

**2SSB 5895** - S AMD TO S-2243.1 **189**

By Senators Hargrove and Tom

ADOPTED AS AMENDED 3/11/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3

4

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

7 (1) The office of consumer education for home construction is  
8 created in the office of the attorney general.

9 (2) The office of consumer education for home construction shall  
10 examine issues involved in establishing a recovery fund to provide  
11 compensation to residential real property homeowners through a claim  
12 filing process. The office of consumer education for home  
13 construction shall consult with appropriate agencies and  
14 representatives from organizations involved in the area of residential  
15 construction. The office of consumer education for home construction  
16 shall make recommendations to the legislature on the creation of a  
17 recovery fund by December 1, 2010.

18

19 **Sec. 2.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to  
20 read as follows:

21 (1) The department shall charge a fee of one hundred dollars for  
22 issuing or renewing a certificate of registration during the 2001-2003  
23 biennium. The department shall revise this amount at least once every  
24 two years for the purpose of recognizing economic changes as reflected  
25 by the fiscal growth factor under chapter 43.135 RCW.

26 (2) The department shall also charge a consumer education fee  
27 of one hundred dollars per year for issuing or renewing a

1 certificate of registration. The department shall deposit the fee  
2 in the consumer education for home construction account created in  
3 section 3 of this act.

4  
5 NEW SECTION. Sec. 3. A new section is added to chapter 43.10 RCW  
6 to read as follows:

7 The consumer education for home construction account is created in  
8 the custody of the state treasury for the purpose of funding the  
9 office of consumer education for home construction. All fees charged  
10 under subsection (2) of section 2 of this act and filing fees charged  
11 under section 9 of this act must be deposited into the account.  
12 Expenditures from the account may be used only to fund the office of  
13 consumer education for home construction. Only the home construction  
14 board created under section 6 of this act or the board's designee may  
15 authorize expenditure from the account. The account is subject to the  
16 allotment procedures under chapter 43.88 RCW, but an appropriation is  
17 not required for expenditures.

18  
19 **Sec. 4.** RCW 43.79A.040 and 2008 c 208 s 9, 2008 c 128 s 20, and  
20 2008 c 122 s 24 are each reenacted and amended to read as follows:

21 (1) Money in the treasurer's trust fund may be deposited,  
22 invested, and reinvested by the state treasurer in accordance with RCW  
23 43.84.080 in the same manner and to the same extent as if the money  
24 were in the state treasury.

25 (2) All income received from investment of the treasurer's trust  
26 fund shall be set aside in an account in the treasury trust fund to be  
27 known as the investment income account.

28 (3) The investment income account may be utilized for the payment  
29 of purchased banking services on behalf of treasurer's trust funds  
30 including, but not limited to, depository, safekeeping, and  
31 disbursement functions for the state treasurer or affected state  
32 agencies. The investment income account is subject in all respects to  
33 chapter 43.88 RCW, but no appropriation is required for payments to  
34

1 financial institutions. Payments shall occur prior to distribution of  
2 earnings set forth in subsection (4) of this section.

3 (4)(a) Monthly, the state treasurer shall distribute the earnings  
4 credited to the investment income account to the state general fund  
5 except under (b) and (c) of this subsection.

6 (b) The following accounts and funds shall receive their  
7 proportionate share of earnings based upon each account's or fund's  
8 average daily balance for the period: The Washington promise  
9 scholarship account, the college savings program account, the  
10 Washington advanced college tuition payment program account, the  
11 agricultural local fund, the American Indian scholarship endowment  
12 fund, the foster care scholarship endowment fund, the foster care  
13 endowed scholarship trust fund, the students with dependents grant  
14 account, the basic health plan self-insurance reserve account, the  
15 contract harvesting revolving account, the Washington state combined  
16 fund drive account, the commemorative works account, the Washington  
17 international exchange scholarship endowment fund, the toll collection  
18 account, the developmental disabilities endowment trust fund, the  
19 energy account, the fair fund, the family leave insurance account, the  
20 food animal veterinarian conditional scholarship account, the fruit  
21 and vegetable inspection account, the future teachers conditional  
22 scholarship account, the game farm alternative account, the GET ready  
23 for math and science scholarship account, the grain inspection  
24 revolving fund, the juvenile accountability incentive account, the law  
25 enforcement officers' and fire fighters' plan 2 expense fund, the  
26 local tourism promotion account, the produce railcar pool account, the  
27 regional transportation investment district account, the rural  
28 rehabilitation account, the stadium and exhibition center account, the  
29 youth athletic facility account, the self-insurance revolving fund,  
30 the sulfur dioxide abatement account, the children's trust fund, the  
31 Washington horse racing commission Washington bred owners' bonus fund  
32 account, the Washington horse racing commission class C purse fund  
33 account, the individual development account program account, the  
34 Washington horse racing commission operating account (earnings from

1 the Washington horse racing commission operating account must be  
2 credited to the Washington horse racing commission class C purse fund  
3 account), the life sciences discovery fund, the Washington state  
4 heritage center account, the consumer education for home construction  
5 account, and the reading achievement account. However, the earnings  
6 to be distributed shall first be reduced by the allocation to the  
7 state treasurer's service fund pursuant to RCW 43.08.190.

8 (c) The following accounts and funds shall receive eighty percent  
9 of their proportionate share of earnings based upon each account's or  
10 fund's average daily balance for the period: The advanced right of  
11 way revolving fund, the advanced environmental mitigation revolving  
12 account, the city and county advance right-of-way revolving fund, the  
13 federal narcotics asset forfeitures account, the high occupancy  
14 vehicle account, the local rail service assistance account, and the  
15 miscellaneous transportation programs account.

16 (5) In conformance with Article II, section 37 of the state  
17 Constitution, no trust accounts or funds shall be allocated earnings  
18 without the specific affirmative directive of this section.

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21 **Sec. 5.** RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9,  
22 2008 c 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to  
23 read as follows:

24 (1) Money in the treasurer's trust fund may be deposited,  
25 invested, and reinvested by the state treasurer in accordance with RCW  
26 43.84.080 in the same manner and to the same extent as if the money  
27 were in the state treasury.

28 (2) All income received from investment of the treasurer's trust  
29 fund shall be set aside in an account in the treasury trust fund to be  
30 known as the investment income account.

