

HOUSE BILL REPORT

HB 1630

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to registration of contractors.

Brief Description: Regulating the registration of contractors.

Sponsors: Representatives Cairnes, Kremen, Ballasiotes, Cole, Conway, Cooke, Goldsmith, Quall, Cody, Elliot, Romero, Veloria and Thompson.

Brief History:

Committee Activity:

Commerce & Labor: 2/15/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 1 member: Representative Fuhrman.

Staff: Chris Cordes (786-7117).

Background: Construction contractors, whether general contractors or specialty contractors are required to register with the Department of Labor and Industries. The statute governs the application requirements, bonding and insurance requirements, notice requirements for customers, and penalties for violations.

Statement of purpose

The purpose of the contractor registration statute is to afford protection to the public, including persons furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financial irresponsible, or incompetent contractors.

Application for registration as a contractor

The Department of Labor and Industries must deny registration if an applicant has been previously registered as a sole proprietor, partnership, or corporation, and was a principal or officer of the corporation, and the applicant has unsatisfied final judgments arising from the previous registration.

Applicants for registration or for renewing a registration must submit a surety bond of \$6,000 for general contractors and \$4,000 for specialty contractors. The surety on a bond is not liable in an aggregate amount beyond the amount named in the bond nor for any monetary penalty assessed for an infraction. The surety's liability does not cumulate where the bond has been renewed or extended.

Registration is valid for one year and must be renewed on or before the expiration date. Registration is suspended if a final judgment impairs the bond or the bond is cancelled, or the contractor fails to maintain required insurance or financial responsibility. The department must give notice of suspension of registration.

Substantial compliance doctrine

A contractor may not maintain a suit for breach of contract unless the contractor is registered as required. In determining whether a contractor may maintain a suit, the court may not find a contractor in substantial compliance with registration requirements unless the department has on file the information required from each contractor applicant, and the contractor has a current bond or other security required and current insurance. The court must take into consideration the length of time that the contractor was not validly registered.

Exemptions from registration requirements

Exemptions from the registration requirements include an exemption for a person working on his property, whether he occupies it or not, and a person working on his residence, whether he owns it or not. This exemption does not apply if the person constructs an improvement with the intention of selling the improved property.

Customer notice

Contractors must provide a notice, specified in the statute, to all customers on certain projects. The notice provides the contractor's registration number and information about the potential for a lien against the property if suppliers or laborers are not paid for the project work. The contractor must also inform the consumer if his or her registration expires or is suspended or revoked before completion of the project. The contractor may not maintain a lien claim if the customer is not given a copy of the notice.

Contractor advertising

The alphabetized list of contractors in the advertising section of telephone books and directories must include the contractor's current registration number. A seller of advertising should not accept advertisements if the contractor fails to provide the registration number.

Infractions and misdemeanors

Contractors commit infractions if advertising, offering to do work, or submitting a bid without being registered or while registration is suspended. Infractions are subject to penalties of not less than \$200 or more than \$3,000.

It is also a misdemeanor for a contractor to advertise, offer to do work, or submit a bid without being registered or while registration is suspended, to use a false or expired registration number when purchasing advertising, or to transfer a valid license to an unregistered contractor.

Mandatory coverage of employment for industrial insurance

There is an exemption from mandatory coverage under industrial insurance for employment involving maintenance, repair, remodeling, or similar work in or about a private home.

Summary of Substitute Bill:

Statement of purpose

The statement of purpose for regulating contractor registration is replaced with a new purpose statement. The purposes are to protect the general welfare of the residents of the state who purchase construction services and the general economic welfare of businesses in compliance with the registration requirements, to enhance state revenue, and to promote compliance and enforcement by providing swift and meaningful remedies for those failing to register as required.

Definition of contractor

It is clarified that the definition of "contractor" includes any person who is covered by the definition, whether the person is registered or not.

Application for registration as a contractor

An application for registration as a contractor is valid for two years instead of one year.

The requirement for the Department of Labor and Industries to deny registration to certain applicants who were previously registered as corporations, and the applicant was a principal or officer of the corporation, is amended to delete the requirement that the person was a principal or officer of the corporation. A requirement is added that the department must check for unsatisfied judgments and a history of violations or felonies related to contractor registration as part of the application process, and a history of violations or felonies related to the construction industry may be grounds for denial of an application.

The bond that must accompany an application for registration must be continuous and may be cancelled by the surety on written notice to the director. The bond is one continuous obligation, whether renewed or otherwise extended, and the surety is not liable in an aggregate or cumulative amount exceeding the penal sum of the bond. The penal sum of the bond from two points in time may not be added to determine the surety's liability.

