
SECOND SUBSTITUTE SENATE BILL 5895

State of Washington 61st Legislature 2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Tom, Kohl-
Welles, Fraser, and McDermott)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to improving residential real property construction
2 by strengthening warranty protections applicable to residential real
3 property construction, creating remedies, requiring third-party
4 inspections, enhancing contractor registration requirements,
5 establishing worker certification standards, and enhancing bonding
6 requirements; amending RCW 4.16.310, 64.50.010, 18.27.030, and
7 18.27.040; adding new sections to chapter 64.50 RCW; adding a new
8 section to chapter 18.27 RCW; creating new sections; and providing an
9 expiration date.

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

11 **PART I. RESIDENTIAL REAL PROPERTY WARRANTIES,**
12 **LEGAL REMEDIES, AND THIRD-PARTY INSPECTIONS**

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

15 (1) The legislature intends by this section to modify the common
16 law implied warranty of habitability to provide that this warranty may
17 not be contractually disclaimed, waived, modified, or limited. The

1 legislature does not intend to modify any other aspect of the common
2 law implied warranty of habitability as developed through case law.

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

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

10 (1) A construction professional involved in the construction of new
11 residential real property, or the substantial remodel of existing
12 residential real property, warrants that the work, and any part
13 thereof, will be suitable for the ordinary uses of real property of its
14 type and that the work will be:

15 (a) Free from defective materials;

16 (b) Constructed in accordance with sound engineering and
17 construction standards;

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

19 (d) Constructed in compliance with all laws then applicable to the
20 improvements.

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

28 (3) In a judicial proceeding for breach of a warranty arising under
29 this section, the plaintiff must show that the alleged breach has
30 adversely affected or will adversely affect the performance of that
31 portion of the property alleged to be in breach. To establish an
32 adverse effect, the person alleging the breach is not required to prove
33 that the breach renders the property unfit for occupancy. As used in
34 this subsection, "adverse effect" must be more than technical and must
35 be significant to a reasonable person.

36 (4) Proof of breach of a warranty arising under this section is not
37 proof of damages. Damages awarded for a breach of a warranty arising

1 under this section are the cost of repairs. However, if it is
2 established that the cost of repairs is clearly disproportionate to the
3 loss in market value caused by the breach, damages are limited to the
4 loss in market value.

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

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

14 (i) In the case of the purchase of newly constructed residential
15 real property, on the date the initial owner enters into possession of
16 the property; or

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

20 (c) A cause of action for breach of a warranty arising under this
21 section that is based on a latent structural defect or a latent water
22 penetration defect accrues when the claimant discovers or reasonably
23 should have discovered the latent structural defect or latent water
24 penetration defect.

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

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

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

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

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

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

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

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

11 (13) For the purposes of this section:

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

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

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

23 **Sec. 3.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read
24 as follows:

25 (1) All claims or causes of action as set forth in RCW 4.16.300
26 shall accrue, and the applicable statute of limitation shall begin to
27 run only during the period within six years after substantial
28 completion of construction, or during the period within six years after
29 the termination of the services enumerated in RCW 4.16.300, whichever
30 is later. The phrase "substantial completion of construction" shall
31 mean the state of completion reached when an improvement upon real
32 property may be used or occupied for its intended use. Any cause of
33 action which has not accrued within six years after such substantial
34 completion of construction, or within six years after such termination
35 of services, whichever is later, shall be barred: PROVIDED, That this
36 limitation shall not be asserted as a defense by any owner, tenant or
37 other person in possession and control of the improvement at the time

1 such cause of action accrues. The limitations prescribed in this
2 section apply to all claims or causes of action as set forth in RCW
3 4.16.300 brought in the name or for the benefit of the state which are
4 made or commenced after June 11, 1986.

5 If a written notice is filed under RCW 64.50.020 within the time
6 prescribed for the filing of an action under this chapter, the period
7 of time during which the filing of an action is barred under RCW
8 64.50.020 plus sixty days shall not be a part of the period limited for
9 the commencement of an action, nor for the application of this section.

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

15 **Sec. 4.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

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

27 (2) "Association" means an association, master association, or
28 subassociation as defined and provided for in RCW 64.34.020(4),
29 64.34.276, 64.34.278, and 64.38.010(1).

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

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

33 (5) "Claimant" means a homeowner or association who asserts a claim
34 against a construction professional concerning a defect in the
35 construction of a residence or in the substantial remodel of a
36 residence.

1 ~~((4))~~ (6) "Construction professional" means an architect,
2 builder, builder vendor, contractor, subcontractor, engineer, or
3 inspector, including, but not limited to, a dealer as defined in RCW
4 64.34.020~~((12))~~ (13) and a declarant as defined in RCW
5 64.34.020~~((13))~~ (14), performing or furnishing the design,
6 supervision, inspection, construction, or observation of the
7 construction of any improvement to real property, whether operating as
8 a sole proprietor, partnership, corporation, or other business entity.

