

2 SSB 6638 - S AMD - 764  
3 By Senators Horn and Heavey

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 18.27.010 and 1997 c 314 s 2 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Contractor" means any person, firm, or corporation who or  
12 which, in the pursuit of an independent business undertakes to, or  
13 offers to undertake, or submits a bid to, construct, alter, repair, add  
14 to, subtract from, improve, move, wreck or demolish, for another, any  
15 building, highway, road, railroad, excavation or other structure,  
16 project, development, or improvement attached to real estate or to do  
17 any part thereof including the installation of carpeting or other floor  
18 covering, the erection of scaffolding or other structures or works in  
19 connection therewith or who installs or repairs roofing or siding; or,  
20 who, to do similar work upon his or her own property, employs members  
21 of more than one trade upon a single job or project or under a single  
22 building permit except as otherwise provided herein. "Contractor"  
23 includes any person, firm, or corporation covered by this subsection,  
24 whether or not registered as required under this chapter.

25 (2) "General contractor" means a contractor whose business  
26 operations require the use of more than two unrelated building trades  
27 or crafts whose work the contractor shall superintend or do in whole or  
28 in part. "General contractor" shall not include an individual who does  
29 all work personally without employees or other "specialty contractors"  
30 as defined in this section. The terms "general contractor" and  
31 "builder" are synonymous.

32 (3) "Specialty contractor" means a contractor whose operations do  
33 not fall within the foregoing definition of "general contractor".

34 (4) "Substantial completion" means the earliest occurrence of  
35 either: (a) The date upon which the work of improvement has been  
36 completed as specified under the contract; (b) the date upon which the

1 improvement becomes usable or fit for the purposes for which it was  
2 intended; (c) the date of issuance of a certificate of occupancy; or  
3 (d) the date of occupation or use of the improvement by the owner or an  
4 agent of the owner.

5 (5) "Unregistered contractor" means a person, firm, or corporation  
6 doing work as a contractor without being registered in compliance with  
7 this chapter. "Unregistered contractor" (~~includes contractors whose~~  
8 ~~registration is expired for more than thirty days beyond the renewal~~  
9 ~~date or has been suspended~~) does not include those contractors who  
10 have complied with all the requirements for registration but have not  
11 had their application processed by the department.

12 (~~(+5)~~) (6) "Work of improvement" means work performed or provided,  
13 including labor, materials, equipment, and professional services, that  
14 led to the improvement of real property for a private or public owner.  
15 Work of improvement includes incremental improvements that are in  
16 themselves complete but do not necessarily bring a property improvement  
17 to a state of substantial completion.

18 (7) "Department" means the department of labor and industries.

19 (~~(+6)~~) (8) "Director" means the director of the department of  
20 labor and industries.

21 (~~(+7)~~) (9) "Verification" means the receipt and duplication by the  
22 city, town, or county of a contractor registration card that is current  
23 on its face, checking the department's contractor registration data  
24 base, or calling the department to confirm that the contractor is  
25 registered.

26 (10) "Residential homeowner" means an individual person or persons  
27 owning real property upon which one single-family residence is to be  
28 built or upon which there is a single-family residence to which  
29 construction improvements are to be made and in which the owner intends  
30 to reside upon completion of any construction.

31 (11) "Partnership" means any business formed under Title 25 RCW.

32 **Sec. 2.** RCW 18.27.030 and 1997 c 314 s 4 are each amended to read  
33 as follows:

34 (1) An applicant for registration as a contractor shall submit an  
35 application under oath upon a form to be prescribed by the director and  
36 which shall include the following information pertaining to the  
37 applicant:

38 (a) Employer social security number.

1 (b) As applicable: (i) The industrial insurance account number  
2 covering employees domiciled in Washington; and (ii) evidence of  
3 workers' compensation coverage in the applicant's state of domicile for  
4 the applicant's employees working in Washington who are not domiciled  
5 in Washington.

6 (c) Employment security department number.

7 (d) State excise tax registration number.

8 (e) Unified business identifier (UBI) account number may be  
9 substituted for the information required by (b), (c), and (d) of this  
10 subsection.

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

13 (g) The name and address of each partner if the applicant be a firm  
14 or partnership, or the name and address of the owner if the applicant  
15 be an individual proprietorship, or the name and address of the  
16 corporate officers and statutory agent, if any, if the applicant be a  
17 corporation. The information contained in such application shall be a  
18 matter of public record and open to public inspection.

19 (2) The department may verify the workers' compensation coverage  
20 information provided by the applicant under subsection (1)(b) of this  
21 section, including but not limited to information regarding the  
22 coverage of an individual employee of the applicant. If coverage is  
23 provided under the laws of another state, the department may notify the  
24 other state that the applicant is employing employees in Washington.

25 (3)(a) The department shall deny an application for registration  
26 if: (i) The applicant has been previously registered as a sole  
27 proprietor, partnership, or corporation and the department has notice  
28 that the applicant has an unsatisfied final judgment against him or her  
29 in an action based on this chapter that was incurred during a previous  
30 registration under this chapter; or (ii) the applicant was a principal  
31 or officer named on a previous application of a previously registered  
32 partnership or corporation that has an unsatisfied final judgment  
33 against it in an action based on this chapter that was incurred during  
34 a previous registration under this chapter.

35 (b) The department shall suspend any active registration if the  
36 department has notice that the registrant is a sole proprietor or a  
37 principal or officer named in the application of another registered  
38 entity that has an unsatisfied final judgment against it.

1       (c) The department shall not deny an application or suspend a  
2 registration because of an unsatisfied final judgment if the  
3 applicant's or registrant's unsatisfied final judgment was the result  
4 of the fraud or negligence of another party.

