
SUBSTITUTE HOUSE BILL 1393

State of Washington 61st Legislature 2009 Regular Session

By House Judiciary (originally sponsored by Representatives Springer, Kessler, Eddy, Ormsby, Van De Wege, Lias, Morrell, Roberts, Upthegrove, and Sullivan)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to improving residential real property construction
2 by creating a home construction consumer education office,
3 strengthening warranty protections applicable to residential real
4 property construction, enhancing contractor registration requirements,
5 and establishing worker certification standards; amending RCW
6 18.27.030; adding a new section to chapter 43.10 RCW; adding new
7 sections to chapter 64.50 RCW; adding a new section to chapter 18.27
8 RCW; creating new sections; and providing an expiration date.

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

10 **PART I. OFFICE OF CONSUMER EDUCATION FOR HOME CONSTRUCTION**

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10 RCW
12 to read as follows:

13 (1) The office of consumer education for home construction is
14 created in the office of the attorney general to be the primary point
15 of contact for consumers in matters related to residential
16 construction.

17 (2) The office of consumer education for home construction shall:

1 (a) Educate consumers about contracting for residential
2 construction services, including the requirements of chapter 18.27 RCW
3 and methods available to protect themselves against loss;

4 (b) Produce written and electronic consumer education materials
5 about contracting for residential construction services and legal
6 resources available to consumers;

7 (c) Create a pamphlet explaining a homeowner's legal rights and
8 remedies and provide contractors and other construction professionals
9 with a downloadable version of the brochure to attach to contracts for
10 purchase and sale of new residential real property or the substantial
11 remodel of existing residential real property. The office shall
12 periodically update this pamphlet;

13 (d) Identify and work collaboratively with agencies and
14 organizations who are already engaged in consumer education efforts in
15 the area of residential construction, such as the department of labor
16 and industries, the department of licensing, local governments, the
17 construction industry, financial institutions, and other interested
18 organizations and individuals, to increase outreach to consumers;

19 (e) Share consumer education materials with and serve as a resource
20 for agencies and organizations who are already engaged in consumer
21 education;

22 (f) Develop a uniform manner of receiving, cataloging, analyzing,
23 and responding to consumer complaints about residential construction;

24 (g) Identify which agencies and organizations are already receiving
25 complaints and coordinate with them to ensure that all agencies and
26 organizations are requesting the same information from complaining
27 consumers and that all consumers are referred to the office;

28 (h) Enter into data-sharing agreements with the department of labor
29 and industries, local governments, and other agencies with enforcement
30 duties in residential construction to increase assistance to consumers
31 and enforcement of construction-related laws; and

32 (i) Report to the legislature on an annual basis the total number
33 of complaints, the nature of the complaints, the monetary value of the
34 complaints, whether complaints have been resolved, and any other
35 information that the office deems relevant. The first report is due on
36 January 1, 2010, and subsequent reports are due on November 1st of each
37 year thereafter.

1 **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES**

2 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.50 RCW
3 to read as follows:

4 (1) The legislature intends by this section to modify the common
5 law implied warranty of habitability to provide that this warranty may
6 not be contractually disclaimed, waived, modified, or limited. The
7 legislature does not intend to modify any other aspect of the common
8 law implied warranty of habitability as developed through case law.

9 (2) The common law implied warranty of habitability may not be
10 disclaimed, waived, modified, or limited by contractual agreement. A
11 provision of any contract for the purchase or sale of newly constructed
12 residential property that purports to disclaim, waive, modify, or limit
13 the implied warranty of habitability is void and unenforceable.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.50 RCW
15 to read as follows:

16 (1) A construction professional involved in the construction of new
17 residential real property, or the substantial remodel of existing
18 residential real property, warrants that any work to the foundation,
19 framing, siding, roofing, windows, and doors, and any part thereof,
20 will not impair the suitability of the property for the ordinary uses
21 of real property of its type and that the work to these components of
22 the property will be:

23 (a) Free from defective materials;

24 (b) Constructed in accordance with sound engineering and
25 construction standards;

26 (c) Constructed in a workmanlike manner; and

27 (d) Constructed in compliance with all laws then applicable to the
28 work.

29 (2) If a construction professional breaches a warranty arising
30 under this section and the breach results in damage to any portion of
31 the residential real property, the current owner of the residential
32 real property may bring a cause of action for damages against the
33 construction professional. Absence of privity of contract between the
34 owner and the construction professional is not a defense to the
35 enforcement of a warranty arising under this section.

36 (3) In a proceeding for breach of a warranty arising under this
37 section, the plaintiff must show that the alleged breach has adversely

1 affected or will adversely affect the performance of that portion of
2 the property alleged to be in breach. To establish an adverse effect,
3 the person alleging the breach is not required to prove that the breach
4 renders the property unfit for occupancy. As used in this subsection,
5 an "adverse effect" must be more than technical and must be significant
6 to a reasonable person.