9 ~~((5))~~ (7) "Homeowner" means: (a) Any person, company, firm,
10 partnership, corporation, or association who contracts with a
11 construction professional for the construction, sale, or construction
12 and sale of a residence; and (b) an "association" as defined in this
13 section. "Homeowner" includes, but is not limited to, a subsequent
14 purchaser of a residence from any homeowner.

15 ~~((6))~~ (8) "Qualified building inspector" has the same meaning as
16 in RCW 64.55.010.

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

23 ~~((7))~~ (10) "Serve" or "service" means personal service or
24 delivery by certified mail to the last known address of the addressee.

25 ~~((8))~~ (11) "Stamped" has the same meaning as in RCW 64.55.010.

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

30 NEW SECTION. Sec. 5. A new section is added to chapter 64.50 RCW
31 to read as follows:

32 (1) Any person applying for a building permit for construction of
33 a residential building or substantial remodel shall submit building
34 enclosure design documents to the appropriate building department prior
35 to the start of construction or substantial remodel. If construction
36 work on a building is not a substantial remodel because the cost of
37 thereof does not exceed one-half of the assessed value of the residence

1 for property tax purposes at the time the contract for the remodel work
2 was made, the person applying for a building permit shall submit to the
3 building department a letter so certifying. Any changes to the
4 building enclosure design documents that alter the manner in which the
5 building or its components is waterproofed, weatherproofed, and
6 otherwise protected from water or moisture intrusion must be stamped by
7 the architect or engineer and must be provided to the building
8 department and to the person conducting the course of construction
9 inspection in a timely manner to permit such person to inspect for
10 compliance therewith, and may be provided through individual updates,
11 cumulative updates, or as-built updates.

12 (2) The building department shall not issue a building permit for
13 construction of the building enclosure of a residential building or a
14 substantial remodel unless the building enclosure design documents
15 contain a stamped statement by the person stamping the building
16 enclosure design documents in substantially the following form: "The
17 undersigned has provided building enclosure documents that in my
18 professional judgment are appropriate to satisfy the requirements of
19 sections 5 through 11 of this act."

20 (3) The building department is not charged with determining whether
21 the building enclosure design documents are adequate or appropriate to
22 satisfy the requirements of this section and sections 6 through 11 of
23 this act. This section and sections 6 through 11 of this act do not
24 require a building department to review, approve, or disapprove
25 enclosure design documents.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.50 RCW
27 to read as follows:

28 All residential buildings must have the building enclosure
29 inspected by a qualified inspector during the course of initial
30 construction and during a substantial remodel.

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

33 (1) A qualified building enclosure inspector:

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

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

3 (c) May not be an employee, officer, or director of, or have any
4 pecuniary interest in, the declarant, developer, association, or any
5 party providing services or materials for the project, or any of their
6 respective affiliates, except that the qualified inspector may be the
7 architect or engineer who approved the building enclosure design
8 documents or the architect or engineer of record. The qualified
9 inspector may, but is not required to, assist with the preparation of
10 the design documents.

11 (2) This section does not alter the requirements for licensure of
12 any architect, engineer, or other professional, and does not alter the
13 jurisdiction, authority, or scope of practice of architects, engineers,
14 other professionals, or general contractors.

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

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

19 (a) Water penetration resistance testing of a representative sample
20 of windows and window installations. These tests must be conducted
21 according to industry standards. Where appropriate, tests must be
22 conducted with an induced air pressure difference across the window and
23 window installation. Additional testing is not required if the same
24 assembly has previously been tested in situ within the previous two
25 years in the project under construction by the builder, by another
26 member of the construction team such as an architect or engineer, or by
27 an independent testing laboratory; and

28 (b) An independent periodic review of the building enclosure during
29 the course of construction or rehabilitative construction to ascertain
30 whether the residential building has been constructed, or the
31 substantial remodel has been performed, in substantial compliance with
32 the building enclosure design documents.

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

36 (3) For the purposes of this section, "project" means one or more
37 parcels of land in a single ownership, which are under development

1 pursuant to a single land use approval or building permit, where window
2 installation is performed by the owner with its own forces, or by the
3 same general contractor, or, if the owner is contracting directly with
4 trade contractors, is performed by the same trade contractor.