5       (4) For the purposes of this section, "an unsatisfied final  
6 judgment" includes a judgment assigned under RCW 19.72.070.

7       **Sec. 3.** RCW 18.27.040 and 1997 c 314 s 5 are each amended to read  
8 as follows:

9       (1) Each applicant shall file with the department a surety bond  
10 issued by a surety insurer who meets the requirements of chapter 48.28  
11 RCW in the sum of (~~six~~) twelve thousand dollars if the applicant is  
12 a general contractor and (~~four~~) six thousand dollars if the applicant  
13 is a specialty contractor. If no valid bond is already on file with  
14 the department at the time the application is filed, a bond must  
15 accompany the registration application. The bond shall have the state  
16 of Washington named as obligee with good and sufficient surety in a  
17 form to be approved by the department. The bond shall be continuous  
18 and may be canceled by the surety upon the surety giving written notice  
19 to the director of its intent to cancel the bond. A cancellation or  
20 revocation of the bond or withdrawal of the surety from the bond  
21 suspends the registration issued to the registrant until a new bond or  
22 reinstatement notice has been filed and approved as provided in this  
23 section. The bond shall be conditioned that the applicant will pay all  
24 persons performing labor, including employee benefits, for the  
25 contractor, will pay all taxes and contributions due to the state of  
26 Washington, and will pay all persons furnishing labor or material or  
27 renting or supplying equipment to the contractor and will pay all  
28 amounts that may be adjudged against the contractor by reason of breach  
29 of contract including negligent or improper work in the conduct of the  
30 contracting business. A change in the name of a business or a change  
31 in the type of business entity shall not impair a bond for the purposes  
32 of this section so long as one of the original applicants for such bond  
33 maintains partial ownership in the business covered by the bond.

34       (2) Any contractor registered as of July 1, 1997, who maintains  
35 such registration in accordance with this chapter shall be in  
36 compliance with this chapter until the next annual renewal of the  
37 contractor's certificate of registration. At that time, the contractor  
38 shall provide a bond, cash deposit, or other security deposit as

1 required by this chapter and comply with all of the other provisions of  
2 this chapter before the department shall renew the contractor's  
3 certificate of registration.

4 (3) The total amount paid from a bond or deposit to claimants other  
5 than residential homeowners shall not exceed in the aggregate fifty  
6 percent of the statutory bond required by this section.

7 (4) Any person, firm, or corporation having a claim against the  
8 contractor for any of the items referred to in this section may bring  
9 suit upon the bond or deposit in the superior court of the county in  
10 which the work was done or of any county in which jurisdiction of the  
11 contractor may be had. The surety issuing the bond shall be named as  
12 a party to any suit upon the bond. Action upon the bond or deposit  
13 shall be commenced by filing the summons and complaint with the clerk  
14 of the appropriate superior court within one year from the date of  
15 expiration of the certificate of registration in force at the time the  
16 claimed labor was performed and benefits accrued, taxes and  
17 contributions owing the state of Washington became due, materials and  
18 equipment were furnished, or the claimed contract work was completed,  
19 substantially completed, or abandoned. Service of process in an action  
20 against the contractor, the contractor's bond, or the deposit shall be  
21 exclusively by service upon the department. Three copies of the  
22 summons and complaint and a fee of ten dollars to cover the handling  
23 costs shall be served by registered or certified mail upon the  
24 department at the time suit is started and the department shall  
25 maintain a record, available for public inspection, of all suits so  
26 commenced. Service is not complete until the department receives the  
27 ten-dollar fee and three copies of the summons and complaint. The  
28 service shall constitute service on the registrant and the surety for  
29 suit upon the bond or deposit and the department shall transmit the  
30 summons and complaint or a copy thereof to the registrant at the  
31 address listed in the registrant's application and to the surety within  
32 forty-eight hours after it shall have been received.

33 (~~((4))~~) (5) The surety upon the bond shall not be liable in an  
34 aggregate amount in excess of the amount named in the bond nor for any  
35 monetary penalty assessed pursuant to this chapter for an infraction.  
36 The liability of the surety shall not cumulate where the bond has been  
37 renewed, continued, reinstated, reissued or otherwise extended. The  
38 surety upon the bond may, upon notice to the department and the  
39 parties, tender to the clerk of the court having jurisdiction of the

1 action an amount equal to the claims thereunder or the amount of the  
2 bond less the amount of judgments, if any, previously satisfied  
3 therefrom and to the extent of such tender the surety upon the bond  
4 shall be exonerated but if the actions commenced and pending at any one  
5 time exceed the amount of the bond then unimpaired, claims shall be  
6 satisfied from the bond in the following order:

7 (a) Employee labor and claims of laborers, including employee  
8 benefits;

9 (b) Claims for breach of contract by a party to the construction  
10 contract;

11 (c) Registered subcontractors, material, and equipment;

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

13 (e) Any court costs, interest, and attorney's fees plaintiff may be  
14 entitled to recover. The surety is not liable for any amount in excess  
15 of the penal limit of its bond.

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

18 ~~((+5))~~ (6) If a final judgment impairs the liability of the surety  
19 upon the bond so furnished that there shall not be in effect a bond  
20 undertaking in the full amount prescribed in this section, the  
21 department shall suspend the registration of the contractor until the  
22 bond liability in the required amount unimpaired by unsatisfied  
23 judgment claims is furnished. If the bond becomes fully impaired, a  
24 new bond must be furnished at the rates prescribed by this section.

25 ~~((+6))~~ (7) In lieu of the surety bond required by this section the  
26 contractor may file with the department a deposit consisting of cash or  
27 other security acceptable to the department.

