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SENATE BILL 5895

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State of Washington

61st Legislature

2009 Regular Session

By Senators Tom, Kohl-Welles, Fraser, and McDermott

Read first time 02/05/09. Referred to Committee on Labor, Commerce & Consumer Protection.

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 remedies, creating municipal liability,  
5 requiring third-party inspections, enhancing contractor registration  
6 requirements, establishing worker certification standards, and  
7 enhancing bonding requirements; amending RCW 19.27.020, 19.27.050,  
8 4.16.310, 64.50.010, 18.27.030, and 18.27.040; adding a new section to  
9 chapter 43.10 RCW; adding new sections to chapter 64.50 RCW; adding a  
10 new section to chapter 18.27 RCW; creating new sections; and providing  
11 an expiration date.

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

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

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

16 (1) The office of consumer education for home construction is  
17 created in the office of the attorney general to be the primary point

1 of contact for consumers in matters related to residential  
2 construction.

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

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

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

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

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

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

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

30 (g) Develop a process for the public to have access to consumer  
31 complaints;

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

36 (i) Enter into data-sharing agreements with the department of labor  
37 and industries, local governments, and other agencies with enforcement

1 duties in residential construction to increase assistance to consumers  
2 and enforcement of construction-related laws; and

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

9 **PART II. LEGAL REMEDIES, INCLUDING RESIDENTIAL REAL**  
10 **PROPERTY WARRANTIES, MUNICIPAL LIABILITY, AND THIRD-PARTY INSPECTIONS**

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

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

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

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

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

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

1 (2) If a construction professional breaches a warranty arising  
2 under this section and the breach results in damage to any portion of  
3 the residential real property, the current owner of the residential  
4 real property may bring a cause of action for damages against the  
5 construction professional. Absence of privity of contract between the  
6 owner and the construction professional is not a defense to the  
7 enforcement of a warranty arising under this section.

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

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

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

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

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

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

37 (c) A cause of action for breach of a warranty arising under this  
38 section that is based on a latent structural defect or a latent water

1 penetration defect accrues when the claimant discovers or reasonably  
2 should have discovered the latent structural defect or latent water  
3 penetration defect.

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

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

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

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

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

20 (10) This section does not apply to condominiums subject to chapter  
21 64.34 RCW.

22 (11) This section does not affect the application of the notice and  
23 opportunity to cure requirements and procedures imposed under RCW  
24 64.50.010 through 64.50.050.

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

28 (13) For the purposes of this section:

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

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

37 (c) "Substantial completion of construction" means the state of

1 completion reached when an improvement upon real property may be used  
2 or occupied for its intended use.

3 **Sec. 4.** RCW 19.27.020 and 1985 c 360 s 6 are each amended to read  
4 as follows:

5 The purpose of this chapter is to promote the health, safety, and  
6 welfare of the occupants or users of buildings and structures and the  
7 general public by the provision of building codes throughout the state  
8 and by allowing a cause of action for damages based on the grossly  
9 negligent failure of a county or city to enforce the provisions of the  
10 state building code. Accordingly, this chapter is designed to  
11 effectuate the following purposes, objectives, and standards:

12 (1) To require minimum performance standards and requirements for  
13 construction and construction materials, consistent with accepted  
14 standards of engineering, fire and life safety.

15 (2) To require standards and requirements in terms of performance  
16 and nationally accepted standards.

17 (3) To permit the use of modern technical methods, devices and  
18 improvements.

19 (4) To eliminate restrictive, obsolete, conflicting, duplicating  
20 and unnecessary regulations and requirements which could unnecessarily  
21 increase construction costs or retard the use of new materials and  
22 methods of installation or provide unwarranted preferential treatment  
23 to types or classes of materials or products or methods of  
24 construction.

25 (5) To provide for standards and specifications for making  
26 buildings and facilities accessible to and usable by (~~physically~~  
27 ~~disabled~~) persons with disabilities.

28 (6) To consolidate within each authorized enforcement jurisdiction,  
29 the administration and enforcement of building codes.

30 **Sec. 5.** RCW 19.27.050 and 1985 c 360 s 9 are each amended to read  
31 as follows:

32 (1) The state building code required by this chapter shall be  
33 enforced by the counties and cities. Building inspectors owe a duty of  
34 care to uphold the provisions of the state building code. If a  
35 building inspector or someone acting in the capacity of a building  
36 inspector, in the course of his or her work, breaches that duty and

1 that breach results in damage to new residential construction, or a  
2 substantial remodel, compromising the health, safety, or welfare of the  
3 homeowner, the city or county may be held liable for that building  
4 inspector's gross negligence.