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

7 Upon completion of an inspection required under this chapter, the
8 qualified inspector shall prepare and submit to the appropriate
9 building department a signed letter certifying that the building
10 enclosure has been inspected during the course of construction or
11 substantial remodel and that it has been constructed or reconstructed
12 in substantial compliance with the building enclosure design documents,
13 as updated under section 5 of this act. The building department shall
14 not issue a final certificate of occupancy or other equivalent final
15 acceptance until the letter required under this section has been
16 submitted. The building department is not charged with and has no
17 responsibility for determining whether the building enclosure
18 inspection is adequate or appropriate to satisfy the requirements of
19 this chapter.

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

- 22 (1) This chapter is not intended to and does not:
- 23 (a) Create a private right of action against an inspector,
24 architect, or engineer based upon compliance or noncompliance with this
25 chapter; or
 - 26 (b) Create an independent basis for liability against an inspector,
27 architect, or engineer.
- 28 (2) The qualified inspector, architect, or engineer and the
29 developer that retained the inspector, architect, or engineer may
30 contractually agree to the amount of their liability to the developer.

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

33 A qualified inspector's report or testimony regarding an inspection
34 conducted under this chapter is not entitled to an evidentiary
35 presumption in any arbitration or court proceeding. This chapter does

1 not restrict the admissibility of the qualified inspector's report or
2 testimony, and questions of the admissibility of the report or
3 testimony are determined under the rules of evidence.

4 **PART II. CONTRACTOR REGISTRATION,**
5 **WORKER CERTIFICATION, AND BONDING**

6 NEW SECTION. **Sec. 12.** (1) The legislature finds that there is
7 inadequate protection for consumers in the area of residential
8 construction. The legislature further finds that a significant amount
9 of the problems in the construction of new residential real property,
10 or the substantial remodel of existing residential real property,
11 pertain to water intrusion and unstable foundations and develop from
12 poor installation of roofing, siding, framing, foundations, doors, and
13 windows. The legislature recognizes that it is important to assure
14 consumers that those doing construction work are properly trained. The
15 legislature, therefore, intends to establish a worker certification
16 requirement for those doing construction work in the areas of roofing,
17 siding, framing, foundations, doors, and windows.

18 (2) The department of labor and industries shall contract for
19 consultant services to develop recommendations to the legislature on
20 the education, experience, and examination requirements of the program
21 to certify workers engaged in the installation of roofing, siding,
22 framing, foundations, doors, and windows. In developing the
23 recommendations, the consultant and the department shall closely
24 involve and consult with stakeholders. The recommendations must be
25 submitted to the legislature by November 1, 2009.

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

27 **Sec. 13.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read
28 as follows:

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

- 33 (a) Employer social security number.
- 34 (b) Unified business identifier number.

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

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

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

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

14 (d) Employment security department number.

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

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

20 (g) Type of work performed, whether residential, commercial, or
21 both.

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

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

36 (j) Disclosure of any bankruptcy proceedings filed by or against
37 the applicant.

1 (k) Information about any construction licenses, certifications, or
2 registrations that have been issued to the applicant by other states.
3 The applicant shall also provide details about any denials,
4 suspensions, revocations, or any enforcement actions related to
5 construction against the applicant by other states.

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

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

33 (b) The department shall suspend an active registration if: (i)
34 The department has determined that the registrant has an unsatisfied
35 final judgment against it for work within the scope of this chapter;
36 (ii) the department has determined that the registrant is a sole
37 proprietor or an owner, principal, or officer of a registered
38 contractor that has an unsatisfied final judgment against it for work

1 within the scope of this chapter; (iii) the registrant does not
2 maintain a valid unified business identifier number; (iv) the
3 department has determined that the registrant falsified information on
4 the application, unless the error was inadvertent; (~~(v)~~) (v) the
5 registrant does not have an active and valid certificate of
6 registration with the department of revenue; (vi) the department has
7 determined that a different state has taken enforcement action against
8 the registrant for activities that would be a violation of this chapter
9 if they had occurred in Washington state; or (vii) the department has
10 determined that the registrant failed to reasonably supervise
11 employees, agents, or subcontractors or performed negligently or in
12 breach of contract so as to cause injury or harm to the public.

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

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

23 NEW SECTION. Sec. 14. A new section is added to chapter 18.27 RCW
24 to read as follows:

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

30 **Sec. 15.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to read
31 as follows:

32 (1) Each applicant shall file with the department a surety bond
33 issued by a surety insurer who meets the requirements of chapter 48.28
34 RCW in the sum of (~~twelve~~) twenty-four thousand dollars if the
35 applicant is a general contractor and (~~six~~) twelve thousand dollars
36 if the applicant is a specialty contractor. If no valid bond is