28 ~~((+7))~~ (8) Any person having filed and served a summons and  
29 complaint as required by this section having an unsatisfied final  
30 judgment against the registrant for any items referred to in this  
31 section may execute upon the security held by the department by serving  
32 a certified copy of the unsatisfied final judgment by registered or  
33 certified mail upon the department within one year of the date of entry  
34 of such judgment. Upon the receipt of service of such certified copy  
35 the department shall pay or order paid from the deposit, through the  
36 registry of the superior court which rendered judgment, towards the  
37 amount of the unsatisfied judgment. The priority of payment by the  
38 department shall be the order of receipt by the department, but the

1 department shall have no liability for payment in excess of the amount  
2 of the deposit.

3 ~~((+8))~~ (9) The director may adopt rules necessary for the proper  
4 administration of the security.

5 **Sec. 4.** RCW 18.27.050 and 1987 c 303 s 1 are each amended to read  
6 as follows:

7 (1) At the time of registration and subsequent reregistration, the  
8 applicant shall furnish insurance or financial responsibility in the  
9 form of an assigned account in the amount of ~~((twenty))~~ fifty thousand  
10 dollars for injury or damages to property, and ~~((fifty))~~ one hundred  
11 thousand dollars for injury or damage including death to any one  
12 person, and ~~((one))~~ two hundred thousand dollars for injury or damage  
13 including death to more than one person ~~((or financial responsibility~~  
14 ~~to satisfy these amounts))~~.

15 (2) Failure to maintain insurance or financial responsibility  
16 relative to the contractor's activities shall be cause to suspend or  
17 deny the contractor his or her or their registration.

18 (3)(a) Proof of financial responsibility authorized in this section  
19 may be given by providing, in the amount required by subsection (1) of  
20 this section, an assigned account acceptable to the department. The  
21 assigned account shall be held by the department to satisfy any  
22 execution on a judgment issued against the contractor for damage to  
23 property or injury or death to any person occurring in the contractor's  
24 contracting operations, according to the provisions of the assigned  
25 account agreement. The department shall have no liability for payment  
26 in excess of the amount of the assigned account.

27 (b) The assigned account filed with the director as proof of  
28 financial responsibility shall be canceled at the expiration of three  
29 years after:

30 (i) The contractor's registration has expired or been revoked; or

31 (ii) The contractor has furnished proof of insurance as required by  
32 subsection (1) of this section;

33 if, in either case, no legal action has been instituted against the  
34 contractor or on the account at the expiration of the three-year  
35 period.

36 (c) If a contractor chooses to file an assigned account as  
37 authorized in this section, the contractor shall, on any contracting  
38 project, notify each person with whom the contractor enters into a

1 contract or to whom the contractor submits a bid that the contractor  
2 has filed an assigned account in lieu of insurance and that recovery  
3 from the account for any claim against the contractor for property  
4 damage or personal injury or death occurring in the project requires  
5 the claimant to obtain a court judgment.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.27 RCW  
7 to read as follows:

8 (1) Any moneys released to or obtained by an owner, developer,  
9 prime contractor, subcontractor, or person in charge of a construction  
10 project in connection with a work of improvement, shall be regarded and  
11 held in trust for the benefit of those persons making the payment and  
12 those who provided the labor or furnished materials, equipment, or  
13 professional services in connection with the work of improvement giving  
14 rise to the receipt of the moneys. Nothing in this section shall be  
15 interpreted to create any obligation on the part of a lender that has  
16 advanced such moneys to insure that they are properly disbursed. The  
17 use of trust moneys for any other purpose than to first pay when due  
18 those persons for whom the money is held in trust is a violation of  
19 this chapter and chapter 19.86 RCW. The filing of a lien by a person  
20 for whom the money is held in trust creates the presumption that the  
21 obligations of this section have not been met, and any person holding  
22 the money in trust shall then have the burden of showing that their  
23 obligations under this section have been met.

24 (2) Nothing contained in this section shall be construed as  
25 requiring moneys held in trust by an owner, contractor, or  
26 subcontractor under subsection (1) of this section to be placed in a  
27 separate account. If an owner, contractor, or subcontractor commingles  
28 moneys held in trust under this section with other moneys, the mere  
29 commingling of the moneys does not constitute a violation of this  
30 chapter.

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

33 The prime contractor shall pay amounts due subcontractors and  
34 suppliers for a work of improvement, and the subcontractor shall pay  
35 amounts due their suppliers and lower tier subcontractors for a work of  
36 improvement, no later than thirty days after the due date contractually  
37 specified or, if there is no due date specified contractually, thirty

1 days after receipt of draws, progress payments, or final payment for  
2 that work of improvement. If there is a written notice of a dispute  
3 over all or any portion of the amount due from the prime contractor to  
4 a subcontractor, subcontractor to a subcontractor, or contractor to a  
5 supplier, then the prime contractor or subcontractor may withhold no  
6 more than one hundred fifty percent of the disputed amount. Others not  
7 party to a dispute are entitled to full and prompt payment of the  
8 amounts due them.

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 18.27 RCW  
10 to read as follows:

11 Sections 5 and 6 of this act shall apply only to works of  
12 improvement for residential homeowners.

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

15 (1) If any contractor, whether registered or not, defaults in any  
16 payment, penalty, or fine due to the department, the director or the  
17 director's designee may issue a notice of assessment certifying the  
18 amount due, which notice shall be served upon the contractor by mailing  
19 such notice to the contractor by certified mail to the contractor's  
20 last known address or served in the manner prescribed for the service  
21 of a summons in a civil action.