5 (2) Any county or city not having a building department shall  
6 contract with another county, city, or inspection agency approved by  
7 the county or city for enforcement of the state building code within  
8 its jurisdictional boundaries.

9 **Sec. 6.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read  
10 as follows:

11 (1) All claims or causes of action as set forth in RCW 4.16.300  
12 shall accrue, and the applicable statute of limitation shall begin to  
13 run only during the period within six years after substantial  
14 completion of construction, or during the period within six years after  
15 the termination of the services enumerated in RCW 4.16.300, whichever  
16 is later. The phrase "substantial completion of construction" shall  
17 mean the state of completion reached when an improvement upon real  
18 property may be used or occupied for its intended use. Any cause of  
19 action which has not accrued within six years after such substantial  
20 completion of construction, or within six years after such termination  
21 of services, whichever is later, shall be barred: PROVIDED, That this  
22 limitation shall not be asserted as a defense by any owner, tenant or  
23 other person in possession and control of the improvement at the time  
24 such cause of action accrues. The limitations prescribed in this  
25 section apply to all claims or causes of action as set forth in RCW  
26 4.16.300 brought in the name or for the benefit of the state which are  
27 made or commenced after June 11, 1986.

28 If a written notice is filed under RCW 64.50.020 within the time  
29 prescribed for the filing of an action under this chapter, the period  
30 of time during which the filing of an action is barred under RCW  
31 64.50.020 plus sixty days shall not be a part of the period limited for  
32 the commencement of an action, nor for the application of this section.

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

1       **Sec. 7.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read  
2 as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

5       (1) "Action" means any civil lawsuit or action in contract or tort  
6 for damages or indemnity brought against a construction professional to  
7 assert a claim, whether by complaint, counterclaim, or cross-claim, for  
8 damage or the loss of use of real or personal property caused by a  
9 defect in the construction of a residence or in the substantial remodel  
10 of a residence. "Action" does not include any civil action in tort  
11 alleging personal injury or wrongful death to a person or persons  
12 resulting from a construction defect.

13       (2) "Association" means an association, master association, or  
14 subassociation as defined and provided for in RCW 64.34.020(4),  
15 64.34.276, 64.34.278, and 64.38.010(1).

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

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

19       (5) "Claimant" means a homeowner or association who asserts a claim  
20 against a construction professional concerning a defect in the  
21 construction of a residence or in the substantial remodel of a  
22 residence.

23       (~~(4)~~) (6) "Construction professional" means an architect,  
24 builder, builder vendor, contractor, subcontractor, engineer, or  
25 inspector, including, but not limited to, a dealer as defined in RCW  
26 64.34.020(~~(12)~~) (13) and a declarant as defined in RCW  
27 64.34.020(~~(13)~~) (14), performing or furnishing the design,  
28 supervision, inspection, construction, or observation of the  
29 construction of any improvement to real property, whether operating as  
30 a sole proprietor, partnership, corporation, or other business entity.

31       (~~(5)~~) (7) "Homeowner" means: (a) Any person, company, firm,  
32 partnership, corporation, or association who contracts with a  
33 construction professional for the construction, sale, or construction  
34 and sale of a residence; and (b) an "association" as defined in this  
35 section. "Homeowner" includes, but is not limited to, a subsequent  
36 purchaser of a residence from any homeowner.

37       (~~(6)~~) (8) "Qualified building inspector" has the same meaning as  
38 in RCW 64.55.010.



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

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

9       (~~(8)~~) (11) "Stamped" has the same meaning as in RCW 64.55.010.

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

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

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

33       (2) The building department shall not issue a building permit for  
34 construction of the building enclosure of a residential building or a  
35 substantial remodel unless the building enclosure design documents  
36 contain a stamped statement by the person stamping the building  
37 enclosure design documents in substantially the following form: "The

1 undersigned has provided building enclosure documents that in my  
2 professional judgment are appropriate to satisfy the requirements of  
3 sections 8 through 14 of this act."

4 (3) The building department is not charged with determining whether  
5 the building enclosure design documents are adequate or appropriate to  
6 satisfy the requirements of this section and sections 9 through 14 of  
7 this act. This section and sections 9 through 14 of this act do not  
8 require a building department to review, approve, or disapprove  
9 enclosure design documents.

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

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

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

17 (1) A qualified building enclosure inspector:

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

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

22 (c) May not be an employee, officer, or director of, or have any  
23 pecuniary interest in, the declarant, developer, association, or any  
24 party providing services or materials for the project, or any of their  
25 respective affiliates, except that the qualified inspector may be the  
26 architect or engineer who approved the building enclosure design  
27 documents or the architect or engineer of record. The qualified  
28 inspector may, but is not required to, assist with the preparation of  
29 the design documents.

