue a citation containing an order  
21 of correction. Such order shall require the violator to cease the  
22 unlawful advertising.

23 (2) If the person to whom a citation is issued under subsection (1)  
24 of this section notifies the department in writing that he or she  
25 contests the citation, the department shall afford an opportunity for  
26 an adjudicative proceeding under chapter 34.05 RCW (~~within thirty days~~  
27 ~~after receiving the notification~~)).

28 **Sec. 8.** RCW 18.27.114 and 2001 c 159 s 9 are each amended to read  
29 as follows:

30 (1) Any contractor agreeing to perform any contracting project:  
31 (a) For the repair, alteration, or construction of four or fewer  
32 residential units or accessory structures on such residential property  
33 when the bid or contract price totals one thousand dollars or more; or  
34 (b) for the repair, alteration, or construction of a commercial  
35 building when the bid or contract price totals one thousand dollars or  
36 more but less than sixty thousand dollars, must provide the customer

1 with the following disclosure statement in substantially the following  
2 form using lower case and upper case twelve-point and bold type where  
3 appropriate, prior to starting work on the project:

4 "NOTICE TO CUSTOMER

5 This contractor is registered with the state of Washington,  
6 registration no. . . . , and has posted with the state a bond or  
7 deposit of . . . . for the purpose of satisfying claims  
8 against the contractor for breach of contract including  
9 negligent or improper work in the conduct of the contractor's  
10 business. The expiration date of this contractor's  
11 registration is . . . . .

12 **THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM**  
13 **THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

14 This bond or deposit is not for your exclusive use because it  
15 covers all work performed by this contractor. The bond or  
16 deposit is intended to pay valid claims up to . . . . that  
17 you and other customers, suppliers, subcontractors, or taxing  
18 authorities may have.

19 **FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR**  
20 **CONTRACT.**

21 You may withhold a contractually defined percentage of your  
22 construction contract as retainage for a stated period of time  
23 to provide protection to you and help insure that your project  
24 will be completed as required by your contract.

25 **YOUR PROPERTY MAY BE LIENED.**

26 If a supplier of materials used in your construction project or  
27 an employee or subcontractor of your contractor or  
28 subcontractors is not paid, your property may be liened to  
29 force payment and you could pay twice for the same work.

30 **FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO**  
31 **PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH**  
32 **SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.**

33 The contractor is required to provide you with further



1 information about lien release documents if you request it.  
2 General information is also available from the state Department  
3 of Labor and Industries.

4 I have received a copy of this disclosure statement.

5 \_\_\_\_\_  
6 (Signature of customer)"

7 (2) The contractor must retain a signed copy of the disclosure  
8 statement in their files for a minimum of three years, and produce a  
9 signed or electronic signature copy of the disclosure statement to the  
10 department upon request.

11 (3) A contractor subject to this section shall notify any consumer  
12 to whom notice is required under subsection (1) of this section if the  
13 contractor's registration has expired or is revoked or suspended by the  
14 department prior to completion or other termination of the contract  
15 with the consumer.

16 ((+3)) (4) No contractor subject to this section may bring or  
17 maintain any lien claim under chapter 60.04 RCW based on any contract  
18 to which this section applies without alleging and proving that the  
19 contractor has provided the customer with a copy of the disclosure  
20 statement as required in subsection (1) of this section.

21 ((+4)) (5) This section does not apply to contracts authorized  
22 under chapter 39.04 RCW or to contractors contracting with other  
23 contractors.

24 ((+5)) (6) Failure to comply with this section shall constitute an  
25 infraction under the provisions of this chapter.

26 ((+6)) (7) The department shall produce model disclosure  
27 statements, and public service announcements detailing the information  
28 needed to assist contractors and contractors' customers to comply under  
29 this section. As necessary, the department shall periodically update  
30 these education materials.

31 **Sec. 9.** RCW 18.27.200 and 2002 c 82 s 6 are each amended to read  
32 as follows:

33 (1) It is a violation of this chapter and an infraction for any  
34 contractor to:

35 (a) Advertise, offer to do work, submit a bid, or perform any work  
36 as a contractor without being registered as required by this chapter;

1 (b) Advertise, offer to do work, submit a bid, or perform any work  
2 as a contractor when the contractor's registration is suspended or  
3 revoked;

4 (c) Transfer a valid registration to an unregistered contractor or  
5 allow an unregistered contractor to work under a registration issued to  
6 another contractor; ~~((or))~~

7 (d) If the contractor is a contractor as defined in RCW 18.106.010,  
8 violate RCW 18.106.320; or

9 (e) Subcontract to, or hire, an unregistered contractor.

