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**SUBSTITUTE SENATE BILL 6638**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senate Committee on Commerce & Labor (originally sponsored by Senators Horn, Schow and Oke)

Read first time 02/06/98.

1 AN ACT Relating to consumer protection regarding contractors;  
2 amending RCW 18.27.010, 18.27.030, 18.27.040, 18.27.050, 18.27.100,  
3 18.27.114, 18.27.340, 60.04.021, 60.04.031, and 60.04.041; adding a new  
4 section to chapter 82.01 RCW; adding new sections to chapter 18.27 RCW;  
5 adding new sections to chapter 43.131 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 18.27.010 and 1997 c 314 s 2 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Contractor" means any person, firm, or corporation who or  
12 which, in the pursuit of an independent business undertakes to, or  
13 offers to undertake, or submits a bid to, construct, alter, repair, add  
14 to, subtract from, improve, move, wreck or demolish, for another, any  
15 building, highway, road, railroad, excavation or other structure,  
16 project, development, or improvement attached to real estate or to do  
17 any part thereof including the installation of carpeting or other floor  
18 covering, the erection of scaffolding or other structures or works in  
19 connection therewith or who installs or repairs roofing or siding; or,

1 who, to do similar work upon his or her own property, employs members  
2 of more than one trade upon a single job or project or under a single  
3 building permit except as otherwise provided herein. "Contractor"  
4 includes any person, firm, or corporation covered by this subsection,  
5 whether or not registered as required under this chapter.

6 (2) "General contractor" means a contractor whose business  
7 operations require the use of more than two unrelated building trades  
8 or crafts whose work the contractor shall superintend or do in whole or  
9 in part. "General contractor" shall not include an individual who does  
10 all work personally without employees or other "specialty contractors"  
11 as defined in this section. The terms "general contractor" and  
12 "builder" are synonymous.

13 (3) "Specialty contractor" means a contractor whose operations do  
14 not fall within the foregoing definition of "general contractor".

15 (4) "Substantial completion" means the earliest occurrence of  
16 either: (a) The date upon which the work of improvement has been  
17 completed as specified under the contract; (b) the date upon which the  
18 improvement becomes usable or fit for the purposes for which it was  
19 intended; (c) the date of issuance of a certificate of occupancy; or  
20 (d) the date of occupation or use of the improvement by the owner or an  
21 agent of the owner.

22 (5) "Unregistered contractor" means a person, firm, or corporation  
23 doing work as a contractor without being registered in compliance with  
24 this chapter. "Unregistered contractor" ~~((includes contractors whose~~  
25 ~~registration is expired for more than thirty days beyond the renewal~~  
26 ~~date or has been suspended))~~ does not include those contractors who  
27 have complied with all the requirements for registration but have not  
28 had their application processed by the department.

29 ~~((+5))~~ (6) "Work of improvement" means work performed or provided,  
30 including labor, materials, equipment, and professional services, that  
31 led to the improvement of real property for a private or public owner.  
32 Work of improvement includes incremental improvements that are in  
33 themselves complete but do not necessarily bring a property improvement  
34 to a state of substantial completion.

35 (7) "Department" means the department of labor and industries.

36 ~~((+6))~~ (8) "Director" means the director of the department of  
37 labor and industries.

38 ~~((+7))~~ (9) "Verification" means the receipt and duplication by the  
39 city, town, or county of a contractor registration card that is current

1 on its face, checking the department's contractor registration data  
2 base, or calling the department to confirm that the contractor is  
3 registered.

4 (10) "Residential homeowner" means an individual person or persons  
5 owning real property upon which one single-family residence is to be  
6 built or upon which there is a single-family residence to which  
7 construction improvements are to be made and in which the owner intends  
8 to reside upon completion of any construction.

9 (11) "Partnership" means any business formed under Title 25 RCW.

10 **Sec. 2.** RCW 18.27.030 and 1997 c 314 s 4 are each amended to read  
11 as follows:

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

16 (a) Employer social security number.

17 (b) As applicable: (i) The industrial insurance account number  
18 covering employees domiciled in Washington; and (ii) evidence of  
19 workers' compensation coverage in the applicant's state of domicile for  
20 the applicant's employees working in Washington who are not domiciled  
21 in Washington.

22 (c) Employment security department number.

23 (d) State excise tax registration number.

24 (e) Unified business identifier (UBI) account number may be  
25 substituted for the information required by (b), (c), and (d) of this  
26 subsection.