1 already on file with the department at the time the application is
2 filed, a bond must accompany the registration application. The bond
3 shall have the state of Washington named as obligee with good and
4 sufficient surety in a form to be approved by the department. The bond
5 shall be continuous and may be canceled by the surety upon the surety
6 giving written notice to the director. A cancellation or revocation of
7 the bond or withdrawal of the surety from the bond automatically
8 suspends the registration issued to the contractor until a new bond or
9 reinstatement notice has been filed and approved as provided in this
10 section. The bond shall be conditioned that the applicant will pay all
11 persons performing labor, including employee benefits, for the
12 contractor, will pay all taxes and contributions due to the state of
13 Washington, and will pay all persons furnishing material or renting or
14 supplying equipment to the contractor and will pay all amounts that may
15 be adjudged against the contractor by reason of breach of contract
16 including improper work in the conduct of the contracting business. A
17 change in the name of a business or a change in the type of business
18 entity shall not impair a bond for the purposes of this section so long
19 as one of the original applicants for such bond maintains partial
20 ownership in the business covered by the bond.

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

29 (3) Any person, firm, or corporation having a claim against the
30 contractor for any of the items referred to in this section may bring
31 suit against the contractor and the bond or deposit in the superior
32 court of the county in which the work was done or of any county in
33 which jurisdiction of the contractor may be had. The surety issuing
34 the bond shall be named as a party to any suit upon the bond. Action
35 upon the bond or deposit brought by a residential homeowner for breach
36 of contract by a party to the construction contract shall be commenced
37 by filing the summons and complaint with the clerk of the appropriate
38 superior court within two years from the date the claimed contract work

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

25 (4) The surety upon the bond shall not be liable in an aggregate
26 amount in excess of the amount named in the bond nor for any monetary
27 penalty assessed pursuant to this chapter for an infraction. The
28 liability of the surety shall not cumulate where the bond has been
29 renewed, continued, reinstated, reissued or otherwise extended. The
30 surety upon the bond may, upon notice to the department and the
31 parties, tender to the clerk of the court having jurisdiction of the
32 action an amount equal to the claims thereunder or the amount of the
33 bond less the amount of judgments, if any, previously satisfied
34 therefrom and to the extent of such tender the surety upon the bond
35 shall be exonerated but if the actions commenced and pending and
36 provided to the department as required in subsection (3) of this
37 section, at any one time exceed the amount of the bond then unimpaired,
38 claims shall be satisfied from the bond in the following order:

1 (a) Employee labor and claims of laborers, including employee
2 benefits;

3 (b) Claims for breach of contract by a party to the construction
4 contract;

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

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

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

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

12 (5) The total amount paid from a bond or deposit required of a
13 general contractor by this section to claimants other than residential
14 homeowners must not exceed one-half of the bond amount. The total
15 amount paid from a bond or deposit required of a specialty contractor
16 by this section to claimants other than residential homeowners must not
17 exceed one-half of the bond amount or four thousand dollars, whichever
18 is greater.

19 (6) The prevailing party in an action filed under this section
20 against the contractor and contractor's bond or deposit, for breach of
21 contract by a party to the construction contract involving a
22 residential homeowner, is entitled to costs, interest, and reasonable
23 attorneys' fees. The surety upon the bond or deposit is not liable in
24 an aggregate amount in excess of the amount named in the bond or
25 deposit nor for any monetary penalty assessed pursuant to this chapter
26 for an infraction.

27 (7) If a final judgment impairs the liability of the surety upon
28 the bond or deposit so furnished that there is not in effect a bond or
29 deposit in the full amount prescribed in this section, the registration
30 of the contractor is automatically suspended until the bond or deposit
31 liability in the required amount unimpaired by unsatisfied judgment
32 claims is furnished.

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

36 (9) Any person having filed and served a summons and complaint as
37 required by this section having an unsatisfied final judgment against
38 the registrant for any items referred to in this section may execute

1 upon the security held by the department by serving a certified copy of
2 the unsatisfied final judgment by registered or certified mail upon the
3 department within one year of the date of entry of such judgment. Upon
4 the receipt of service of such certified copy the department shall pay
5 or order paid from the deposit, through the registry of the superior
6 court which rendered judgment, towards the amount of the unsatisfied
7 judgment. The priority of payment by the department shall be the order
8 of receipt by the department, but the department shall have no
9 liability for payment in excess of the amount of the deposit.

10 (10) Within ten days after resolution of the case, a certified copy
11 of the final judgment and order, or any settlement documents where a
12 case is not disposed of by a court trial, a certified copy of the
13 dispositive settlement documents must be provided to the department by
14 the prevailing party. Failure to provide a copy of the final judgment
15 and order or the dispositive settlement documents to the department
16 within ten days of entry of such an order constitutes a violation of
17 this chapter and a penalty adopted by rule of not less than two hundred
18 fifty dollars may be assessed against the prevailing party.

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

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

29 NEW SECTION. **Sec. 16.** Part headings used in this act are not any
30 part of the law.

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