22 (2) A notice of assessment becomes final thirty days from the date  
23 the notice was served upon the contractor unless a written request for  
24 reconsideration is filed with the department or an appeal is filed in  
25 superior court in the manner specified in RCW 34.05.510 through  
26 34.05.598. The request for reconsideration shall set forth with  
27 particularity the reason for the contractor's request. The department,  
28 within thirty days after receiving a written request for  
29 reconsideration, may modify, or reverse any notice of assessment, or  
30 may hold any such notice of assessment in abeyance pending further  
31 investigation. If a final decision of any court in favor of the  
32 department is not appealed within the time allowed by law, then the  
33 amount of the unappealed assessment, or such amount of the assessment  
34 as is found due by the final decision of the court, shall be deemed  
35 final.

36 (3) The director or the director's designee may file with the clerk  
37 of any county within the state a warrant in the amount of the notice of

1 assessment. The clerk of the county wherein the warrant is filed shall  
2 immediately designate a superior court cause number for such warrant,  
3 and the clerk shall cause to be entered in the judgment docket under  
4 the superior court cause number assigned to the warrant, the name of  
5 such contractor mentioned in the warrant, the amount of payment,  
6 penalty, or fine due thereon, and the date when such warrant was filed.  
7 The aggregate amount of such warrant as docketed shall become a lien  
8 upon the title to, and interest in all real and personal property of  
9 the contractor against whom the warrant is issued, the same as a  
10 judgment in a civil case duly docketed in the office of such clerk.  
11 The sheriff shall thereupon proceed upon the same in all respects and  
12 with like effect as prescribed by law with respect to execution or  
13 other process issued against rights or property upon judgment in the  
14 superior court. Such warrant so docketed shall be sufficient to  
15 support the issuance of writs of garnishment in favor of the state in  
16 a manner provided by law in case of judgment, wholly or partially  
17 unsatisfied. The clerk of the court shall be entitled to a filing fee  
18 of five dollars, which shall be added to the amount of the warrant. A  
19 copy of such warrant shall be mailed to the contractor within three  
20 days of filing with the clerk.

21 (4) The director or the director's designee is hereby authorized to  
22 issue to any person, firm, corporation, municipal corporation,  
23 political subdivision of the state, a public corporation, or any agency  
24 of the state, a notice and order to withhold and deliver property of  
25 any kind whatsoever when he or she has reason to believe that there is  
26 in the possession of such person, firm, corporation, municipal  
27 corporation, political subdivision of the state, public corporation, or  
28 any agency of the state, property which is or shall become due, owing,  
29 or belonging to any contractor upon whom a notice of assessment has  
30 been served by the department for payments, penalties, or fines due to  
31 the department. The effect of a notice and order to withhold and  
32 deliver shall be continuous from the date such notice and order to  
33 withhold and deliver is first made until the liability out of which  
34 such notice and order to withhold and deliver arose is satisfied or  
35 becomes unenforceable because of lapse of time. The department shall  
36 release the notice and order to withhold and deliver when the liability  
37 out of which the notice and order to withhold and deliver arose is  
38 satisfied or becomes unenforceable by reason of lapse of time and shall  
39 notify the person against whom the notice and order to withhold and

1 deliver was made that such notice and order to withhold and deliver has  
2 been released.

3 The notice and order to withhold and deliver shall be served by the  
4 sheriff of the county or by the sheriff's deputy, by certified mail,  
5 return receipt requested, or by any duly authorized representatives of  
6 the director. Any person, firm, corporation, municipal corporation,  
7 political subdivision of the state, public corporation, or any agency  
8 of the state upon whom service has been made is hereby required to  
9 answer the notice within twenty days exclusive of the day of service,  
10 under oath and in writing, and shall make true answers to the matters  
11 inquired of in the notice and order to withhold and deliver. In the  
12 event there is in the possession of the party named and served with a  
13 notice and order to withhold and deliver, any property which may be  
14 subject to the claim of the department, such property shall be  
15 delivered forthwith to the director or the director's duly authorized  
16 representative upon service of the notice to withhold and deliver which  
17 will be held in trust by the director for application on the  
18 contractor's indebtedness to the department, or for return without  
19 interest, in accordance with a final determination of a petition for  
20 review, or in the alternative such party shall furnish a good and  
21 sufficient surety bond satisfactory to the director conditioned upon  
22 final determination of liability. Should any party served and named in  
23 the notice to withhold and deliver fail to make answer to such notice  
24 and order to withhold and deliver, within the time prescribed herein,  
25 it shall be lawful for the court, after the time to answer such order  
26 has expired, to render judgment by default against the party named in  
27 the notice to withhold and deliver for the full amount claimed by the  
28 director in the notice to withhold and deliver together with costs. In  
29 the event that a notice to withhold and deliver is served upon a  
30 contractor and the property found to be subject thereto is wages, then  
31 the contractor shall be entitled to assert in the answer to all  
32 exemptions provided for by chapter 6.27 RCW to which the wage earner  
33 may be entitled.

34 (5) In addition to the procedure for collection of any payment,  
35 penalty, or fine due to the department as set forth in this section,  
36 the department may recover civil penalties imposed under this chapter  
37 in a civil action in the name of the department brought in the superior  
38 court of the county where the violation is alleged to have occurred.

1       **Sec. 9.** RCW 18.27.100 and 1997 c 314 s 9 are each amended to read  
2 as follows:

3       (1) Except as provided in RCW 18.27.065 for partnerships and joint  
4 ventures, no person who has registered under one name as provided in  
5 this chapter shall engage in the business, or act in the capacity, of  
6 a contractor under any other name unless such name also is registered  
7 under this chapter.

8       (2) All advertising and all contracts, correspondence, cards,  
9 signs, posters, papers, and documents which show a contractor's name or  
10 address shall show the contractor's name or address as registered under  
11 this chapter.

