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**SECOND SUBSTITUTE HOUSE BILL 1393**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Ways & Means (originally sponsored by Representatives Springer, Kessler, Eddy, Ormsby, Van De Wege, Liias, Morrell, Roberts, Upthegrove, and Sullivan)

READ FIRST TIME 03/02/09.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           (a) Free from defective materials;

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

26           (c) Constructed in a workmanlike manner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (12) For the purposes of this section:

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

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

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

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

35 **Sec. 4.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read  
36 as follows:

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

5 (a) Employer social security number.

6 (b) Unified business identifier number.

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

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

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

12 or

13 (iii) For applicants domiciled in a state or province of Canada  
14 subject to an agreement entered into under RCW 51.12.120(7), as  
15 permitted by the agreement, filing a certificate of coverage issued by  
16 the agency that administers the workers' compensation law in the  
17 applicant's state or province of domicile certifying that the applicant  
18 has secured the payment of compensation under the other state's or  
19 province's workers' compensation law.

20 (d) Employment security department number.

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

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

26 (g) Type of work performed, whether residential, commercial, or  
27 both.

28 (h) The name ((and)), address, social security number, date of  
29 birth, and driver's license number of each partner if the applicant is  
30 a firm or partnership, or the name ((and)), address, social security  
31 number, date of birth, and driver's license number of the owner if the  
32 applicant is an individual proprietorship, or the name ((and)),  
33 address, social security number, date of birth, and driver's license  
34 number of the corporate officers and statutory agent, if any, if the  
35 applicant is a corporation, or the name ((and)), address, social  
36 security number, date of birth, and driver's license number of all  
37 members of other business entities. The information contained in such  
38 application is a matter of public record and open to public inspection.

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

4       (j) Disclosure of any bankruptcy proceedings filed by or against  
5 the applicant.

6       (k) Information about any construction licenses, certifications, or  
7 registrations that have been issued to the applicant by other states.  
8 The applicant shall also provide details about any denials,  
9 suspensions, revocations, or any enforcement actions related to  
10 construction against the applicant by other states.

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

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

1 (b) The department shall suspend an active registration if: (i)  
2 The department has determined that the registrant has an unsatisfied  
3 final judgment against it for work within the scope of this chapter;  
4 (ii) the department has determined that the registrant is a sole  
5 proprietor or an owner, principal, or officer of a registered  
6 contractor that has an unsatisfied final judgment against it for work  
7 within the scope of this chapter; (iii) the registrant does not  
8 maintain a valid unified business identifier number; (iv) the  
9 department has determined that the registrant falsified information on  
10 the application, unless the error was inadvertent; (~~(v)~~) (v) the  
11 registrant does not have an active and valid certificate of  
12 registration with the department of revenue; or (vi) the department has  
13 determined that a different state has taken enforcement action against  
14 the registrant for activities that would be a violation of this chapter  
15 if they had occurred in Washington state.

16 (c) The department may suspend an active registration if the  
17 department has determined that an owner, principal, partner, or officer  
18 of the registrant was an owner, principal, or officer of a previous  
19 partnership, corporation, or other entity that has an unsatisfied final  
20 judgment against it.

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

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

28 A registered contractor, by or against whom a petition in  
29 bankruptcy has been filed, shall notify the department of the  
30 proceedings in bankruptcy, including the identity and location of the  
31 court in which the proceedings are pending, within ten days of the  
32 filing.

33 NEW SECTION. Sec. 6. Part headings used in this act are not any  
34 part of the law.

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