
SUBSTITUTE SENATE BILL 5895

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Tom, Kohl-Welles, Fraser, and McDermott)

READ FIRST TIME 02/25/09.

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, creating municipal liability, requiring third-
5 party inspections, enhancing contractor registration requirements,
6 establishing worker certification standards, and enhancing bonding
7 requirements; amending RCW 4.16.310, 64.50.010, 18.27.030, and
8 18.27.040; adding a new section to chapter 43.10 RCW; adding new
9 sections to chapter 64.50 RCW; adding a new section to chapter 18.27
10 RCW; creating new sections; and providing an expiration date.

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

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

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

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

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

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

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

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

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

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

23 (f) Develop a uniform manner of receiving, cataloging, analyzing,
24 and responding to consumer complaints about residential construction
25 against duly registered and bonded construction professionals or
26 construction professionals that a consumer reasonably believed was duly
27 registered and bonded at the time services were rendered;

28 (g) Develop a process for the public to have access to consumer
29 complaints;

30 (h) Identify which agencies and organizations are already receiving
31 complaints and coordinate with them to ensure that all agencies and
32 organizations are requesting the same information from complaining
33 consumers and that all consumers are referred to the office;

34 (i) Enter into data-sharing agreements with the department of labor
35 and industries, local governments, and other agencies with enforcement
36 duties in residential construction to increase assistance to consumers
37 and enforcement of construction-related laws; and

1 (j) Report to the legislature on an annual basis the total number
2 of complaints, the nature of the complaints, the monetary value of the
3 complaints, whether complaints have been resolved, and any other
4 information that the office deems relevant. The first report is due on
5 January 1, 2010, and subsequent reports are due on November 1st of each
6 year thereafter.

7 **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES,**
8 **MUNICIPAL LIABILITY, AND THIRD-PARTY INSPECTIONS**

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

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

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

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

23 (1) A construction professional involved in the construction of new
24 residential real property, or the substantial remodel of existing
25 residential real property, warrants that the work, and any part
26 thereof, will be suitable for the ordinary uses of real property of its
27 type and that the work will be:

- 28 (a) Free from defective materials;
- 29 (b) Constructed in accordance with sound engineering and
30 construction standards;
- 31 (c) Constructed in a work-like manner; and
- 32 (d) Constructed in compliance with all laws then applicable to the
33 improvements.

34 (2) If a construction professional breaches a warranty arising
35 under this section and the breach results in damage to any portion of

1 the residential real property, the current owner of the residential
2 real property may bring a cause of action for damages against the
3 construction professional. Absence of privity of contract between the
4 owner and the construction professional is not a defense to the
5 enforcement of a warranty arising under this section.

6 (3) In a judicial proceeding for breach of a warranty arising under
7 this section, the plaintiff must show that the alleged breach has
8 adversely affected or will adversely affect the performance of that
9 portion of the property alleged to be in breach. To establish an
10 adverse effect, the person alleging the breach is not required to prove
11 that the breach renders the property unfit for occupancy. As used in
12 this subsection, "adverse effect" must be more than technical and must
13 be significant to a reasonable person.

14 (4) Proof of breach of a warranty arising under this section is not
15 proof of damages. Damages awarded for a breach of a warranty arising
16 under this section are the cost of repairs. However, if it is
17 established that the cost of repairs is clearly disproportionate to the
18 loss in market value caused by the breach, damages are limited to the
19 loss in market value.

20 (5)(a) A judicial proceeding for breach of a warranty arising under
21 this section must be commenced within four years after the cause of
22 action accrues. This period may not be reduced by either oral or
23 written agreement, or through the use of contractual claims or notice
24 procedures that require the filing or service of any claim or notice
25 prior to the expiration of the period specified in this section.

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

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

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

35 (c) A cause of action for breach of a warranty arising under this
36 section that is based on a latent structural defect or a latent water
37 penetration defect accrues when the claimant discovers or reasonably

1 should have discovered the latent structural defect or latent water
2 penetration defect.

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

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

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

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

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

19 (10) This section does not apply to condominiums subject to chapter
20 64.34 RCW.

21 (11) This section does not affect the application of the notice and
22 opportunity to cure requirements and procedures imposed under RCW
23 64.50.010 through 64.50.050.

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

27 (13) For the purposes of this section:

28 (a) "Construction professional" means an architect, builder,
29 builder vendor, contractor, subcontractor, engineer, or inspector,
30 performing or furnishing the design, supervision, inspection,
31 construction, or observation of the construction, of any improvement to
32 residential real property, whether operating as a sole proprietor,
33 partnership, corporation, or other business entity.