12       (3)(a) All advertising that shows the contractor's name or address  
13 shall show the contractor's current registration number. The  
14 registration number may be omitted in an alphabetized listing of  
15 registered contractors stating only the name, address, and telephone  
16 number: PROVIDED, That signs on motor vehicles subject to RCW  
17 46.16.010 and on-premise signs shall not constitute advertising as  
18 provided in this section. All materials used to directly solicit  
19 business from retail customers who are not businesses shall show the  
20 contractor's current registration number. A contractor shall not use  
21 a false or expired registration number in purchasing or offering to  
22 purchase an advertisement for which a contractor registration number is  
23 required. Advertising by airwave transmission shall not be subject to  
24 this subsection (3)(a).

25       (b) The director may issue a subpoena to any person or entity  
26 selling any advertising subject to this section for the name, address,  
27 and telephone number provided to the seller of the advertising by the  
28 purchaser of the advertising. The subpoena must have enclosed a  
29 stamped, self-addressed envelope and blank form to be filled out by the  
30 seller of the advertising. If the seller of the advertising has the  
31 information on file, the seller shall, within a reasonable time, return  
32 the completed form to the department. The subpoena must be issued  
33 before forty-eight hours after the expiration of the issue or  
34 publication containing the advertising or after the broadcast of the  
35 advertising. The good-faith compliance by a seller of advertising with  
36 a written request of the department for information concerning the  
37 purchaser of advertising shall constitute a complete defense to any  
38 civil or criminal action brought against the seller of advertising

1 arising from such compliance. Advertising by airwave or electronic  
2 transmission is subject to this subsection (3)(b).

3 ~~(4) ((No contractor shall advertise that he or she is bonded and  
4 insured because of the bond required to be filed and sufficiency of  
5 insurance as provided in this chapter.~~

6 ~~(5))~~ A contractor shall not falsify a registration number and use  
7 it, or use an expired registration number, in connection with any  
8 solicitation or identification as a contractor. All individual  
9 contractors and all partners, associates, agents, salesmen, solicitors,  
10 officers, and employees of contractors shall use their true names and  
11 addresses at all times while engaged in the business or capacity of a  
12 contractor or activities related thereto.

13 ~~((+6))~~ (5) Any advertising by a person, firm, or corporation  
14 soliciting work as a contractor when that person, firm, or corporation  
15 is not registered pursuant to this chapter is a violation of this  
16 chapter.

17 ~~((+7))~~ (6)(a) The finding of a violation of this section by the  
18 director at a hearing held in accordance with the Administrative  
19 Procedure Act, chapter 34.05 RCW, shall subject the person committing  
20 the violation to a penalty of not more than ~~((five))~~ ten thousand  
21 dollars as determined by the director.

22 (b) Penalties under this section shall not apply to a violation  
23 determined to be an inadvertent error.

24 **Sec. 10.** RCW 18.27.110 and 1997 c 314 s 11 are each amended to  
25 read as follows:

26 (1) No city, town or county shall issue a construction building  
27 permit for work which is to be done by any contractor required to be  
28 registered under this chapter without verification that such contractor  
29 is currently registered as required by law. When such verification is  
30 made, nothing contained in this section is intended to be, nor shall be  
31 construed to create, or form the basis for any liability under this  
32 chapter on the part of any city, town or county, or its officers,  
33 employees or agents. However, failure to verify the contractor  
34 registration number results in liability to the city, town, or county  
35 to a penalty to be imposed according to RCW 18.27.100~~((+7))~~ (6)(a).

36 (2) At the time of issuing the building permit, all cities, towns,  
37 or counties are responsible for:

1 (a) Printing the contractor registration number on the building  
2 permit; and

3 (b) Providing a written notice to the building permit applicant  
4 informing them of contractor registration laws and the potential risk  
5 and monetary liability to the homeowner for using an unregistered  
6 contractor.

7 (3) If a building permit is obtained by an applicant or contractor  
8 who falsifies information to obtain an exemption provided under RCW  
9 18.27.090, the building permit shall be forfeited.

10 **Sec. 11.** RCW 18.27.114 and 1997 c 314 s 12 are each amended to  
11 read as follows:

12 (1) Any contractor agreeing to perform any contracting project:

13 (a) For the repair, alteration, or construction of four or fewer  
14 residential units or accessory structures on such residential property  
15 when the bid or contract price totals one thousand dollars or more; or

16 (b) for the repair, alteration, or construction of a commercial  
17 building when the bid or contract price totals one thousand dollars or  
18 more but less than sixty thousand dollars, must provide the customer  
19 with the following disclosure statement in substantially the following  
20 form using lower case and upper case twelve-point and bold type where  
21 appropriate, prior to starting work on the project:

22 "NOTICE TO CUSTOMER

23 (~~This contractor is registered with the state of Washington,~~  
24 ~~registration no. . . . ., as a general/specialty contractor and~~  
25 ~~has posted with the state a bond or cash deposit of~~  
26 ~~\$6,000/\$4,000 for the purpose of satisfying claims against the~~  
27 ~~contractor for negligent or improper work or breach of contract~~  
28 ~~in the conduct of the contractor's business. The expiration~~  
29 ~~date of this contractor's registration is . . . . . This~~  
30 ~~bond or cash deposit may not be sufficient to cover a claim~~  
31 ~~which might arise from the work done under your contract. If~~  
32 ~~any supplier of materials used in your construction project or~~  
33 ~~any employee of the contractor or subcontractor is not paid by~~  
34 ~~the contractor or subcontractor on your job, your property may~~  
35 ~~be liened to force payment. If you wish additional protection,~~  
36 ~~you may request the contractor to provide you with original~~  
37 ~~"lien release" documents from each supplier or subcontractor on~~

1 ~~your project. The contractor is required to provide you with~~  
2 ~~further information about lien release documents if you request~~  
3 ~~it. General information is also available from the department~~  
4 ~~of labor and industries."))~~

5 This contractor is registered with the state of Washington,  
6 registration no. . . . , and has posted with the state a bond or  
7 cash 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 CASH DEPOSIT MAY NOT BE SUFFICIENT TO COVER A**  
13 **CLAIM WHICH 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 REQUEST YOUR CONTRACTOR TO**  
20 **PROVIDE YOU WITH A PERFORMANCE BOND FOR YOUR JOB.**

21 Your contractor may obtain a performance bond for an additional  
22 fee. A performance bond would give you greater protection in  
23 the event your contractor fails to perform as agreed.