The prevailing party in a bond claim action against the contractor and contractor's bond is entitled to costs and reasonable attorneys' fees.

A registration is considered validly renewed on the date that the department receives the required fee and proof of bond and insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery is proof of renewed registration until verification is received from the department.

The department must give notice of the suspension of a contractor's registration by certified and first class mail within 48 hours of the suspension.

Substantial compliance doctrine

The doctrine of substantial compliance is not to be used by the department in applying or construing the registration requirements.

Exemptions from registration requirements

The exemption from the registration requirements for a person who is working on his or her property is amended. The exemption from registration applies as long as the person performs the work him or herself. The provision is deleted that excluded from this exemption someone who constructs an improvement for the purpose of selling the improved property.

An exemption is added for projects that are performed by trading services between parties in lieu of cash payment, if the project cost does not exceed \$10,000.

Customer notice

The requirement for the contractor to provide the statutory "notice to customer" is changed. The notice is mandatory only if the customer requests the notice. Upon request, the contractor must also provide the address and telephone number of the Department of Labor and Industries' contractor registration section. Provisions are deleted that required the contractor to notify the customer if his or her registration is revoked or suspended, that prohibited a contractor from bringing a lien claim against the customer if the notice is not given, and that required the department to prepare model customer disclosure statements.

Contractor advertising

The contractor registration number may be omitted from an alphabetized listing of contractors that states only the name, address, and telephone number.

Language is deleted stating that a person selling advertising should not accept advertisements if the contractor fails to provide the registration number. The director of the Department of Labor and Industries is authorized to issue a subpoena to a seller of advertising asking for the name, address, and telephone number of the purchaser of advertising. The subpoena must enclose a stamped, self-addressed envelope and a blank form to be filled out by the seller of the advertising. If the seller has the information on file, the seller must return the completed form to the department within a reasonable time. The seller's good-faith compliance with the request for information is a complete defense to any civil or criminal action brought against the seller arising from compliance.

The subpoena must be issued within 48 hours after the expiration of the issue or publication of the advertising. The subpoena requirements apply to advertising by airwave transmission.

A contractor may not use an expired registration number in any solicitation or identification as a contractor.

Infractions

An "unregistered contractor" is anyone doing work as a contractor without being registered and includes contractors whose registration has been suspended or is expired for more than 30 days beyond the renewal date.

There is a presumption that a person engaged in contractor activities knows the registration requirements.

A provision is added making it an infraction for a contractor to knowingly subcontract work to an unregistered contractor, except that it is not a violation if the

subcontractor becomes unregistered during the course of the work without the knowledge of the contractor.

The provision is deleted that made it an infraction for a contractor to offer to do work without being registered as a contractor.

A person who fails to register as required is subject to a penalty of not less than \$1,000 or more than \$5,000 per violation. The director may reduce the penalty to no less than \$500 if the person registers within 10 days of the notice of infraction and it is a first offense. A person who is issued a notice of infraction while unregistered is subject to a penalty of \$1,000 per violation. If the person registers within 10 days of the notice of infraction, the penalty may be reduced to no less than \$500.

Misdemeanor violations

An additional misdemeanor is created. It is a misdemeanor for a contractor to knowingly subcontract work to a person who is not registered as required, except that the contractor is not liable if the subcontractor becomes unregistered during the course of the work without the knowledge of the contractor.

The director of the Department of Labor and Industries must establish a two-year monitoring program for persons who, after receiving an infraction or conviction for failure to register, become registered contractors. The director must notify the Department of Revenue and the Employment Security Department of the infractions and convictions and cooperate in determining whether any taxes, fees, or penalties are owed to the state.

Mandatory coverage of employment for industrial insurance

The exemption from mandatory coverage under industrial insurance for work in or about a private home is amended. The exemption does not apply to remodeling or similar work about the private home of the employer. The exemption continues to apply to maintenance, defined as the work of keeping in proper condition, and to repair, defined as restoring to sound condition after damage. A private home is defined as a person's place of residence.

Substitute Bill Compared to Original Bill: The substitute bill makes the following major changes to the original bill:

(1) Substantial compliance doctrine: The prohibition against the use of the doctrine of substantial compliance is limited to the Department of Labor and Industries' application and construction of the statute.

(2) Definition of contractor: A provision is added that the definition of "contractor" includes any person who is covered by the definition, whether the person is registered or not.

(3) Verification of registration: The additional methods for verifying a contractor registration number are deleted. Verification continues to be checking a registration card that is current on its face.

(4) Application for registration as a contractor: The certificate of registration is valid for two years instead of one year.