7 (4) Proof of breach of a warranty arising under this section is not
8 proof of damages. Damages awarded for a breach of a warranty arising
9 under this section are the cost of repairs. However, if it is
10 established that the cost of repairs is clearly disproportionate to the
11 loss in market value caused by the breach, damages are limited to the
12 loss in market value.

13 (5)(a)(i) Except as provided in (a)(ii) of this subsection, a
14 proceeding for breach of a warranty arising under this section must be
15 commenced within three years after the cause of action accrues.

16 (ii) A cause of action for breach of a warranty arising under this
17 section that is based on a latent structural defect to the foundation
18 component of the residential real property must be commenced within
19 four years after the cause of action accrues.

20 (iii) The periods provided in this subsection (5)(a) may not be
21 reduced by either oral or written agreement, or through the use of
22 contractual claims or notice procedures that require the filing or
23 service of any claim or notice prior to the expiration of the period
24 specified in this section.

25 (b) A cause of action for breach of a warranty arising under this
26 section accrues, regardless of the owner's lack of knowledge of the
27 breach:

28 (i) In the case of the purchase of newly constructed residential
29 real property, on the date the initial owner enters into possession of
30 the property; or

31 (ii) In the case of the substantial remodel of existing residential
32 real property, on the date of substantial completion of construction or
33 termination of the construction project, whichever is later.

34 (6) If a written notice of claim is served under RCW 64.50.020
35 within the time prescribed for the filing of an action under this
36 section, the statute of limitations in this section and any applicable
37 statute of repose for construction-related claims are tolled until

1 sixty days after the period of time during which the filing of an
2 action is barred under RCW 64.50.020.

3 (7) The warranties provided under this section are in addition to
4 any other rights or remedies available under statutory law or common
5 law or provided for under contract. The warranties provided under this
6 section may not be waived, disclaimed, modified, or limited.

7 (8) This section does not apply to condominiums subject to chapter
8 64.34 RCW.

9 (9) This section does not affect the application of the notice and
10 opportunity to cure requirements and procedures imposed under RCW
11 64.50.010 through 64.50.050.

12 (10) An action for breach of a warranty created under this section
13 is subject to any requirements for mandatory arbitration imposed under
14 chapter 7.06 RCW or state or local court rules.

15 (11) This section applies to new residential real property
16 construction and substantial remodels of residential real property that
17 are commenced on or after January 1, 2010.

18 (12) For the purposes of this section:

19 (a) "Construction professional" means a builder, builder-vendor,
20 contractor, subcontractor, engineer, or inspector, performing or
21 furnishing the design, supervision, inspection, construction, or
22 observation of the construction, of any improvement to residential real
23 property, whether operating as a sole proprietor, partnership,
24 corporation, or other business entity. "Construction professional"
25 does not include a supplier of materials who has otherwise had no
26 involvement in performing or furnishing the design, supervision,
27 inspection, construction, or observation of the construction, of any
28 improvement to residential real property.

29 (b) "Residential real property" means a single-family home, a
30 duplex, a triplex, or a quadraplex.

31 (c) "Substantial completion of construction" means the state of
32 completion reached when an improvement upon real property may be used
33 or occupied for its intended use.

34 **PART III. CONTRACTOR REGISTRATION AND WORKER CERTIFICATION**

35 NEW SECTION. **Sec. 4.** (1) The legislature finds that there is
36 inadequate protection for consumers in the area of residential

1 construction. The legislature further finds that a significant amount
2 of the problems in the construction of new residential real property,
3 or the substantial remodel of existing residential real property,
4 pertain to water intrusion and unstable foundations and develop from
5 poor installation of roofing, siding, framing, foundations, doors, and
6 windows. The legislature recognizes that it is important to assure
7 consumers that those doing construction work are properly trained. The
8 legislature, therefore, intends to establish a worker certification
9 requirement for those doing construction work in the areas of roofing,
10 siding, framing, foundations, doors, and windows.

11 (2) The department of labor and industries shall contract for
12 consultant services to develop recommendations to the legislature on
13 the education, experience, and examination requirements of the program
14 to certify workers engaged in the installation of roofing, siding,
15 framing, foundations, doors, and windows. In developing the
16 recommendations, the consultant and the department shall closely
17 involve and consult with stakeholders. The recommendations must be
18 submitted to the legislature by November 1, 2009.

19 (3) This section expires December 31, 2009.