24 **YOUR PROPERTY MAY BE LIENED.**

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

29 **FOR ADDITIONAL PROTECTION, YOU SHOULD MAKE CHECKS PAYABLE**  
30 **JOINTLY TO THE CONTRACTOR AND SUPPLIERS OR SUBCONTRACTORS AND**  
31 **REQUIRE THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN**  
32 **RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR**  
33 **PROJECT.**

34 The contractor is required to provide you with further  
35 information about lien release documents if you request it.

1 General information is also available from the department of  
2 labor and industries by phoning (360) 902-5578."

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

8 (3) No contractor subject to this section may bring or maintain any  
9 lien claim under chapter 60.04 RCW based on any contract to which this  
10 section applies without alleging and proving that the contractor has  
11 provided the customer with a copy of the disclosure statement as  
12 required in subsection (1) of this section.

13 (4) This section does not apply to contracts authorized under  
14 chapter 39.04 RCW or to contractors contracting with other contractors.

15 (5) Failure to comply with this section shall constitute an  
16 infraction under the provisions of this chapter.

17 (6) The department shall produce model disclosure statements, and  
18 public service announcements detailing the information needed to assist  
19 contractors and contractors' customers to comply under this section.  
20 As necessary, the department shall periodically update these education  
21 materials.

22 **Sec. 12.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to  
23 read as follows:

24 (1) Except as otherwise provided in subsection (3) of this section,  
25 a contractor found to have committed an infraction under RCW 18.27.200  
26 shall be assessed a monetary penalty of not less than two hundred  
27 dollars and not more than five thousand dollars.

28 (2) The director may waive collection in favor of payment of  
29 restitution to a consumer complainant.

30 (3) A contractor found to have committed an infraction under RCW  
31 18.27.200 for failure to register shall be assessed a fine of not less  
32 than one thousand dollars, nor more than ~~((five))~~ ten thousand dollars.  
33 The director may reduce the penalty for failure to register, but in no  
34 case below five hundred dollars, if the person becomes registered  
35 within ten days of receiving a notice of infraction and the notice of  
36 infraction is for a first offense.

37 (4) ~~((Monetary penalties collected under this chapter shall be~~  
38 ~~deposited in the general fund.))~~ Revenue generated through fines and

1 penalties for infractions of this chapter shall be retained by the  
2 department for the purposes of administering and enforcing this  
3 chapter.

4 NEW SECTION. Sec. 13. A new section is added to chapter 18.27 RCW  
5 to read as follows:

6 There is created in the department of labor and industries the  
7 professional contractors' board.

8 (1) The board shall consist of:

9 (a) Five contractors who have been actively engaged in the  
10 contracting business for a minimum of five years, two of whom are  
11 contractors primarily engaged in commercial construction, two of whom  
12 are contractors primarily engaged in residential construction, and one  
13 of whom is a specialty contractor. At least three of the contractor  
14 members shall be general contractors and at least one of the contractor  
15 members shall be a specialty contractor;

16 (b) One member of a labor organization representing the building  
17 trades;

18 (c) One local building official; and

19 (d) Four public members who are knowledgeable of and represent  
20 consumer's interests in construction issues but do not meet any of the  
21 qualifications of (a) through (c) of this subsection.

22 (2) All board members shall be appointed by the governor except the  
23 four public members, one of whom shall be appointed by the speaker of  
24 the house of representatives, one of whom shall be appointed by the  
25 minority leader of the house of representatives, one of whom shall be  
26 appointed by the majority leader of the senate, and one of whom shall  
27 be appointed by the minority leader of the senate. The term of office  
28 for each board member shall be for four years. The governor may remove  
29 any member of the board for misconduct, incompetency, or neglect of  
30 duty. Vacancies shall be filled by appointment by the appropriate  
31 person under this subsection for the balance of the unexpired term.

32 (3) The board shall meet at least quarterly. The officers of the  
33 board shall be selected by the board at the first board meeting of each  
34 fiscal year. The chair of the board shall be selected by the board  
35 from among the public members. The board shall adopt bylaws consistent  
36 with this section and chapter 34.05 RCW. Six members constitute a  
37 quorum at a board meeting. Due notice of the time and place of each  
38 meeting must be given each member.

1 (4) Each member of the board shall receive compensation in  
2 accordance with RCW 43.03.240 and shall be reimbursed for travel  
3 expenses in accordance with RCW 43.03.050 and 43.03.060.

4 (5) The board is vested with all functions and duties relating to  
5 the administration of this chapter, except those functions and duties  
6 vested in the department or the director. Notwithstanding any other  
7 provision of state law, the department shall set registration fees  
8 sufficient to meet the obligations of this chapter. A member or  
9 committee of the board may administer oaths and may take testimony and  
10 proofs concerning all matters within the jurisdiction of the board.

11 (6) The board shall, with the approval of the director, appoint a  
12 registrar of contractors and fix the registrar's compensation. The  
13 registrar shall be the executive officer and secretary of the board and  
14 shall carry out all of the administrative duties as provided in this  
15 chapter and as delegated to him or her by the board. Upon the  
16 recommendation of the registrar, the board may appoint, with the  
17 approval of the director, such other administrative officers or staff  
18 as are necessary to carry out the administration of this chapter.