31 (3) The investment income account may be utilized for the payment  
32 of purchased banking services on behalf of treasurer's trust funds  
33 including, but not limited to, depository, safekeeping, and  
34 disbursement functions for the state treasurer or affected state

1 agencies. The investment income account is subject in all respects to  
2 chapter 43.88 RCW, but no appropriation is required for payments to  
3 financial institutions. Payments shall occur prior to distribution of  
4 earnings set forth in subsection (4) of this section.

5 (4)(a) Monthly, the state treasurer shall distribute the earnings  
6 credited to the investment income account to the state general fund  
7 except under (b) and (c) of this subsection.

8 (b) The following accounts and funds shall receive their  
9 proportionate share of earnings based upon each account's or fund's  
10 average daily balance for the period: The Washington promise  
11 scholarship account, the college savings program account, the  
12 Washington advanced college tuition payment program account, the  
13 agricultural local fund, the American Indian scholarship endowment  
14 fund, the foster care scholarship endowment fund, the foster care  
15 endowed scholarship trust fund, the students with dependents grant  
16 account, the basic health plan self-insurance reserve account, the  
17 contract harvesting revolving account, the Washington state combined  
18 fund drive account, the commemorative works account, the Washington  
19 international exchange scholarship endowment fund, the toll collection  
20 account, the developmental disabilities endowment trust fund, the  
21 energy account, the fair fund, the family leave insurance account, the  
22 food animal veterinarian conditional scholarship account, the fruit  
23 and vegetable inspection account, the future teachers conditional  
24 scholarship account, the game farm alternative account, the GET ready  
25 for math and science scholarship account, the grain inspection  
26 revolving fund, the juvenile accountability incentive account, the law  
27 enforcement officers' and fire fighters' plan 2 expense fund, the  
28 local tourism promotion account, the produce railcar pool account, the  
29 regional transportation investment district account, the rural  
30 rehabilitation account, the stadium and exhibition center account, the  
31 youth athletic facility account, the self-insurance revolving fund,  
32 the sulfur dioxide abatement account, the children's trust fund, the  
33 Washington horse racing commission Washington bred owners' bonus fund  
34 account, the Washington horse racing commission class C purse fund

1 account, the individual development account program account, the  
2 Washington horse racing commission operating account (earnings from  
3 the Washington horse racing commission operating account must be  
4 credited to the Washington horse racing commission class C purse fund  
5 account), the life sciences discovery fund, the Washington state  
6 heritage center account, the consumer education for home construction  
7 account, and the reading achievement account. However, the earnings  
8 to be distributed shall first be reduced by the allocation to the  
9 state treasurer's service fund pursuant to RCW 43.08.190.

10 (c) The following accounts and funds shall receive eighty percent  
11 of their proportionate share of earnings based upon each account's or  
12 fund's average daily balance for the period: The advanced right of  
13 way revolving fund, the advanced environmental mitigation revolving  
14 account, the city and county advance right-of-way revolving fund, the  
15 federal narcotics asset forfeitures account, the high occupancy  
16 vehicle account, the local rail service assistance account, and the  
17 miscellaneous transportation programs account.

18 (5) In conformance with Article II, section 37 of the state  
19 Constitution, no trust accounts or funds shall be allocated earnings  
20 without the specific affirmative directive of this section.

21  
22 NEW SECTION. Sec. 6. A new section is added to chapter 43.10 RCW  
23 to read as follows:

24 For the purposes of sections 7 through 11 of this act, the  
25 following definitions apply:

26 (1) "Board" means the home construction board created in section 7  
27 of this act.

28 (2) "Claim" means a claim filed with the board against a  
29 construction professional under section 9 of this act and does not  
30 mean a complaint as that term is used in section 1 of this act.

31 (3) "Construction professional" has the same meaning as in section  
32 15 of this act.

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1 (4) "Contractor" means a contractor, as defined in RCW 18.27.010,  
2 that is registered with the department of labor and industries under  
3 chapter 18.27 RCW.

4 (5) "Defect" means a deficiency, an inadequacy or an insufficiency  
5 arising out of or relating to the construction, alteration, or repair  
6 of residential real property. "Defect" also includes a deficiency, an  
7 inadequacy or an insufficiency in a system, component, or material  
8 incorporated into residential real property.

9 (6) "Damages" means the cost of repairs, or if the cost of repairs  
10 is clearly disproportionate to the loss in market value, damages is  
11 the loss in market value.

12 (7) "Homeowner" means a person or persons owning residential real  
13 property. "Homeowner" does not include government agencies, political  
14 subdivisions, financial institutions, and any other entity that  
15 purchases, guarantees, or insures a loan secured by real property.  
16 "Homeowner" also does not include the spouse, domestic partner, or  
17 personal representative of the contractor named in the claim filed  
18 under section 10 of this act.

19 (8) "Residential real property" has the same meaning as in section  
20 15 of this act.

21  
22 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.10 RCW  
23 to read as follows:

24 (1) The home construction board is established within the office  
25 of consumer education for home construction to administer a  
26 residential real property homeowner and construction professional  
27 early resolution mediation program.

28 (2) The purpose of the board is to provide homeowners and  
29 construction professionals with a cost-effective and time-efficient  
30 process to resolve disputes arising from alleged construction.

31 (3) The board consists of the following seven members:

32 (a) Three members possessing a minimum of ten years of  
33 experience in the construction of residences and directly, or as  
34 employees or officers of a firm, registered under chapter 18.27 RCW;

1 (b) One member possessing a minimum of ten years of experience  
2 in the remodeling of residences and directly, or as employees or  
3 officers of a firm, registered under chapter 18.27 RCW;

4 (c) One architect licensed under chapter 18.08 RCW or  
5 professional engineer registered under chapter 18.43 RCW;

6 (d) One building inspector employed by a city or county; and

7 (e) One member of the general public.

8 (3) Members of the board shall be appointed by the governor with  
9 consent of the Senate. The governor shall appoint initial members  
10 of the board to staggered terms of from two to four years.  
11 Thereafter, all members shall be appointed to full four-year terms.  
12 Members of the board hold office until their successors are  
13 appointed. A vacancy shall be filled by appointment by the governor  
14 for the unexpired portion of the term in which the vacancy occurs.

15 (4) The board shall select from its members a chair person, vice  
16 chair person, and any other officer the board determines is  
17 necessary to perform its duties.

18 (5) The board shall meet a minimum of four times per year to carry  
19 out its functions.

20 (6) The board may adopt rules to implement the board's duties.