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

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

1 **Sec. 4.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read
2 as follows:

3 (1) All claims or causes of action as set forth in RCW 4.16.300
4 shall accrue, and the applicable statute of limitation shall begin to
5 run only during the period within six years after substantial
6 completion of construction, or during the period within six years after
7 the termination of the services enumerated in RCW 4.16.300, whichever
8 is later. The phrase "substantial completion of construction" shall
9 mean the state of completion reached when an improvement upon real
10 property may be used or occupied for its intended use. Any cause of
11 action which has not accrued within six years after such substantial
12 completion of construction, or within six years after such termination
13 of services, whichever is later, shall be barred: PROVIDED, That this
14 limitation shall not be asserted as a defense by any owner, tenant or
15 other person in possession and control of the improvement at the time
16 such cause of action accrues. The limitations prescribed in this
17 section apply to all claims or causes of action as set forth in RCW
18 4.16.300 brought in the name or for the benefit of the state which are
19 made or commenced after June 11, 1986.

20 If a written notice is filed under RCW 64.50.020 within the time
21 prescribed for the filing of an action under this chapter, the period
22 of time during which the filing of an action is barred under RCW
23 64.50.020 plus sixty days shall not be a part of the period limited for
24 the commencement of an action, nor for the application of this section.

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

30 **Sec. 5.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read
31 as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Action" means any civil lawsuit or action in contract or tort
35 for damages or indemnity brought against a construction professional to
36 assert a claim, whether by complaint, counterclaim, or cross-claim, for
37 damage or the loss of use of real or personal property caused by a

1 defect in the construction of a residence or in the substantial remodel
2 of a residence. "Action" does not include any civil action in tort
3 alleging personal injury or wrongful death to a person or persons
4 resulting from a construction defect.

5 (2) "Association" means an association, master association, or
6 subassociation as defined and provided for in RCW 64.34.020(4),
7 64.34.276, 64.34.278, and 64.38.010(1).

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

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

11 (5) "Claimant" means a homeowner or association who asserts a claim
12 against a construction professional concerning a defect in the
13 construction of a residence or in the substantial remodel of a
14 residence.

15 ((+4)) (6) "Construction professional" means an architect,
16 builder, builder vendor, contractor, subcontractor, engineer, or
17 inspector, including, but not limited to, a dealer as defined in RCW
18 64.34.020((+12)) (13) and a declarant as defined in RCW
19 64.34.020((+13)) (14), performing or furnishing the design,
20 supervision, inspection, construction, or observation of the
21 construction of any improvement to real property, whether operating as
22 a sole proprietor, partnership, corporation, or other business entity.

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

29 ((+6)) (8) "Qualified building inspector" has the same meaning as
30 in RCW 64.55.010.

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

37 ((+7)) (10) "Serve" or "service" means personal service or
38 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 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.50 RCW
7 to read as follows:

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

25 (2) The building department shall not issue a building permit for
26 construction of the building enclosure of a residential building or a
27 substantial remodel unless the building enclosure design documents
28 contain a stamped statement by the person stamping the building
29 enclosure design documents in substantially the following form: "The
30 undersigned has provided building enclosure documents that in my
31 professional judgment are appropriate to satisfy the requirements of
32 sections 6 through 12 of this act."

33 (3) The building department is not charged with determining whether
34 the building enclosure design documents are adequate or appropriate to
35 satisfy the requirements of this section and sections 7 through 12 of
36 this act. This section and sections 7 through 12 of this act do not

1 require a building department to review, approve, or disapprove
2 enclosure design documents.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 64.50 RCW
4 to read as follows:

5 All residential buildings must have the building enclosure
6 inspected by a qualified inspector during the course of initial
7 construction and during a substantial remodel.

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

10 (1) A qualified building enclosure inspector:

11 (a) Must be a person with substantial and verifiable training and
12 experience in building enclosure design and construction;

13 (b) Must be free from improper interference or influence relating
14 to the inspections; and

15 (c) May not be an employee, officer, or director of, or have any
16 pecuniary interest in, the declarant, developer, association, or any
17 party providing services or materials for the project, or any of their
18 respective affiliates, except that the qualified inspector may be the
19 architect or engineer who approved the building enclosure design
20 documents or the architect or engineer of record. The qualified
21 inspector may, but is not required to, assist with the preparation of
22 the design documents.

23 (2) This section does not alter the requirements for licensure of
24 any architect, engineer, or other professional, and does not alter the
25 jurisdiction, authority, or scope of practice of architects, engineers,
26 other professionals, or general contractors.

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

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

31 (a) Water penetration resistance testing of a representative sample
32 of windows and window installations. These tests must be conducted
33 according to industry standards. Where appropriate, tests must be
34 conducted with an induced air pressure difference across the window and
35 window installation. Additional testing is not required if the same

1 assembly has previously been tested in situ within the previous two
2 years in the project under construction by the builder, by another
3 member of the construction team such as an architect or engineer, or by
4 an independent testing laboratory; and

5 (b) An independent periodic review of the building enclosure during
6 the course of construction or rehabilitative construction to ascertain
7 whether the residential building has been constructed, or the
8 substantial remodel has been performed, in substantial compliance with
9 the building enclosure design documents.