19 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.27 RCW  
20 to read as follows:

21 The professional contractors' board shall:

22 (1) Examine the potential benefits to consumers of establishing a  
23 licensing process for contractors and make recommendations to the  
24 legislature on: (a) Whether there should be a licensing process; (b)  
25 whether any licensing process should be optional; (c) whether there  
26 should be more than one category of licenses; and (d) if a licensing  
27 process is recommended, what the licensing requirements should be;

28 (2) Review practices of the department relating to enforcement of  
29 contractor requirements and make recommendations to the director  
30 regarding the need for the development of a comprehensive enforcement  
31 program and the need for additional inspectors, enforcement staff, and  
32 compliance officers;

33 (3) Review practices of the department relating to consumer  
34 awareness and contractor education and determine the best methods for:  
35 (a) Educating consumers on ways to protect themselves from financial  
36 loss when using contractors; and (b) informing contractors of the  
37 contractors' obligations under this chapter;

1 (4) Examine current dispute resolution mechanisms available for  
2 construction disputes and develop such alternative processes as the  
3 board determines will best meet consumers' needs;

4 (5) Manage a consumer complaint process, investigate consumer  
5 complaints, and maintain a computerized enforcement tracking system for  
6 consumer complaints;

7 (6) Make recommendations to the director on such rules as the board  
8 determines are necessary to carry out the intent and purposes of this  
9 chapter; and

10 (7) Make a report available to the public by December 1st, of each  
11 year. The report must include any findings, recommendations, or action  
12 taken by the board. A copy of the report must be sent to the director  
13 and to the legislature.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131  
15 RCW to read as follows:

16 The professional contractors' board shall be terminated on June 30,  
17 2003, as provided in section 16 of this act.

18 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.131  
19 RCW to read as follows:

20 The following acts or parts of acts, as now existing or hereafter  
21 amended, are each repealed, effective June 30, 2004:

22 (1) RCW 18.27.--- and 1998 c . . . s 13 (section 13 of this act);  
23 and

24 (2) RCW 18.27.--- and 1998 c . . . s 14 (section 14 of this act).

25 **Sec. 17.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read  
26 as follows:

27 Except as provided in RCW 60.04.031, any person furnishing labor,  
28 professional services, materials, or equipment for the improvement of  
29 real property shall have a lien upon the improvement for the contract  
30 price of labor, professional services, materials, or equipment  
31 furnished at the instance of the owner, or the agent or construction  
32 agent of the owner. With the exception of lien claims by laborers, the  
33 right to claim a lien upon the improvement of residential property may  
34 not be exercised if the prime contractor is not registered or licensed  
35 as required by law.

1       **Sec. 18.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read  
2 as follows:

3       (1) Except as otherwise provided in this section, every person  
4 furnishing professional services, materials, or equipment for the  
5 improvement of real property shall give the owner or reputed owner  
6 notice in writing of the right to claim a lien. If the prime  
7 contractor is in compliance with the requirements of RCW 19.27.095,  
8 60.04.230, and 60.04.261, this notice shall also be given to the prime  
9 contractor as described in this subsection unless the potential lien  
10 claimant has contracted directly with the prime contractor. The notice  
11 may be given at any time but only protects the right to claim a lien  
12 for professional services, materials, or equipment supplied after the  
13 date which is sixty days before:

14       (a) Mailing the notice by certified or registered mail to the owner  
15 or reputed owner; or

16       (b) Delivering or serving the notice personally upon the owner or  
17 reputed owner and obtaining evidence of delivery in the form of a  
18 receipt or other acknowledgement signed by the owner or reputed owner  
19 or an affidavit of service.

20       In the case of new construction of a single-family residence, the  
21 notice of a right to claim a lien may be given at any time but only  
22 protects the right to claim a lien for professional services,  
23 materials, or equipment supplied after a date which is ten days before  
24 the notice is given as described in this subsection.

25       (2) Notices of a right to claim a lien shall not be required of:

26       (a) Persons who contract directly with the owner or the owner's  
27 common law agent;

28       (b) Laborers whose claim of lien is based solely on performing  
29 labor; or

30       (c) Subcontractors who contract for the improvement of real  
31 property directly with the prime contractor, except as provided in  
32 subsection (3)(b) of this section.

33       (3) Persons who furnish professional services, materials, or  
34 equipment in connection with the repair, alteration, or remodel of an  
35 existing owner-occupied single-family residence or appurtenant garage  
36 or in connection with the new construction of a single-family residence  
37 for a residential homeowner:

38       (a) Who contract directly with the (~~owner-occupier~~) owner or  
39 (~~their~~) the owner's common law agent shall not be required to send a

1 written notice of the right to claim a lien and shall have a lien for  
2 the full amount due under their contract, as provided in RCW 60.04.021;  
3 or

4 (b) Who do not contract directly with the (~~owner-occupier~~) owner  
5 or (~~their~~) the owner's common law agent shall give notice of the  
6 right to claim a lien to the (~~owner-occupier~~) owner. Liens of  
7 persons furnishing professional services, materials, or equipment who  
8 do not contract directly with the (~~owner-occupier~~) owner or (~~their~~)  
9 the owner's common law agent may only be satisfied from amounts not yet  
10 paid to the prime contractor by the owner at the time the notice  
11 described in this section is received, regardless of whether amounts  
12 not yet paid to the prime contractor are due. For the purposes of this  
13 subsection "received" means actual receipt of notice by personal  
14 service, or registered or certified mail, or three days after mailing  
15 by registered or certified mail, excluding Saturdays, Sundays, or legal  
16 holidays.

17 (4) The notice of right to claim a lien described in subsection (1)  
18 of this section, shall include but not be limited to the following  
19 information and shall substantially be in the following form, using  
20 lower-case and upper-case ten-point type where appropriate.

