
HOUSE BILL 1393

State of Washington 61st Legislature 2009 Regular Session

By Representatives Springer, Kessler, Eddy, Ormsby, VanDeWege, Lias, Morrell, Roberts, Upthegrove, and Sullivan

Read first time 01/20/09. Referred to Committee on Judiciary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) Free from defective materials; and

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

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

33 (3) Proof of breach of a warranty arising under this section is not
34 proof of damages. Damages awarded for a breach of a warranty arising
35 under this section are the cost of repairs. However, if it is
36 established that the cost of repairs is clearly disproportionate to the

1 loss in market value caused by the breach, damages are limited to the
2 loss in market value.

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

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

10 (iii) The periods provided in this subsection (4)(a) may not be
11 reduced by either oral or written agreement, or through the use of
12 contractual claims or notice procedures that require the filing or
13 service of any claim or notice prior to the expiration of the period
14 specified in this section.

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

18 (i) In the case of the purchase of newly constructed residential
19 real property, on the date the initial owner enters into possession of
20 the property; or

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

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

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

34 (7) This section does not apply to condominiums subject to chapter
35 64.34 RCW.

36 (8) This section does not affect the application of the notice and
37 opportunity to cure requirements and procedures imposed under RCW
38 64.50.010 through 64.50.050.

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

4 (10) This section applies to new residential real property
5 construction and substantial remodels of residential real property that
6 are commenced on or after January 1, 2010.

7 (11) For the purposes of this section:

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

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

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

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

20 NEW SECTION. **Sec. 4.** (1) The legislature finds that there is
21 inadequate protection for consumers in the area of residential
22 construction. The legislature further finds that a significant amount
23 of the problems in the construction of new residential real property,
24 or the substantial remodel of existing residential real property,
25 pertain to water intrusion and unstable foundations and develop from
26 poor installation of roofing, siding, framing, foundations, doors, and
27 windows. The legislature recognizes that it is important to assure
28 consumers that those doing construction work are properly trained. The
29 legislature, therefore, intends to establish a worker certification
30 requirement for those doing construction work in the areas of roofing,
31 siding, framing, foundations, doors, and windows.

32 (2) The department of labor and industries shall contract for
33 consultant services to develop recommendations to the legislature on
34 the education, experience, and examination requirements of the program
35 to certify workers engaged in the installation of roofing, siding,
36 framing, foundations, doors, and windows. In developing the

1 recommendations, the consultant and the department shall closely
2 involve and consult with stakeholders. The recommendations must be
3 submitted to the legislature by November 1, 2009.

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

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

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

11 (a) Employer social security number.

12 (b) Unified business identifier number.

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

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

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

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

26 (d) Employment security department number.

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

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

32 (g) Type of work performed, whether residential, commercial, or
33 both.

34 (h) The name ((and)), address, social security number, date of
35 birth, and driver's license number of each partner if the applicant is
36 a firm or partnership, or the name ((and)), address, social security
37 number, date of birth, and driver's license number of the owner if the

1 applicant is an individual proprietorship, or the name ((and)),
2 address, social security number, date of birth, and driver's license
3 number of the corporate officers and statutory agent, if any, if the
4 applicant is a corporation, or the name ((and)), address, social
5 security number, date of birth, and driver's license number of all
6 members of other business entities. The information contained in such
7 application is a matter of public record and open to public inspection.

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

11 (j) Disclosure of any bankruptcy proceedings filed by or against
12 the applicant.

13 (k) Information about any construction licenses, certifications, or
14 registrations that have been issued to the applicant by other states.
15 The applicant shall also provide details about any denials,
16 suspensions, revocations, or any enforcement actions related to
17 construction against the applicant by other states.

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

24 (3)(a) The department shall deny an application for registration
25 if: (i) The applicant has been previously performing work subject to
26 this chapter as a sole proprietor, partnership, corporation, or other
27 entity and the department has notice that the applicant has an
28 unsatisfied final judgment against him or her in an action based on
29 work performed subject to this chapter or the applicant owes the
30 department money for penalties assessed or fees due under this chapter
31 as a result of a final judgment; (ii) the applicant was an owner,
32 principal, or officer of a partnership, corporation, or other entity
33 that either has an unsatisfied final judgment against it in an action
34 that was incurred for work performed subject to this chapter or owes
35 the department money for penalties assessed or fees due under this
36 chapter as a result of a final judgment; (iii) the applicant does not
37 have a valid unified business identifier number; (iv) the department
38 determines that the applicant has falsified information on the

1 application, unless the error was inadvertent; ~~((e))~~ (v) the applicant
2 does not have an active and valid certificate of registration with the
3 department of revenue; or (vi) the department has determined that a
4 different state has taken enforcement action against the applicant for
5 activities that would be a violation of this chapter if they had
6 occurred in Washington state.

7 (b) The department shall suspend an active registration if: (i)
8 The department has determined that the registrant has an unsatisfied
9 final judgment against it for work within the scope of this chapter;
10 (ii) the department has determined that the registrant is a sole
11 proprietor or an owner, principal, or officer of a registered
12 contractor that has an unsatisfied final judgment against it for work
13 within the scope of this chapter; (iii) the registrant does not
14 maintain a valid unified business identifier number; (iv) the
15 department has determined that the registrant falsified information on
16 the application, unless the error was inadvertent; ~~((e))~~ (v) the
17 registrant does not have an active and valid certificate of
18 registration with the department of revenue; (vi) the department has
19 determined that a different state has taken enforcement action against
20 the registrant for activities that would be a violation of this chapter
21 if they had occurred in Washington state; or (vii) the department has
22 determined that the registrant failed to reasonably supervise
23 employees, agents, or subcontractors or performed negligently or in
24 breach of contract so as to cause injury or harm to the public.

25 (c) The department may suspend an active registration if the
26 department has determined that an owner, principal, partner, or officer
27 of the registrant was an owner, principal, or officer of a previous
28 partnership, corporation, or other entity that has an unsatisfied final
29 judgment against it.

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

35 NEW SECTION. Sec. 6. A new section is added to chapter 18.27 RCW
36 to read as follows:

37 A registered contractor, by or against whom a petition in

1 bankruptcy has been filed, shall notify the department of the
2 proceedings in bankruptcy, including the identity and location of the
3 court in which the proceedings are pending, within ten days of the
4 filing.

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

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