21

22 NEW SECTION. Sec. 8 A new section is added to chapter 43.10 RCW to  
23 read as follows:

24 (1) The board shall investigate and mediate claims filed by a  
25 homeowner against a construction professional for alleged construction  
26 defects to residential real property.

27 (2) The board may use the services of neutral third party experts  
28 to assist the board in investigating, assessing, and mediating claims.  
29 The board may rely on the national building standards and other  
30 recognized standards or codes that the board finds appropriate.

31

32 NEW SECTION. Sec. 9 A new section is added to chapter 43.10 RCW  
33 to read as follows:

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1 (1) A homeowner of residential real property alleging that a  
2 construction professional has performed defective work must, prior to  
3 commencing an action against the construction professional, file a  
4 claim against the construction professional with the board.

5 (2) The claim shall be in the form required by the board, and  
6 shall include, at a minimum:

7 (a) The name and mailing address of the homeowner or the  
8 homeowner's legal representative, if any;

9 (b) The address and location of the residential real property;

10 (c) The names and addresses of the construction professionals, to  
11 the extent known to the homeowner, who performed the work;

12 (d) Whether the work performed involved construction of new  
13 residential real property or a substantial remodel of residential real  
14 property and the date that the homeowner took possession of the new  
15 residential real property or, for a substantial remodel, the date the  
16 work was substantially completed or the project was terminated;

17 (e) A description of the defective work performed and the actual  
18 or estimated costs of repair;

19 (f) Any report, estimates, and other documents evidencing the  
20 defect and the costs of repair;

21 (g) Whether there is a written contract between the construction  
22 professional and the homeowner and whether the contract contains  
23 warranties related to the work performed or the materials used.

24 (3) The board may not process a claim against a construction  
25 professional unless the claim is filed with the board within the  
26 applicable statute of limitations.

27 (4) When a claim is filed with the board within the applicable  
28 statute of limitations, the filing of the claim tolls any applicable  
29 statute of limitations and any applicable statute of repose for  
30 construction-related claims for the period of time until fifteen days  
31 after the board provides written notice of completion of mediation.

32 (5) Any action commenced in court by a homeowner prior to  
33 compliance with the requirements of this section shall be subject to  
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1 dismissal without prejudice, and may not be recommenced until the  
2 homeowner has complied with the requirements of this section.

3 (6) The board by rule may impose a processing fee for claims filed  
4 under this section not to exceed one hundred dollars. The fee shall  
5 be deposited into the consumer education for home construction account  
6 created under section 3 of this act.

7

8 NEW SECTION. Sec.10 A new section is added to chapter 43.10 RCW  
9 to read as follows:

10 (1) Upon receipt of a claim, the board shall give written notice  
11 to the construction professional against whom the claim is made. The  
12 notice of the claim shall describe the claim in reasonable detail  
13 sufficient to determine the nature of the defect.

14 (2) Within twenty-one days after service of the notice of claim,  
15 the construction professional shall serve a written response on the  
16 homeowner by registered mail or personal service. The written  
17 response shall:

18 (a) Propose to inspect the residence that is the subject of the  
19 claim and to complete the inspection within a specified time frame.  
20 The proposal shall include the statement that the construction  
21 professional shall, based on the inspection, offer to remedy the  
22 defect, compromise by payment, or dispute the claim;

23 (b) Offer to compromise and settle the claim by monetary payment  
24 without inspection. A construction professional's offer under this  
25 subsection (2)(b) to compromise and settle a homeowner's claim may  
26 include, but is not limited to, an express offer to purchase the  
27 homeowner's residence that is the subject of the claim, and to pay the  
28 homeowner's reasonable relocation costs; or

29 (c) State that the construction professional disputes the claim  
30 and will neither remedy the defect nor compromise and settle the  
31 claim.

32 (3)(a) If the construction professional disputes the claim or does  
33 not respond to the notice of claim within the time stated in  
34

1 subsection (2) of this section, the board shall commence an  
2 investigation and mediation of the claim.

3 (b) If the homeowner rejects the inspection proposal or the  
4 settlement offer made by the construction professional pursuant to  
5 subsection (2) of this section, the homeowner shall serve written  
6 notice of the rejection on the construction professional and the  
7 board. After service of the rejection, the board shall commence an  
8 investigation and mediation of the claim.

9 (c) If the construction professional has not received from the  
10 homeowner, within thirty days after the homeowner's receipt of the  
11 construction professional's response, either an acceptance or  
12 rejection of the inspection proposal or settlement offer, then at  
13 anytime thereafter the construction professional may terminate the  
14 proposal or offer by serving written notice to the homeowner, and the  
15 board shall commence an investigation and mediation of the claim.

16 (4)(a) If the homeowner elects to allow the construction  
17 professional to inspect in accordance with the construction  
18 professional's proposal pursuant to this section, the homeowner shall  
19 provide the construction professional and its contractors or other  
20 agents reasonable access to the homeowner's residence during normal  
21 working hours to inspect the premises and the claimed defect.

22 (b) Within fourteen days following completion of the inspection,  
23 the construction professional shall serve on the homeowner:

24 (i) A written offer to remedy the defect at no cost to the  
25 homeowner, including a report of the scope of the inspection, the  
26 findings and results of the inspection, a description of the  
27 additional construction necessary to remedy the defect, and a  
28 timetable for the completion of such construction;

29 (ii) A written offer to compromise and settle the claim by  
30 monetary payment pursuant to subsection (2)(b) of this section; or

31 (iii) A written statement that the construction professional will  
32 not proceed further to remedy the defect.

33 (c) If the construction professional does not proceed further to  
34 remedy the defect within the agreed timetable, or if the construction

1 professional fails to comply with the provisions of (b) of this  
2 subsection, the homeowner shall provide written notification to the  
3 board. The board shall commence an investigation and mediation of the  
4 claim.

5 (d) If the homeowner rejects the offer made by the construction  
6 professional pursuant to (b)(i) or (ii) of this subsection (4) to  
7 either remedy the defect or to compromise and settle the claim by  
8 monetary payment, the homeowner shall serve written notice of the  
9 rejection on the construction professional and the board. After  
10 service of the rejection notice, the board shall commence an  
11 investigation and mediation of the claim.

12 (e) If the construction professional has not received from the  
13 homeowner, within thirty days after the homeowner's receipt of the  
14 construction professional's response, either an acceptance or  
15 rejection of the offer made pursuant to (b)(i) or (ii) of this  
16 subsection (4), then at anytime thereafter the construction  
17 professional may terminate the offer by serving written notice to the  
18 homeowner.