10 (2) Each day that a contractor works without being registered as  
11 required by this chapter, works while the contractor's registration is  
12 suspended or revoked, or works under a registration issued to another  
13 contractor is a separate infraction. Each worksite at which a  
14 contractor works without being registered as required by this chapter,  
15 works while the contractor's registration is suspended or revoked, or  
16 works under a registration issued to another contractor is a separate  
17 infraction.

18 **Sec. 10.** RCW 18.27.210 and 1993 c 454 s 8 are each amended to read  
19 as follows:

20 (1) The director shall appoint compliance inspectors to investigate  
21 alleged or apparent violations of this chapter.

22 (a) The director, or authorized compliance inspector, upon  
23 presentation of appropriate credentials, may inspect and investigate  
24 job sites at which a contractor had bid or presently is working to  
25 determine whether the contractor is registered in accordance with this  
26 chapter or the rules adopted under this chapter or whether there is a  
27 violation of ~~((RCW 18.27.200))~~ this chapter.

28 (b) Upon request of the compliance inspector of the department, a  
29 contractor or an employee of the contractor shall provide information  
30 identifying the contractor.

31 (c) The director or the director's authorized representative may  
32 apply to a court of competent jurisdiction for a search warrant  
33 authorizing access to any job site at which a contractor had bid or  
34 presently is working. The court may, upon such an application, issue  
35 a search warrant for the purpose requested. The costs for obtaining  
36 the search warrant must be added to the penalty for a violation of this  
37 chapter if such a violation becomes final.

1 (2) If the employee of an unregistered contractor is cited by a  
2 compliance inspector, that employee is cited as the agent of the  
3 employer-contractor, and issuance of the infraction to the employee is  
4 notice to the employer-contractor that the contractor is in violation  
5 of this chapter. An employee who is cited by a compliance inspector  
6 shall not be liable for any of the alleged violations contained in the  
7 citation unless the employee is also the contractor.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 18.27 RCW  
9 to read as follows:

10 The director and the director's authorized representatives may  
11 issue subpoenas to enforce the production and examination of any  
12 documents, including electronic documents, concerning business  
13 transactions between a contractor and the contractor's customers,  
14 between a contractor and the contractor's suppliers, or between a  
15 contractor and any subcontractors hired by the contractor. The  
16 superior court has the power to enforce such a subpoena by proper  
17 proceedings. This section applies to registered and unregistered  
18 contractors.

19 **Sec. 12.** RCW 18.27.230 and 1997 c 314 s 15 are each amended to  
20 read as follows:

21 The department may issue a notice of infraction if the department  
22 reasonably believes that the contractor has committed an infraction  
23 under this chapter. A notice of infraction issued under this section  
24 shall be personally served on the contractor named in the notice by the  
25 department's compliance inspectors or service can be made by certified  
26 mail directed to the contractor named in the notice of infraction at  
27 the contractor's last known address of record. If the contractor named  
28 in the notice of infraction is a firm or corporation, the notice may be  
29 personally served on any employee of the firm or corporation. If a  
30 notice of infraction is personally served upon an employee of a firm or  
31 corporation, the department shall (~~within four days of service~~) send  
32 a copy of the notice by (~~certified~~) mail to the contractor if the  
33 department is able to obtain the contractor's address.

34 **Sec. 13.** RCW 18.27.240 and 2006 c 270 s 8 are each amended to read  
35 as follows:

1 The form of the notice of infraction issued under this chapter  
2 shall include the following:

3 (1) A statement that the notice represents a determination that the  
4 infraction has been committed by the contractor named in the notice and  
5 that the determination shall be final unless contested as provided in  
6 this chapter;

7 (2) A statement that the infraction is a noncriminal offense for  
8 which imprisonment shall not be imposed as a sanction;

9 (3) A statement of the (~~specific~~) violation which necessitated  
10 issuance of the infraction;

11 (4) A statement of penalty involved if the infraction is  
12 established;

13 (5) A statement of the options provided in this chapter for  
14 responding to the notice and the procedures necessary to exercise these  
15 options;

16 (6) A statement that, at any hearing to contest the notice of  
17 infraction (~~(the state has the burden of proving, by a preponderance of  
18 the evidence, that the infraction was committed; and that)~~), the  
19 contractor may subpoena witnesses, including the compliance inspector  
20 of the department who issued and served the notice of infraction;

21 (7) A statement that the contractor must respond to the notice of  
22 infraction in one of the ways provided in this chapter; and

23 (8) A statement that a contractor's failure to timely select one of  
24 the options for responding to the notice of infraction after receiving  
25 a statement of the options provided in this chapter for responding to  
26 the notice of infraction and the procedures necessary to exercise these  
27 options is guilty of a gross misdemeanor and may be punished by a fine  
28 or imprisonment in jail.