20 **Sec. 5.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read
21 as follows:

22 (1) An applicant for registration as a contractor shall submit an
23 application under oath upon a form to be prescribed by the director and
24 which shall include the following information pertaining to the
25 applicant:

- 26 (a) Employer social security number.
- 27 (b) Unified business identifier number.
- 28 (c) Evidence of workers' compensation coverage for the applicant's
29 employees working in Washington, as follows:

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

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

34 (iii) For applicants domiciled in a state or province of Canada
35 subject to an agreement entered into under RCW 51.12.120(7), as
36 permitted by the agreement, filing a certificate of coverage issued by
37 the agency that administers the workers' compensation law in the

1 applicant's state or province of domicile certifying that the applicant
2 has secured the payment of compensation under the other state's or
3 province's workers' compensation law.

4 (d) Employment security department number.

5 (e) Unified business identifier (UBI) account number may be
6 substituted for the information required by (c) and (d) of this
7 subsection if the applicant will not employ employees in Washington.

8 (f) Type of contracting activity, whether a general or a specialty
9 contractor and if the latter, the type of specialty.

10 (g) Type of work performed, whether residential, commercial, or
11 both.

12 (h) The name ((and)), address, social security number, date of
13 birth, and driver's license number of each partner if the applicant is
14 a firm or partnership, or the name ((and)), address, social security
15 number, date of birth, and driver's license number of the owner if the
16 applicant is an individual proprietorship, or the name ((and)),
17 address, social security number, date of birth, and driver's license
18 number of the corporate officers and statutory agent, if any, if the
19 applicant is a corporation, or the name ((and)), address, social
20 security number, date of birth, and driver's license number of all
21 members of other business entities. The information contained in such
22 application is a matter of public record and open to public inspection.

23 (i) The registration numbers and unified business identifier
24 account numbers of previously or currently registered businesses
25 involving the same owner, principal, or officer as the applicant.

26 (j) Disclosure of any bankruptcy proceedings filed by or against
27 the applicant.

28 (k) Information about any construction licenses, certifications, or
29 registrations that have been issued to the applicant by other states.
30 The applicant shall also provide details about any denials,
31 suspensions, revocations, or any enforcement actions related to
32 construction against the applicant by other states.

33 (2) The department may verify the workers' compensation coverage
34 information provided by the applicant under subsection (1)(c) of this
35 section, including but not limited to information regarding the
36 coverage of an individual employee of the applicant. If coverage is
37 provided under the laws of another state, the department may notify the
38 other state that the applicant is employing employees in Washington.

1 (3)(a) The department shall deny an application for registration
2 if: (i) The applicant has been previously performing work subject to
3 this chapter as a sole proprietor, partnership, corporation, or other
4 entity and the department has notice that the applicant has an
5 unsatisfied final judgment against him or her in an action based on
6 work performed subject to this chapter or the applicant owes the
7 department money for penalties assessed or fees due under this chapter
8 as a result of a final judgment; (ii) the applicant was an owner,
9 principal, or officer of a partnership, corporation, or other entity
10 that either has an unsatisfied final judgment against it in an action
11 that was incurred for work performed subject to this chapter or owes
12 the department money for penalties assessed or fees due under this
13 chapter as a result of a final judgment; (iii) the applicant does not
14 have a valid unified business identifier number; (iv) the department
15 determines that the applicant has falsified information on the
16 application, unless the error was inadvertent; (~~(v)~~) (v) the applicant
17 does not have an active and valid certificate of registration with the
18 department of revenue; or (vi) the department has determined that a
19 different state has taken enforcement action against the applicant for
20 activities that would be a violation of this chapter if they had
21 occurred in Washington state.

22 (b) The department shall suspend an active registration if: (i)
23 The department has determined that the registrant has an unsatisfied
24 final judgment against it for work within the scope of this chapter;
25 (ii) the department has determined that the registrant is a sole
26 proprietor or an owner, principal, or officer of a registered
27 contractor that has an unsatisfied final judgment against it for work
28 within the scope of this chapter; (iii) the registrant does not
29 maintain a valid unified business identifier number; (iv) the
30 department has determined that the registrant falsified information on
31 the application, unless the error was inadvertent; (~~(v)~~) (v) the
32 registrant does not have an active and valid certificate of
33 registration with the department of revenue; or (vi) the department has
34 determined that a different state has taken enforcement action against
35 the registrant for activities that would be a violation of this chapter
36 if they had occurred in Washington state.

37 (c) The department may suspend an active registration if the
38 department has determined that an owner, principal, partner, or officer

1 of the registrant was an owner, principal, or officer of a previous
2 partnership, corporation, or other entity that has an unsatisfied final
3 judgment against it.

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

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.27 RCW
10 to read as follows:

11 A registered contractor, by or against whom a petition in
12 bankruptcy has been filed, shall notify the department of the
13 proceedings in bankruptcy, including the identity and location of the
14 court in which the proceedings are pending, within ten days of the
15 filing.

16 NEW SECTION. **Sec. 7.** Part headings used in this act are not any
17 part of the law.

--- END ---