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

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

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

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

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

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

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

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

28 Upon completion of an inspection required under this chapter, the  
29 qualified inspector shall prepare and submit to the appropriate  
30 building department a signed letter certifying that the building  
31 enclosure has been inspected during the course of construction or  
32 substantial remodel and that it has been constructed or reconstructed  
33 in substantial compliance with the building enclosure design documents,  
34 as updated under section 8 of this act. The building department shall  
35 not issue a final certificate of occupancy or other equivalent final  
36 acceptance until the letter required under this section has been  
37 submitted. The building department is not charged with and has no

1 responsibility for determining whether the building enclosure  
2 inspection is adequate or appropriate to satisfy the requirements of  
3 this chapter.

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

- 6 (1) This chapter is not intended to and does not:
- 7 (a) Create a private right of action against an inspector,  
8 architect, or engineer based upon compliance or noncompliance with this  
9 chapter; or
  - 10 (b) Create an independent basis for liability against an inspector,  
11 architect, or engineer.
- 12 (2) The qualified inspector, architect, or engineer and the  
13 developer that retained the inspector, architect, or engineer may  
14 contractually agree to the amount of their liability to the developer.

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

17 A qualified inspector's report or testimony regarding an inspection  
18 conducted under this chapter is not entitled to an evidentiary  
19 presumption in any arbitration or court proceeding. This chapter does  
20 not restrict the admissibility of the qualified inspector's report or  
21 testimony, and questions of the admissibility of the report or  
22 testimony are determined under the rules of evidence.

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

25 NEW SECTION. **Sec. 15.** (1) The legislature finds that there is  
26 inadequate protection for consumers in the area of residential  
27 construction. The legislature further finds that a significant amount  
28 of the problems in the construction of new residential real property,  
29 or the substantial remodel of existing residential real property,  
30 pertain to water intrusion and unstable foundations and develop from  
31 poor installation of roofing, siding, framing, foundations, doors, and  
32 windows. The legislature recognizes that it is important to assure  
33 consumers that those doing construction work are properly trained. The

1 legislature, therefore, intends to establish a worker certification  
2 requirement for those doing construction work in the areas of roofing,  
3 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 **Sec. 16.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read  
14 as follows:

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

19 (a) Employer social security number.

20 (b) Unified business identifier number.

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

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

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

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

34 (d) Employment security department number.

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

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

3 (g) Type of work performed, whether residential, commercial, or  
4 both.

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

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

19 (j) Disclosure of any bankruptcy proceedings filed by or against  
20 the applicant.

21 (k) Information about any construction licenses, certifications, or  
22 registrations that have been issued to the applicant by other states.  
23 The applicant shall also provide details about any denials,  
24 suspensions, revocations, or any enforcement actions related to  
25 construction against the applicant by other states.

26 (2) The department may verify the workers' compensation coverage  
27 information provided by the applicant under subsection (1)(c) of this  
28 section, including but not limited to information regarding the  
29 coverage of an individual employee of the applicant. If coverage is  
30 provided under the laws of another state, the department may notify the  
31 other state that the applicant is employing employees in Washington.

32 (3)(a) The department shall deny an application for registration  
33 if: (i) The applicant has been previously performing work subject to  
34 this chapter as a sole proprietor, partnership, corporation, or other  
35 entity and the department has notice that the applicant has an  
36 unsatisfied final judgment against him or her in an action based on  
37 work performed subject to this chapter or the applicant owes the  
38 department money for penalties assessed or fees due under this chapter

1 as a result of a final judgment; (ii) the applicant was an owner,  
2 principal, or officer of a partnership, corporation, or other entity  
3 that either has an unsatisfied final judgment against it in an action  
4 that was incurred for work performed subject to this chapter or owes  
5 the department money for penalties assessed or fees due under this  
6 chapter as a result of a final judgment; (iii) the applicant does not  
7 have a valid unified business identifier number; (iv) the department  
8 determines that the applicant has falsified information on the  
9 application, unless the error was inadvertent; ~~((v))~~ (v) the applicant  
10 does not have an active and valid certificate of registration with the  
11 department of revenue; or (vi) the department has determined that a  
12 different state has taken enforcement action against the applicant for  
13 activities that would be a violation of this chapter if they had  
14 occurred in Washington state.

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

33 (c) The department may suspend an active registration if the  
34 department has determined that an owner, principal, partner, or officer  
35 of the registrant was an owner, principal, or officer of a previous  
36 partnership, corporation, or other entity that has an unsatisfied final  
37 judgment against it.