29 **Sec. 14.** RCW 18.27.250 and 1986 c 197 s 5 are each amended to read  
30 as follows:

31 A violation of RCW 18.27.040 (3) or (5) or a violation designated  
32 as an infraction under this chapter shall be heard and determined by an  
33 administrative law judge of the office of administrative hearings. If  
34 a party desires to contest the notice of infraction, the party shall  
35 file a notice of appeal with the department (~~(7)~~) specifying the grounds  
36 of the appeal within twenty days (~~(of issuance of the infraction)~~) of  
37 service of the infraction in a manner provided by this chapter. The

1 appeal must be accompanied by a certified check for two hundred  
2 dollars, which shall be returned to the assessed party if the decision  
3 of the department is not sustained following the final decision in the  
4 appeal. If the final decision sustains the decision of the department,  
5 the department must apply the two hundred dollars to the payment of the  
6 expenses of the appeal, including costs charged by the office of  
7 administrative hearings. The administrative law judge shall conduct  
8 hearings in these cases at locations in the county where the infraction  
9 occurred.

10 **Sec. 15.** RCW 18.27.270 and 2000 c 171 s 9 are each amended to read  
11 as follows:

12 (1) A contractor who is issued a notice of infraction shall respond  
13 within twenty days of the date of issuance of the notice of infraction.

14 (2) If the contractor named in the notice of infraction does not  
15 elect to contest the notice of infraction, then the contractor shall  
16 pay to the department, by check or money order, the amount of the  
17 penalty prescribed for the infraction. When a response which does not  
18 contest the notice of infraction is received by the department with the  
19 appropriate penalty, the department shall make the appropriate entry in  
20 its records.

21 (3) If the contractor named in the notice of infraction elects to  
22 contest the notice of infraction, the contractor shall respond by  
23 filing an ~~((answer of protest with the department specifying the~~  
24 ~~grounds of protest))~~ appeal to the department in the manner specified  
25 in RCW 18.27.250.

26 (4) If any contractor issued a notice of infraction fails to  
27 respond within the prescribed response period, the contractor shall be  
28 guilty of a misdemeanor and prosecuted in the county where the  
29 infraction occurred.

30 (5) After final determination by an administrative law judge that  
31 an infraction has been committed, a contractor who fails to pay a  
32 monetary penalty within thirty days, that is not waived pursuant to RCW  
33 18.27.340(2), and who fails to file an appeal pursuant to RCW  
34 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the  
35 county where the infraction occurred.

36 (6) A contractor who fails to pay a monetary penalty within thirty

1 days after exhausting appellate remedies pursuant to RCW 18.27.310(4),  
2 shall be guilty of a misdemeanor and be prosecuted in the county where  
3 the infraction occurred.

4 (7) If a contractor who is issued a notice of infraction is a  
5 contractor who has failed to register as a contractor under this  
6 chapter, the contractor is subject to a monetary penalty per infraction  
7 as provided in the schedule of penalties established by the department,  
8 and each day the person works without becoming registered is a separate  
9 infraction.

10 **Sec. 16.** RCW 18.27.290 and 1983 1st ex.s. c 2 s 11 are each  
11 amended to read as follows:

12 It is a gross misdemeanor for a contractor who has been personally  
13 served with a notice of infraction to willfully (~~violate the written~~  
14 ~~promise~~) fail to respond to a notice of infraction as provided in this  
15 chapter, regardless of the ultimate disposition of the infraction.

16 **Sec. 17.** RCW 18.27.310 and 2001 c 159 s 10 are each amended to  
17 read as follows:

18 (1) The administrative law judge shall conduct contractors' notice  
19 of infraction cases pursuant to chapter 34.05 RCW.

20 (2) (~~The burden of proof is on the department to establish the~~  
21 ~~commission of the infraction by a preponderance of the evidence.~~) The  
22 notice of infraction shall be dismissed if the (~~defendant~~) appellant  
23 establishes that, at the time the advertising occurred, offer or bid  
24 was made, or work was performed, the (~~defendant~~) appellant was  
25 registered by the department, without suspension, or was exempt from  
26 registration.

27 (3) After consideration of the evidence and argument, the  
28 administrative law judge shall determine whether the infraction was  
29 committed. If it has not been established that the infraction was  
30 committed, an order dismissing the notice shall be entered in the  
31 record of the proceedings. If it has been established that the  
32 infraction was committed, the administrative law judge shall issue  
33 findings of fact and conclusions of law in its decision and order  
34 determining whether the infraction was committed.

35 (4) An appeal from the administrative law judge's determination or

1 order shall be to the superior court. The decision of the superior  
2 court is subject only to discretionary review pursuant to Rule 2.3 of  
3 the Rules of Appellate Procedure.

--- END ---