19 (5)(a) Any homeowner accepting the offer of a construction  
20 professional to remedy the defect pursuant to subsection (4)(b)(i) of  
21 this section shall do so by serving the construction professional with  
22 a written notice of acceptance within a reasonable time period after  
23 receipt of the offer, and no later than thirty days after receipt of  
24 the offer. The homeowner shall also send a copy of the written notice  
25 of acceptance to the board. The homeowner shall provide the  
26 construction professional and its contractors or other agents  
27 reasonable access to the homeowner's residence during normal working  
28 hours to perform and complete the construction by the timetable stated  
29 in the offer.

30 (b) The homeowner and construction professional may, by written  
31 mutual agreement, alter the extent of construction or the timetable  
32 for completion of construction stated in the offer, including, but not  
33 limited to, repair of additional defects.

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1 (6) Compliance with this section satisfies the requirements of RCW  
2 64.50.020.

3  
4 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.10 RCW  
5 to read as follows:

6 (1) If, after compliance with the procedures established in  
7 section 10 of this act, a resolution has not been reached between the  
8 homeowner and construction professional, the board shall investigate  
9 the claim.

10 (2) The board may use the services of neutral third party experts  
11 to conduct on-site investigations, make recommendations to the board,  
12 and assist the board in investigating and mediating claims.

13 (3) After the investigation is complete, the board shall provide  
14 the parties with notification of the findings of the investigation.  
15 If the parties do not provide the board with written notification  
16 within 14 days after receipt of the findings that the parties have  
17 resolved the claim, the board shall mediate the claim.

18 (4) The mediation shall be conducted by a panel of three members  
19 of the board in accordance with rules adopted by the board.

20 (5) All proceedings of the mediation conference, including any  
21 statement made by any party, attorney or other participant, shall be  
22 privileged and not reported, recorded, placed in evidence, used for  
23 impeachment, made known to a court or jury, or construed for any  
24 purpose as an admission. No party shall be bound by anything done or  
25 said at the mediation conference unless a settlement is reached, in  
26 which event the agreement upon a settlement shall be reduced to  
27 writing and shall be binding upon all parties to that agreement.

28 (6) At the conclusion of the mediation the board shall provide a  
29 written notice of the completion of mediation to the parties. The  
30 notice shall include a statement of the results of the mediation and a  
31 copy of any written settlement agreement between the parties. If the  
32 parties did not reach an agreement, the notice shall include a  
33 statement that the parties may pursue any other right or remedy  
34 provided by statutory or common law.

1        NEW SECTION. **Sec.12.** A new section is added to chapter 43.10 RCW  
2 to read as follows:  
3 The board shall maintain and make available to the office of consumer  
4 education for home construction a record of all claims filed with the  
5 board against construction professionals under this chapter and the  
6 outcomes of those claims.

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9        NEW SECTION. **Sec. 13** A new section is added to chapter 64.50 RCW  
10 to read as follows:

11        The provisions of RCW 64.50.020 do not apply to a claim filed with  
12 the home construction board under sections 9 through 11 of this act.

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15                    **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES,**  
16                    **LEGAL REMEDIES, AND THIRD-PARTY INSPECTIONS**

17  
18

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

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

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

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

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1 (1) A construction professional involved in the construction of  
2 new residential real property, or the substantial remodel of existing  
3 residential real property, warrants that the work, and any part  
4 thereof, will be suitable for the ordinary uses of real property of  
5 its type and that the work will be:

6 (a) Free from defective materials;

7 (b) Constructed in accordance with sound engineering and  
8 construction standards;

9 (c) Constructed in a work-like manner; and

10 (d) Constructed in compliance with all laws then applicable to the  
11 improvements.

12 (2) If a construction professional breaches a warranty arising  
13 under this section and the breach results in damage to any portion of  
14 the residential real property, the current owner of the residential  
15 real property may bring a cause of action for damages against the  
16 construction professional. Absence of privity of contract between the  
17 owner and the construction professional is not a defense to the  
18 enforcement of a warranty arising under this section.

19 (3) In a judicial proceeding for breach of a warranty arising  
20 under this section, the plaintiff must show that the alleged breach  
21 has adversely affected or will adversely affect the performance of  
22 that portion of the property alleged to be in breach. To establish an  
23 adverse effect, the person alleging the breach is not required to  
24 prove that the breach renders the property unfit for occupancy. As  
25 used in this subsection, "adverse effect" must be more than technical  
26 and must be significant to a reasonable person.

27 (4) Proof of breach of a warranty arising under this section is  
28 not proof of damages. Damages awarded for a breach of a warranty  
29 arising under this section are the cost of repairs. However, if it is  
30 established that the cost of repairs is clearly disproportionate to  
31 the loss in market value caused by the breach, damages are limited to  
32 the loss in market value.

33 (5)(a) A judicial proceeding for breach of a warranty arising  
34 under this section must be commenced within four years after the cause

1 of action accrues. This period may not be reduced by either oral or  
2 written agreement, or through the use of contractual claims or notice  
3 procedures that require the filing or service of any claim or notice  
4 prior to the expiration of the period specified in this section.

5 (b) Except as provided under (c) of this subsection, a judicial  
6 proceeding for breach of a warranty arising under this section  
7 accrues, regardless of the owner's lack of knowledge of the breach:

8 (i) In the case of the purchase of newly constructed residential  
9 real property, on the date the initial owner enters into possession of  
10 the property; or

11 (ii) In the case of the substantial remodel of existing  
12 residential real property, on the date of substantial completion of  
13 construction or termination of the construction project, whichever is  
14 later.

15 (c) A cause of action for breach of a warranty arising under this  
16 section that is based on a latent structural defect or a latent water  
17 penetration defect accrues when the claimant discovers or reasonably  
18 should have discovered the latent structural defect or latent water  
19 penetration defect.

20 (d) An action for breach of warranty under this section is subject  
21 to the time limitations provided in RCW 4.16.310.

22 (6) If a written notice of claim is served under RCW 64.50.020  
23 within the time prescribed for the filing of an action under this  
24 section, the statute of limitations in this section and any applicable  
25 statute of repose for construction-related claims are tolled until  
26 sixty days after the period of time during which the filing of an  
27 action is barred under RCW 64.50.020.

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

32 (8) In a judicial proceeding under this section, the court may  
33 award reasonable attorneys' fees and costs to the prevailing party.