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

6 NEW SECTION. **Sec. 17.** A new section is added to chapter 18.27 RCW  
7 to read as follows:

8 A registered contractor, by or against whom a petition in  
9 bankruptcy has been filed, shall notify the department of the  
10 proceedings in bankruptcy, including the identity and location of the  
11 court in which the proceedings are pending, within ten days of the  
12 filing.

13 **Sec. 18.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to read  
14 as follows:

15 (1) Each applicant shall file with the department a surety bond  
16 issued by a surety insurer who meets the requirements of chapter 48.28  
17 RCW in the sum of (~~twelve~~) twenty-four thousand dollars if the  
18 applicant is a general contractor and (~~six~~) twelve thousand dollars  
19 if the applicant is a specialty contractor. If no valid bond is  
20 already on file with the department at the time the application is  
21 filed, a bond must accompany the registration application. The bond  
22 shall have the state of Washington named as obligee with good and  
23 sufficient surety in a form to be approved by the department. The bond  
24 shall be continuous and may be canceled by the surety upon the surety  
25 giving written notice to the director. A cancellation or revocation of  
26 the bond or withdrawal of the surety from the bond automatically  
27 suspends the registration issued to the contractor until a new bond or  
28 reinstatement notice has been filed and approved as provided in this  
29 section. The bond shall be conditioned that the applicant will pay all  
30 persons performing labor, including employee benefits, for the  
31 contractor, will pay all taxes and contributions due to the state of  
32 Washington, and will pay all persons furnishing material or renting or  
33 supplying equipment to the contractor and will pay all amounts that may  
34 be adjudged against the contractor by reason of breach of contract  
35 including improper work in the conduct of the contracting business. A  
36 change in the name of a business or a change in the type of business



1 entity shall not impair a bond for the purposes of this section so long  
2 as one of the original applicants for such bond maintains partial  
3 ownership in the business covered by the bond.

4 (2) At the time of initial registration or renewal, the contractor  
5 shall provide a bond or other security deposit as required by this  
6 chapter and comply with all of the other provisions of this chapter  
7 before the department shall issue or renew the contractor's certificate  
8 of registration. Any contractor registered as of July 1, 2001, who  
9 maintains that registration in accordance with this chapter is in  
10 compliance with this chapter until the next renewal of the contractor's  
11 certificate of registration.

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

1 fee and three copies of the summons and complaint. The service shall  
2 constitute service and confer personal jurisdiction on the contractor  
3 and the surety for suit on claimant's claim against the contractor and  
4 the bond or deposit and the department shall transmit the summons and  
5 complaint or a copy thereof to the contractor at the address listed in  
6 the contractor's application and to the surety within two days after it  
7 shall have been received.

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

22 (a) Employee labor and claims of laborers, including employee  
23 benefits;

24 (b) Claims for breach of contract by a party to the construction  
25 contract;

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

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

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

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

33 (5) The total amount paid from a bond or deposit required of a  
34 general contractor by this section to claimants other than residential  
35 homeowners must not exceed one-half of the bond amount. The total  
36 amount paid from a bond or deposit required of a specialty contractor  
37 by this section to claimants other than residential homeowners must not

1 exceed one-half of the bond amount or four thousand dollars, whichever  
2 is greater.

3 (6) The prevailing party in an action filed under this section  
4 against the contractor and contractor's bond or deposit, for breach of  
5 contract by a party to the construction contract involving a  
6 residential homeowner, is entitled to costs, interest, and reasonable  
7 attorneys' fees. The surety upon the bond or deposit is not liable in  
8 an aggregate amount in excess of the amount named in the bond or  
9 deposit nor for any monetary penalty assessed pursuant to this chapter  
10 for an infraction.

11 (7) If a final judgment impairs the liability of the surety upon  
12 the bond or deposit so furnished that there is not in effect a bond or  
13 deposit in the full amount prescribed in this section, the registration  
14 of the contractor is automatically suspended until the bond or deposit  
15 liability in the required amount unimpaired by unsatisfied judgment  
16 claims is furnished.

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

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

32 (10) Within ten days after resolution of the case, a certified copy  
33 of the final judgment and order, or any settlement documents where a  
34 case is not disposed of by a court trial, a certified copy of the  
35 dispositive settlement documents must be provided to the department by  
36 the prevailing party. Failure to provide a copy of the final judgment  
37 and order or the dispositive settlement documents to the department

1 within ten days of entry of such an order constitutes a violation of  
2 this chapter and a penalty adopted by rule of not less than two hundred  
3 fifty dollars may be assessed against the prevailing party.

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

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

14 NEW SECTION. **Sec. 19.** Part headings used in this act are not any  
15 part of the law.

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