(5) Exemptions: The proposed substitute changes the exemption from the registration requirement for persons working on their property, making the exemption apply as long as the property owner performs the work him or herself.

Deleted from the original bill are provisions that limit the use of the exemption when work is performed with the intention of selling the improved property; require coverage of persons who construct a residence for uses other than a personal residence for at least two years; limit the exemption to the construction of one residence in a one-year period; require disclosure to the buyer that the seller performed the construction; and require coverage of persons operating a business that frequently uses the exemption through the resale of personal residences.

An exemption is added for projects that are performed by trading services between parties in lieu of cash payment, if the project cost is not more than \$10,000.

(6) Customer notice: The requirement for the contractor to provide the statutory "notice to customer" is changed. The notice is mandatory only if the customer requests the notice. Upon request, the contractor must also provide the address and telephone number of the Department of Labor and Industries' contractor registration section. Provisions are deleted that required the contractor to notify the customer if his or her registration is revoked or suspended, that prohibited a contractor from bringing a lien claim against the customer if the notice is not given, and that required the department to prepare model customer disclosure statements.

(7) Contractor advertising: The requirement is deleted for publishers of advertising to include a "customer alert" notice regarding verifying contractor registration number.

The authority of the director of the Department of Labor and Industries to issue a subpoena to a seller of advertising is limited to asking for the name, address, and telephone number of the purchaser of advertising. The subpoena must enclose a stamped, self-addressed envelope and a blank form to be filled out by the seller of the

advertising. If the seller has the information on file, the seller must return the completed form to the department within a reasonable time.

A provision is added that the subpoena must be issued within 48 hours after the expiration of the issue or publication of the advertising.

The subpoena requirements apply to advertising by airwave transmission.

A contractor may not use an expired registration number in any solicitation or identification as a contractor.

(8) Misdemeanors and infractions: The provision is deleted that made it a misdemeanor for each day and on each site that a contractor worked without being registered or while registration is suspended or revoked, for using a false number when purchasing advertising, or transferring a valid registration to an unregistered contractor.

The provision is deleted that made it an infraction for a contractor to offer to do work without being registered as a contractor.

The additional penalty imposed on a contractor who is issued a citation and is not registered is modified. The provision is deleted that made each day of the violation a separate violation.

The provision is deleted that made it a violation for any person to knowingly enter into a contract with an unregistered contractor. A provision is added that it is a violation for a contractor to knowingly subcontract work to an unregistered contractor, except that it is not a violation if the subcontractor becomes unregistered during the course of the work without the knowledge of the contractor.

Appropriation: None.

Fiscal Note: Requested on February 6, 1995.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (1) It is very difficult for contractors who comply with the laws to compete with those who do not. The cost of bids cannot compare when one is paying all of his or her taxes and the other is not. Homeowners should also realize that they are creating liability for themselves if they hire an unregistered contractor and an injury occurs during the project. The revenue loss to the state is enormous, with studies indicating that as much as \$400 to 600 million is lost annually. (2) More needs to be done to educate the public about the problems associated with unregistered

contractors. Also, homeowners need to be more responsible about the bids they accept. They should be held accountable for contracting with an unregistered contractor. Consumers often knowingly contract with an unregistered contractor to save money. (3) This bill will assist the Department of Labor and Industries to do a better job of enforcement by clarifying some of the gray areas. It has been shown that increasing enforcement has a large impact on the number of contractors who become registered. (4) The bill is the product of several years of work, with consensus reached by all the parties involved in the study group. The bill attempts to reduce advertising by unregistered contractors by giving more authority to the department to get information about these contractors. (5) The bill is needed to attempt to solve the "underground" economy problem in this industry. (6) Although some in the industry favor raising the bond amount, it is not a consensus position. However, more consumer protection is possible if better enforcement is in place. The work group recognized this and tried to narrow the focus of its efforts.

Testimony Against: It will be difficult for the newspapers, especially the smaller businesses, to comply with the subpoena requirements as drafted. These newspapers handle many different advertising purchases every day. They will not be able to track all the contractor ads and keep these records.

Testified: (In Favor) Frank Stull; Frank Immel, Roofing Contractors Association; Gary Smith, Independent Business Association; Brian Minnich, Bob Blayden, and Jack Tenhulzen, Building Industry Association of Washington; Rick Slunaker, Associated General Contractors; Robert Dilger, Washington Building and Construction Trades Council; Dick King, International Brotherhood of Electrical Workers; Doug Bohlke, Jeff Yusen, and Don Sirkin, Contractors Bonding and Insurance Company; and Art Favinger. (Opposed) Roland Thompson, Allied Daily Newspapers.