34



1 (9) This section is not intended to create an independent right to  
2 maintain a class action against any construction professional.

3 (10) This section does not apply to condominiums subject to  
4 chapter 64.34 RCW.

5 (11) This section does not affect the application of the notice  
6 and opportunity to cure requirements and procedures imposed under RCW  
7 64.50.010 through 64.50.050.

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

11 (13) For the purposes of this section:

12 (a) "Construction professional" means an architect, builder,  
13 builder vendor, contractor, subcontractor, engineer, or inspector,  
14 performing or furnishing the design, supervision, inspection,  
15 construction, or observation of the construction, of any improvement  
16 to residential real property, whether operating as a sole proprietor,  
17 partnership, corporation, or other business entity.

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

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

23

24 **Sec. 16.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read  
25 as follows:

26 (1) All claims or causes of action as set forth in RCW 4.16.300 shall  
27 accrue, and the applicable statute of limitation shall begin to run  
28 only during the period within six years after substantial completion  
29 of construction, or during the period within six years after the  
30 termination of the services enumerated in RCW 4.16.300, whichever is  
31 later. The phrase "substantial completion of construction" shall mean  
32 the state of completion reached when an improvement upon real property  
33 may be used or occupied for its intended use. Any cause of action  
34 which has not accrued within six years after such substantial

1 completion of construction, or within six years after such termination  
2 of services, whichever is later, shall be barred: PROVIDED, That this  
3 limitation shall not be asserted as a defense by any owner, tenant or  
4 other person in possession and control of the improvement at the time  
5 such cause of action accrues. The limitations prescribed in this  
6 section apply to all claims or causes of action as set forth in RCW  
7 4.16.300 brought in the name or for the benefit of the state which are  
8 made or commenced after June 11, 1986.

9 If a written notice is filed under RCW 64.50.020 within the time  
10 prescribed for the filing of an action under this chapter, the period  
11 of time during which the filing of an action is barred under RCW  
12 64.50.020 plus sixty days shall not be a part of the period limited  
13 for the commencement of an action, nor for the application of this  
14 section.

15 (2) Actions and claims for fraud arising from including, but not  
16 limited to, construction, alteration, repair, design, planning,  
17 survey, and the engineering of improvements upon real property are not  
18 subject to the time limitations under subsection (1) of this section.  
19 Such actions and claims are governed under RCW 4.16.080.

20  
21 **Sec. 17.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to  
22 read as follows:

23 Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

25 (1) "Action" means any civil lawsuit or action in contract or tort  
26 for damages or indemnity brought against a construction professional  
27 to assert a claim, whether by complaint, counterclaim, or cross-claim,  
28 for damage or the loss of use of real or personal property caused by a  
29 defect in the construction of a residence or in the substantial  
30 remodel of a residence. "Action" does not include any civil action in  
31 tort alleging personal injury or wrongful death to a person or persons  
32 resulting from a construction defect.

33  
34

1 (2) "Association" means an association, master association, or  
2 subassociation as defined and provided for in RCW 64.34.020(4),  
3 64.34.276, 64.34.278, and 64.38.010(1).

4 (3) "Building enclosure" has the same meaning as in RCW 64.55.010.

5 (4) "Building enclosure design documents" has the same meaning as  
6 in RCW 64.55.010.

7 (5) "Claimant" means a homeowner or association who asserts a  
8 claim against a construction professional concerning a defect in the  
9 construction of a residence or in the substantial remodel of a  
10 residence.

11 ~~((+4))~~ (6) "Construction professional" means an architect,  
12 builder, builder vendor, contractor, subcontractor, engineer, or  
13 inspector, including, but not limited to, a dealer as defined in RCW  
14 64.34.020~~((+12))~~ (13) and a declarant as defined in RCW  
15 64.34.020~~((+13))~~ (14), performing or furnishing the design,  
16 supervision, inspection, construction, or observation of the  
17 construction of any improvement to real property, whether operating as  
18 a sole proprietor, partnership, corporation, or other business entity.

19 ~~((+5))~~ (7) "Homeowner" means: (a) Any person, company, firm,  
20 partnership, corporation, or association who contracts with a  
21 construction professional for the construction, sale, or construction  
22 and sale of a residence; and (b) an "association" as defined in this  
23 section. "Homeowner" includes, but is not limited to, a subsequent  
24 purchaser of a residence from any homeowner.

25 ~~((+6))~~ (8) "Qualified building inspector" has the same meaning as  
26 in RCW 64.55.010.

27 (9) "Residence" means a building, including a single-family house,  
28 duplex, triplex, quadraplex, or a unit in a multiunit residential  
29 structure in which title to each individual unit is transferred to the  
30 owner under a condominium or cooperative system, and shall include  
31 common elements as defined in RCW 64.34.020(6) and common areas as  
32 defined in RCW 64.38.010(4).

33 ~~((+7))~~ (10) "Serve" or "service" means personal service or  
34 delivery by certified mail to the last known address of the addressee.

1       (~~(8)~~) (11) "Stamped" has the same meaning as in RCW 64.55.010.

2       (12) "Substantial remodel" means a remodel of a residence, for  
3 which the total cost exceeds one-half of the assessed value of the  
4 residence for property tax purposes at the time the contract for the  
5 remodel work was made.

6  
7       NEW SECTION.   **Sec. 18.**   A new section is added to chapter 64.50  
8 RCW to read as follows:

9       (1) Any person applying for a building permit for construction of  
10 a residential building or substantial remodel shall submit building  
11 enclosure design documents to the appropriate building department  
12 prior to the start of construction or substantial remodel.   If  
13 construction work on a building is not a substantial remodel because  
14 the cost of thereof does not exceed one-half of the assessed value of  
15 the residence for property tax purposes at the time the contract for  
16 the remodel work was made, the person applying for a building permit  
17 shall submit to the building department a letter so certifying.   Any  
18 changes to the building enclosure design documents that alter the  
19 manner in which the building or its components is waterproofed,  
20 weatherproofed, and otherwise protected from water or moisture  
21 intrusion must be stamped by the architect or engineer and must be  
22 provided to the building department and to the person conducting the  
23 course of construction inspection in a timely manner to permit such  
24 person to inspect for compliance therewith, and may be provided  
25 through individual updates, cumulative updates, or as-built updates.