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

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

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

21 Upon completion of an inspection required under this chapter, the
22 qualified inspector shall prepare and submit to the appropriate
23 building department a signed letter certifying that the building
24 enclosure has been inspected during the course of construction or
25 substantial remodel and that it has been constructed or reconstructed
26 in substantial compliance with the building enclosure design documents,
27 as updated under section 6 of this act. The building department shall
28 not issue a final certificate of occupancy or other equivalent final
29 acceptance until the letter required under this section has been
30 submitted. The building department is not charged with and has no
31 responsibility for determining whether the building enclosure
32 inspection is adequate or appropriate to satisfy the requirements of
33 this chapter.

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 64.50 RCW
35 to read as follows:

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

1 (a) Create a private right of action against an inspector,
2 architect, or engineer based upon compliance or noncompliance with this
3 chapter; or

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

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

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

11 A qualified inspector's report or testimony regarding an inspection
12 conducted under this chapter is not entitled to an evidentiary
13 presumption in any arbitration or court proceeding. This chapter does
14 not restrict the admissibility of the qualified inspector's report or
15 testimony, and questions of the admissibility of the report or
16 testimony are determined under the rules of evidence.

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

19 NEW SECTION. **Sec. 13.** (1) The legislature finds that there is
20 inadequate protection for consumers in the area of residential
21 construction. The legislature further finds that a significant amount
22 of the problems in the construction of new residential real property,
23 or the substantial remodel of existing residential real property,
24 pertain to water intrusion and unstable foundations and develop from
25 poor installation of roofing, siding, framing, foundations, doors, and
26 windows. The legislature recognizes that it is important to assure
27 consumers that those doing construction work are properly trained. The
28 legislature, therefore, intends to establish a worker certification
29 requirement for those doing construction work in the areas of roofing,
30 siding, framing, foundations, doors, and windows.

31 (2) The department of labor and industries shall contract for
32 consultant services to develop recommendations to the legislature on
33 the education, experience, and examination requirements of the program
34 to certify workers engaged in the installation of roofing, siding,
35 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. 14.** 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; (~~(v)~~) (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; (~~(v)~~) (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. 15. 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 **Sec. 16.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to read
6 as follows:

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

32 (2) At the time of initial registration or renewal, the contractor
33 shall provide a bond or other security deposit as required by this
34 chapter and comply with all of the other provisions of this chapter
35 before the department shall issue or renew the contractor's certificate
36 of registration. Any contractor registered as of July 1, 2001, who

1 maintains that registration in accordance with this chapter is in
2 compliance with this chapter until the next renewal of the contractor's
3 certificate of registration.

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

1 (4) The surety upon the bond shall not be liable in an aggregate
2 amount in excess of the amount named in the bond nor for any monetary
3 penalty assessed pursuant to this chapter for an infraction. The
4 liability of the surety shall not cumulate where the bond has been
5 renewed, continued, reinstated, reissued or otherwise extended. The
6 surety upon the bond may, upon notice to the department and the
7 parties, tender to the clerk of the court having jurisdiction of the
8 action an amount equal to the claims thereunder or the amount of the
9 bond less the amount of judgments, if any, previously satisfied
10 therefrom and to the extent of such tender the surety upon the bond
11 shall be exonerated but if the actions commenced and pending and
12 provided to the department as required in subsection (3) of this
13 section, at any one time exceed the amount of the bond then unimpaired,
14 claims shall be satisfied from the bond in the following order:

15 (a) Employee labor and claims of laborers, including employee
16 benefits;

17 (b) Claims for breach of contract by a party to the construction
18 contract;

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

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

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

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

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

33 (6) The prevailing party in an action filed under this section
34 against the contractor and contractor's bond or deposit, for breach of
35 contract by a party to the construction contract involving a
36 residential homeowner, is entitled to costs, interest, and reasonable
37 attorneys' fees. The surety upon the bond or deposit is not liable in

1 an aggregate amount in excess of the amount named in the bond or
2 deposit nor for any monetary penalty assessed pursuant to this chapter
3 for an infraction.

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

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

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

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

34 (11) The director may require an applicant applying to renew or
35 reinstate a registration or applying for a new registration to file a
36 bond of up to three times the normally required amount, if the director
37 determines that an applicant, or a previous registration of a corporate
38 officer, owner, or partner of a current applicant, has had in the past

1 five years a total of three final judgments in actions under this
2 chapter involving a residential single-family dwelling on two or more
3 different structures.

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

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

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