21 NOTICE TO OWNER

22 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
23 CAREFULLY.

24 PROTECT YOURSELF FROM PAYING TWICE

25 To: . . . . . Date: . . . . .

26 Re: (description of property: Street address or general  
27 location.)

28 From: . . . . .

29 AT THE REQUEST OF: (Name of person ordering the professional  
30 services, materials, or equipment)

31 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH  
32 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:

33 This notice is sent to you to tell you who is providing professional  
34 services, materials, or equipment for the improvement of your property  
35 and to advise you of the rights of these persons and your

1 responsibilities. Also take note that laborers on your project may  
2 claim a lien without sending you a notice.

3 OWNER/OCCUPIER OF EXISTING  
4 RESIDENTIAL PROPERTY AND/OR  
5 NEW RESIDENTIAL PROPERTY

6 Under Washington law, those who furnish labor, professional services,  
7 materials, or equipment for the repair, remodel, or alteration of your  
8 owner-occupied principal residence and who are not paid, have a right  
9 to enforce their claim for payment against your property. This claim  
10 is known as a construction lien.

11 The law limits the amount that a lien claimant can claim against your  
12 property. If the improvement to your property is the construction of  
13 a new single-family residence, a lien may be claimed for all  
14 professional services, materials, or equipment furnished after ten days  
15 before this notice was given to you or mailed to you. Claims may only  
16 be made against that portion of the contract price you have not yet  
17 paid to your prime contractor as of the time this notice was given to  
18 you or three days after this notice was mailed to you. Review the back  
19 of this notice for more information and ways to avoid lien claims.

20 COMMERCIAL ((~~AND/OR NEW~~  
21 ~~RESIDENTIAL~~)) PROPERTY

22 We have or will be providing professional services, materials, or  
23 equipment for the improvement of your commercial ((~~or new residential~~))  
24 project. In the event you or your contractor fail to pay us, we may  
25 file a lien against your property. A lien may be claimed for all  
26 professional services, materials, or equipment furnished after a date  
27 that is sixty days before this notice was given to you or mailed to  
28 you(~~(, unless the improvement to your property is the construction of~~  
29 ~~a new single-family residence, then ten days before this notice was~~  
30 ~~given to you or mailed to you))~~).

31 Sender: . . . . .  
32 Address: . . . . .  
33 Telephone: . . . . .

34 Brief description of professional services, materials, or equipment  
35 provided or to be provided: . . . . .



1 shall contain the professional service provider's name, address,  
2 telephone number, legal description of the property, the owner or  
3 reputed owner's name, and the general nature of the professional  
4 services provided. If such notice is not recorded, the lien claimed  
5 shall be subordinate to the interest of any subsequent mortgagee and  
6 invalid as to the interest of any subsequent purchaser if the mortgagee  
7 or purchaser acts in good faith and for a valuable consideration  
8 acquires an interest in the property prior to the commencement of an  
9 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
10 the professional services being provided. The notice described in this  
11 subsection shall be substantially in the following form:

12 NOTICE OF FURNISHING  
13 PROFESSIONAL SERVICES

14 That on the \_\_\_(day)\_\_\_ day of \_\_\_(month and year)\_\_\_, \_\_\_(name of  
15 provider)\_\_\_ began providing professional services upon or for the  
16 improvement of real property legally described as follows:

17 [Legal Description  
18 is mandatory]

19 The general nature of the professional services provided is . . .  
20 . . . . .  
21 The owner or reputed owner of the real property is . . . . .  
22 . . . . .

23 . . . . .  
24 (Signature)

25 . . . . .  
26 (Name of Claimant)

27 . . . . .  
28 (Street Address)

29 . . . . .  
30 (City, State, Zip Code)

31 . . . . .  
32 (Phone Number)

33 (6) A lien authorized by this chapter: (a) Shall not be enforced  
34 against property after a new purchaser has acquired it; and (b) shall

1 not be enforced unless the lien claimant has complied with the  
2 applicable provisions of this section.

3 (7) For the purposes of this section "commercial property" includes  
4 residential property that is not owned by a residential homeowner.

5 **Sec. 19.** RCW 60.04.041 and 1992 c 126 s 4 are each amended to read  
6 as follows:

7 A contractor or subcontractor required to be registered under  
8 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise  
9 required to be registered or licensed by law, shall be deemed the  
10 construction agent of the owner for the purposes of establishing the  
11 lien created by this chapter only if so registered or licensed.  
12 Persons dealing with contractors or subcontractors may rely, for the  
13 purposes of this section, upon a certificate of registration issued  
14 pursuant to chapter 18.27 RCW or license issued pursuant to chapter  
15 19.28 RCW, or other certificate or license issued pursuant to law,  
16 covering the period when the labor, professional services, material, or  
17 equipment shall be furnished, and the lien rights shall not be lost by  
18 suspension or revocation of registration or license without their  
19 knowledge. Except as provided in RCW 60.04.021, no lien rights  
20 described in this chapter shall be lost or denied by virtue of the  
21 absence, suspension, or revocation of such registration or license with  
22 respect to any contractor or subcontractor not in immediate contractual  
23 privity with the lien claimant."

24 **SSB 6638** - S AMD - 764  
25 By Senators Horn and Heavey

26  
27 On page 1, line 1 of the title, after "contractors;" strike the  
28 remainder of the title and insert "amending RCW 18.27.010, 18.27.030,  
29 18.27.040, 18.27.050, 18.27.100, 18.27.110, 18.27.114, 18.27.340,  
30 60.04.021, 60.04.031, and 60.04.041; adding new sections to chapter  
31 18.27 RCW; adding new sections to chapter 43.131 RCW; and prescribing  
32 penalties."

--- END ---