26       (2) The building department shall not issue a building permit for  
27 construction of the building enclosure of a residential building or a  
28 substantial remodel unless the building enclosure design documents  
29 contain a stamped statement by the person stamping the building  
30 enclosure design documents in substantially the following form:   "The  
31 undersigned has provided building enclosure documents that in my  
32 professional judgment are appropriate to satisfy the requirements of  
33 sections 18 through 24 of this act."

34

1 (3) The building department is not charged with determining  
2 whether the building enclosure design documents are adequate or  
3 appropriate to satisfy the requirements of this section and sections  
4 19 through 24 of this act. This section and sections 19 through 24 of  
5 this act do not require a building department to review, approve, or  
6 disapprove enclosure design documents.

7  
8 NEW SECTION. **Sec. 19.** A new section is added to chapter 64.50  
9 RCW to read as follows:

10 All residential buildings must have the building enclosure  
11 inspected by a qualified inspector during the course of initial  
12 construction and during a substantial remodel.

13  
14 NEW SECTION. **Sec. 20.** A new section is added to chapter 64.50  
15 RCW to read as follows:

- 16 (1) A qualified building enclosure inspector:
- 17 (a) Must be a person with substantial and verifiable training and  
18 experience in building enclosure design and construction;
- 19 (b) Must be free from improper interference or influence relating  
20 to the inspections; and
- 21 (c) May not be an employee, officer, or director of, or have any  
22 pecuniary interest in, the declarant, developer, association, or any  
23 party providing services or materials for the project, or any of their  
24 respective affiliates, except that the qualified inspector may be the  
25 architect or engineer who approved the building enclosure design  
26 documents or the architect or engineer of record. The qualified  
27 inspector may, but is not required to, assist with the preparation of  
28 the design documents.

29 (2) This section does not alter the requirements for licensure of  
30 any architect, engineer, or other professional, and does not alter the  
31 jurisdiction, authority, or scope of practice of architects,  
32 engineers, other professionals, or general contractors.

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1        NEW SECTION.    **Sec. 21.**    A new section is added to chapter 64.50  
2 RCW to read as follows:

3        (1) An inspection required under this chapter must include, at a  
4 minimum, the following:

5        (a) Water penetration resistance testing of a representative  
6 sample of windows and window installations. These tests must be  
7 conducted according to industry standards. Where appropriate, tests  
8 must be conducted with an induced air pressure difference across the  
9 window and window installation. Additional testing is not required if  
10 the same assembly has previously been tested in situ within the  
11 previous two years in the project under construction by the builder,  
12 by another member of the construction team such as an architect or  
13 engineer, or by an independent testing laboratory; and

14        (b) An independent periodic review of the building enclosure  
15 during the course of construction or rehabilitative construction to  
16 ascertain whether the residential building has been constructed, or  
17 the substantial remodel has been performed, in substantial compliance  
18 with the building enclosure design documents.

19        (2) Subsection (1)(a) of this section does not apply to  
20 substantial remodels if the windows and adjacent cladding are not  
21 altered in the substantial remodel.

22        (3) For the purposes of this section, "project" means one or more  
23 parcels of land in a single ownership, which are under development  
24 pursuant to a single land use approval or building permit, where  
25 window installation is performed by the owner with its own forces, or  
26 by the same general contractor, or, if the owner is contracting  
27 directly with trade contractors, is performed by the same trade  
28 contractor.

29  
30        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 64.50  
31 RCW to read as follows:

32        Upon completion of an inspection required under this chapter, the  
33 qualified inspector shall prepare and submit to the appropriate  
34 building department a signed letter certifying that the building

1 enclosure has been inspected during the course of construction or  
2 substantial remodel and that it has been constructed or reconstructed  
3 in substantial compliance with the building enclosure design  
4 documents, as updated under section 18 of this act. The building  
5 department shall not issue a final certificate of occupancy or other  
6 equivalent final acceptance until the letter required under this  
7 section has been submitted. The building department is not charged  
8 with and has no responsibility for determining whether the building  
9 enclosure inspection is adequate or appropriate to satisfy the  
10 requirements of this chapter.

11

12 NEW SECTION. **Sec. 23.** A new section is added to chapter 64.50  
13 RCW to read as follows:

14 (1) This chapter is not intended to and does not:

15 (a) Create a private right of action against an inspector,  
16 architect, or engineer based upon compliance or noncompliance with  
17 this chapter; or

18 (b) Create an independent basis for liability against an  
19 inspector, architect, or engineer.

20 (2) The qualified inspector, architect, or engineer and the  
21 developer that retained the inspector, architect, or engineer may  
22 contractually agree to the amount of their liability to the developer.

23

24 NEW SECTION. **Sec. 24.** A new section is added to chapter 64.50  
25 RCW to read as follows:

26 A qualified inspector's report or testimony regarding an  
27 inspection conducted under this chapter is not entitled to an  
28 evidentiary presumption in any arbitration or court proceeding. This  
29 chapter does not restrict the admissibility of the qualified  
30 inspector's report or testimony, and questions of the admissibility of  
31 the report or testimony are determined under the rules of evidence.

32

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1       **Sec. 25.** A new section is added to chapter 19.27 RCW to read as  
2 follows:

3       (1) The state building code council must adopt rules requiring  
4 that natural or manufactured wood framing members used in residential  
5 construction be tested by a special inspector or the local building  
6 jurisdiction for maximum allowable moisture content prior to enclosing  
7 the framing. The rules adopted under this section must provide for  
8 the maximum percentage of moisture allowed, the various locations in a  
9 building that must be tested, the standards that need to be applied  
10 during testing, and procedures for retesting the structure if the  
11 moisture content exceeds the maximum allowable amount at the time of  
12 inspection. The rules may include a requirement that the special  
13 inspector be tested and certified by the Washington association of  
14 building officials certification and registration program and be  
15 approved by the local building official.

16       (2) After the inspection, the special inspector must provide a  
17 certificate of compliance to the local building official showing  
18 compliance with the requirements of this section and the rules adopted  
19 under this section.

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**PART III. CONTRACTOR REGISTRATION,  
WORKER CERTIFICATION, AND BONDING**

NEW SECTION.   **Sec. 26.** (1) The legislature finds that there is  
inadequate protection for consumers in the area of residential  
construction. The legislature further finds that a significant amount  
of the problems in the construction of new residential real property,  
or the substantial remodel of existing residential real property,  
pertain to water intrusion and unstable foundations and develop from  
poor installation of roofing, siding, framing, foundations, doors, and  
windows. The legislature recognizes that it is important to assure  
consumers that those doing construction work are properly trained.



1 The legislature, therefore, intends to establish a worker  
2 certification requirement for those doing construction work in the  
3 areas of roofing, siding, framing, foundations, doors, and windows.

4 (2) The department of labor and industries shall contract for  
5 consultant services to develop recommendations to the legislature on  
6 the education, experience, and examination requirements of the program  
7 to certify workers engaged in the installation of roofing, siding,  
8 framing, foundations, doors, and windows. In developing the  
9 recommendations, the consultant and the department shall closely  
10 involve and consult with stakeholders. The recommendations must be  
11 submitted to the legislature by November 1, 2009.

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

13

14 **Sec. 27.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to  
15 read as follows:

16 (1) An applicant for registration as a contractor shall submit an  
17 application under oath upon a form to be prescribed by the director  
18 and which shall include the following information pertaining to the  
19 applicant:

20 (a) Employer social security number.

21 (b) Unified business identifier number.

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

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

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

27 or

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

1 (d) Employment security department number.

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

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

7 (g) Type of work performed, whether residential, commercial, or  
8 both.

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

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

24 (j) Disclosure of any bankruptcy proceedings filed by or against  
25 the applicant.

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

31 (2) The department may verify the workers' compensation coverage  
32 information provided by the applicant under subsection (1)(c) of this  
33 section, including but not limited to information regarding the  
34 coverage of an individual employee of the applicant. If coverage is

1 provided under the laws of another state, the department may notify  
2 the other state that the applicant is employing employees in  
3 Washington.

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

25 (b) The department shall suspend an active registration if: (i)  
26 The department has determined that the registrant has an unsatisfied  
27 final judgment against it for work within the scope of this chapter;  
28 (ii) the department has determined that the registrant is a sole  
29 proprietor or an owner, principal, or officer of a registered  
30 contractor that has an unsatisfied final judgment against it for work  
31 within the scope of this chapter; (iii) the registrant does not  
32 maintain a valid unified business identifier number; (iv) the  
33 department has determined that the registrant falsified information on  
34 the application, unless the error was inadvertent; (~~(v)~~) (v) the

1 registrant does not have an active and valid certificate of  
2 registration with the department of revenue; (vi) the department has  
3 determined that a different state has taken enforcement action against  
4 the registrant for activities that would be a violation of this  
5 chapter if they had occurred in Washington state; or (vii) the  
6 department has determined that the registrant failed to reasonably  
7 supervise employees, agents, or subcontractors or performed  
8 negligently or in breach of contract so as to cause injury or harm to  
9 the public.

10 (c) The department may suspend an active registration if the  
11 department has determined that an owner, principal, partner, or  
12 officer of the registrant was an owner, principal, or officer of a  
13 previous partnership, corporation, or other entity that has an  
14 unsatisfied final judgment against it.

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

20  
21 NEW SECTION. **Sec. 28.** A new section is added to chapter 18.27  
22 RCW to read as follows:

23 A registered contractor, by or against whom a petition in  
24 bankruptcy has been filed, shall notify the department of the  
25 proceedings in bankruptcy, including the identity and location of the  
26 court in which the proceedings are pending, within ten days of the  
27 filing.

28  
29 **Sec. 29.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to  
30 read as follows:

31 (1) Each applicant shall file with the department a surety bond  
32 issued by a surety insurer who meets the requirements of chapter 48.28  
33 RCW in the sum of (~~twelve~~) twenty-four thousand dollars if the  
34 applicant is a general contractor and (~~six~~) twelve thousand dollars

1 if the applicant is a specialty contractor. If no valid bond is  
2 already on file with the department at the time the application is  
3 filed, a bond must accompany the registration application. The bond  
4 shall have the state of Washington named as obligee with good and  
5 sufficient surety in a form to be approved by the department. The  
6 bond shall be continuous and may be canceled by the surety upon the  
7 surety giving written notice to the director. A cancellation or  
8 revocation of the bond or withdrawal of the surety from the bond  
9 automatically suspends the registration issued to the contractor until  
10 a new bond or reinstatement notice has been filed and approved as  
11 provided in this section. The bond shall be conditioned that the  
12 applicant will pay all persons performing labor, including employee  
13 benefits, for the contractor, will pay all taxes and contributions due  
14 to the state of Washington, and will pay all persons furnishing  
15 material or renting or supplying equipment to the contractor and will  
16 pay all amounts that may be adjudged against the contractor by reason  
17 of breach of contract including improper work in the conduct of the  
18 contracting business. A change in the name of a business or a change  
19 in the type of business entity shall not impair a bond for the  
20 purposes of this section so long as one of the original applicants for  
21 such bond maintains partial ownership in the business covered by the  
22 bond.

23 (2) At the time of initial registration or renewal, the contractor  
24 shall provide a bond or other security deposit as required by this  
25 chapter and comply with all of the other provisions of this chapter  
26 before the department shall issue or renew the contractor's  
27 certificate of registration. Any contractor registered as of July 1,  
28 2001, who maintains that registration in accordance with this chapter  
29 is in compliance with this chapter until the next renewal of the  
30 contractor's certificate of registration.

31 (3) Any person, firm, or corporation having a claim against the  
32 contractor for any of the items referred to in this section may bring  
33 suit against the contractor and the bond or deposit in the superior  
34 court of the county in which the work was done or of any county in

1 which jurisdiction of the contractor may be had. The surety issuing  
2 the bond shall be named as a party to any suit upon the bond. Action  
3 upon the bond or deposit brought by a residential homeowner for breach  
4 of contract by a party to the construction contract shall be commenced  
5 by filing the summons and complaint with the clerk of the appropriate  
6 superior court within two years from the date the claimed contract  
7 work was substantially completed or abandoned, whichever occurred  
8 first. Action upon the bond or deposit brought by any other  
9 authorized party shall be commenced by filing the summons and  
10 complaint with the clerk of the appropriate superior court within one  
11 year from the date the claimed labor was performed and benefits  
12 accrued, taxes and contributions owing the state of Washington became  
13 due, materials and equipment were furnished, or the claimed contract  
14 work was substantially completed or abandoned, whichever occurred  
15 first. Service of process in an action filed under this chapter  
16 against the contractor and the contractor's bond or the deposit shall  
17 be exclusively by service upon the department. Three copies of the  
18 summons and complaint and a fee adopted by rule of not less than fifty  
19 dollars to cover the costs shall be served by registered or certified  
20 mail, or other delivery service requiring notice of receipt, upon the  
21 department at the time suit is started and the department shall  
22 maintain a record, available for public inspection, of all suits so  
23 commenced. Service is not complete until the department receives the  
24 fee and three copies of the summons and complaint. The service shall  
25 constitute service and confer personal jurisdiction on the contractor  
26 and the surety for suit on claimant's claim against the contractor and  
27 the bond or deposit and the department shall transmit the summons and  
28 complaint or a copy thereof to the contractor at the address listed in  
29 the contractor's application and to the surety within two days after  
30 it shall have been received.

31 (4) The surety upon the bond shall not be liable in an aggregate  
32 amount in excess of the amount named in the bond nor for any monetary  
33 penalty assessed pursuant to this chapter for an infraction. The  
34 liability of the surety shall not cumulate where the bond has been

1 renewed, continued, reinstated, reissued or otherwise extended. The  
2 surety upon the bond may, upon notice to the department and the  
3 parties, tender to the clerk of the court having jurisdiction of the  
4 action an amount equal to the claims thereunder or the amount of the  
5 bond less the amount of judgments, if any, previously satisfied  
6 therefrom and to the extent of such tender the surety upon the bond  
7 shall be exonerated but if the actions commenced and pending and  
8 provided to the department as required in subsection (3) of this  
9 section, at any one time exceed the amount of the bond then  
10 unimpaired, claims shall be satisfied from the bond in the following  
11 order:

12 (a) Employee labor and claims of laborers, including employee  
13 benefits;

14 (b) Claims for breach of contract by a party to the construction  
15 contract;

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

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

19 (e) Any court costs, interest, and attorneys' fees plaintiff may  
20 be entitled to recover. The surety is not liable for any amount in  
21 excess of the penal limit of its bond.

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

24 (5) The total amount paid from a bond or deposit required of a  
25 general contractor by this section to claimants other than residential  
26 homeowners must not exceed one-half of the bond amount. The total  
27 amount paid from a bond or deposit required of a specialty contractor  
28 by this section to claimants other than residential homeowners must  
29 not exceed one-half of the bond amount or four thousand dollars,  
30 whichever is greater.

31 (6) The prevailing party in an action filed under this section  
32 against the contractor and contractor's bond or deposit, for breach of  
33 contract by a party to the construction contract involving a  
34 residential homeowner, is entitled to costs, interest, and reasonable

1 attorneys' fees. The surety upon the bond or deposit is not liable in  
2 an aggregate amount in excess of the amount named in the bond or  
3 deposit nor for any monetary penalty assessed pursuant to this chapter  
4 for an infraction.

5 (7) If a final judgment impairs the liability of the surety upon  
6 the bond or deposit so furnished that there is not in effect a bond or  
7 deposit in the full amount prescribed in this section, the  
8 registration of the contractor is automatically suspended until the  
9 bond or deposit liability in the required amount unimpaired by  
10 unsatisfied judgment claims is furnished.

11 (8) In lieu of the surety bond required by this section the  
12 contractor may file with the department an assigned savings account,  
13 upon forms provided by the department.

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

26 (10) Within ten days after resolution of the case, a certified  
27 copy of the final judgment and order, or any settlement documents  
28 where a case is not disposed of by a court trial, a certified copy of  
29 the dispositive settlement documents must be provided to the  
30 department by the prevailing party. Failure to provide a copy of the  
31 final judgment and order or the dispositive settlement documents to  
32 the department within ten days of entry of such an order constitutes a  
33 violation of this chapter and a penalty adopted by rule of not less  
34



1 than two hundred fifty dollars may be assessed against the prevailing  
2 party.

3 (11) The director may require an applicant applying to renew or  
4 reinstate a registration or applying for a new registration to file a  
5 bond of up to three times the normally required amount, if the  
6 director determines that an applicant, or a previous registration of a  
7 corporate officer, owner, or partner of a current applicant, has had  
8 in the past five years a total of three final judgments in actions  
9 under this chapter involving a residential single-family dwelling on  
10 two or more different structures.

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

13  
14 NEW SECTION. **Sec. 30.** Sections 6 through 13 of this act take  
15 effect on January 1, 2010.

16  
17 NEW SECTION. **Sec. 31.** Part headings used in this act are not  
18 any part of the law.

19  
20  
21 Renumber the sections consecutively and correct any internal  
22 references accordingly.

23  
24 **2SSB 5895** - S AMD TO S-2243.1 **189**

25 By Senators Hargrove and Tom

26 ADOPTED AS AMENDED 3/11/2009

27 On page 1, line 1 of the title, after "Relating to" strike the  
28 remainder of the title and insert: "improving residential real  
29 property construction by creating the office of consumer education for  
30 home construction, strengthening warranty protections applicable to  
31 residential real property construction, creating remedies, requiring  
32 third-party inspections, enhancing contractor registration  
33 requirements, establishing worker certification standards, and  
34 enhancing bonding requirements; amending RCW 4.16.310, 64.50.010,

1 18.27.030, 18.27.040; and 18.27.075; reenacting and amending  
2 43.79A.040 and 43.79A.040; adding new sections to chapter 64.50 RCW;  
3 adding new sections to chapter 43.10 RCW; adding a new section to  
4 chapter 18.27 RCW; adding a new section to chapter 19.27, creating new  
5 sections, providing an effective date, and providing expiration  
6 dates".

7

8

EFFECT:

The Office of Consumer Education for Home Construction (Office) is created within the Office of the Attorney General.

Within the Office there is a seven-member Home Construction Board (Board) to investigate and mediate construction defect claims.

The Board may use the services of neutral third parties to investigate, assess, and mediate claims.

Creates notice and opportunity to cure procedures when a homeowner files a claim with the Board.

Requires the board to investigate and mediate a claim that has not been settled by the parties.

Allows the Board to impose a fee of up to \$100 for claims filed with the Board.

Requires a homeowner to file a claim with the Board prior to commencing a lawsuit alleging a construction defect.

Creates an account to fund the Office of Consumer Education for Home Construction and requires the Department of Labor and Industries to charge contractors a \$100 fee to be deposited in the account. Requires the Office to examine issues involved in establishing a recovery fund to provide compensation to residential real property homeowners through a claim filing process.

The state building code council shall adopt rules requiring that natural or manufactured wood framing members used in residential construction be tested by for maximum allowable moisture content prior to enclosing the framing.

--- END ---