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

29 (g) The name and address of each partner if the applicant be a firm  
30 or partnership, or the name and address of the owner if the applicant  
31 be an individual proprietorship, or the name and address of the  
32 corporate officers and statutory agent, if any, if the applicant be a  
33 corporation. The information contained in such application shall be a  
34 matter of public record and open to public inspection.

35 (2) The department may verify the workers' compensation coverage  
36 information provided by the applicant under subsection (1)(b) of this  
37 section, including but not limited to information regarding the  
38 coverage of an individual employee of the applicant. If coverage is

1 provided under the laws of another state, the department may notify the  
2 other state that the applicant is employing employees in Washington.

3 (3)(a) The department shall deny an application for registration  
4 if: (i) The applicant has been previously registered as a sole  
5 proprietor, partnership, or corporation and the department has notice  
6 that the applicant has an unsatisfied final judgment against him or her  
7 in an action based on this chapter that was incurred during a previous  
8 registration under this chapter; or (ii) the applicant was a principal  
9 or officer named on a previous application of a previously registered  
10 partnership or corporation that has an unsatisfied final judgment  
11 against it in an action based on this chapter that was incurred during  
12 a previous registration under this chapter.

13 (b) The department shall suspend any active registration if the  
14 department has notice that the registrant is a sole proprietor or a  
15 principal or officer named in the application of another registered  
16 entity that has an unsatisfied final judgment against it.

17 (4) For the purposes of this section, "an unsatisfied final  
18 judgment" includes a judgment assigned under RCW 19.72.070.

19 **Sec. 3.** RCW 18.27.040 and 1997 c 314 s 5 are each amended to read  
20 as follows:

21 (1)(a) Each applicant shall file with the department a surety bond  
22 issued by a surety insurer who meets the requirements of chapter 48.28  
23 RCW in ~~((the sum of six thousand dollars if the applicant is a general~~  
24 ~~contractor and four thousand dollars if the applicant is a specialty~~  
25 ~~contractor)) accordance with the following schedule:~~

26 (i) If the gross revenue of the applicant for the four quarters  
27 preceding the date of the application is more than seven and one-half  
28 million dollars, the applicant shall furnish a bond of fifty thousand  
29 dollars;

30 (ii) If the gross revenue of the applicant for the four quarters  
31 preceding the date of the application is more than two million dollars  
32 but less than or equal to seven and one-half million dollars, the  
33 applicant shall furnish a bond of twenty-five thousand dollars; and

34 (iii) If the gross revenue of the applicant for the four quarters  
35 preceding the date of the application is less than two million dollars,  
36 the applicant shall furnish a bond of ten thousand dollars.

37 (b) The department shall, beginning July 1, 2000, adjust the bond  
38 amounts required under (a) of this subsection on a biennial basis by

1 use of either the implicit price deflator for personal consumption or  
2 another tool approved by the office of financial management for  
3 inflationary adjustments. If no valid bond is already on file with the  
4 department at the time the application is filed, a bond must accompany  
5 the registration application. The bond shall have the state of  
6 Washington named as obligee with good and sufficient surety in a form  
7 to be approved by the department. The bond shall be continuous and may  
8 be canceled by the surety upon the surety giving written notice to the  
9 director of its intent to cancel the bond. A cancellation or  
10 revocation of the bond or withdrawal of the surety from the bond  
11 suspends the registration issued to the registrant until a new bond or  
12 reinstatement notice has been filed and approved as provided in this  
13 section. The bond shall be conditioned that the applicant will pay all  
14 persons performing labor, including employee benefits, for the  
15 contractor, will pay all taxes and contributions due to the state of  
16 Washington, and will pay all persons furnishing labor or material or  
17 renting or supplying equipment to the contractor and will pay all  
18 amounts that may be adjudged against the contractor by reason of breach  
19 of contract including negligent or improper work in the conduct of the  
20 contracting business. A change in the name of a business or a change  
21 in the type of business entity shall not impair a bond for the purposes  
22 of this section so long as one of the original applicants for such bond  
23 maintains partial ownership in the business covered by the bond.

24 (2) Any contractor registered as of July 1, 1997, who maintains  
25 such registration in accordance with this chapter shall be in  
26 compliance with this chapter until the next annual renewal of the  
27 contractor's certificate of registration. At that time, the contractor  
28 shall provide a bond, cash deposit, or other security deposit as  
29 required by this chapter and comply with all of the other provisions of  
30 this chapter before the department shall renew the contractor's  
31 certificate of registration.

32 (3) One-half of the amount of the surety bond or the security  
33 deposit held by the department shall be reserved for claims by  
34 residential homeowners with a right to make claims against the bond or  
35 deposit. If, within the time required under subsection (4) of this  
36 section for actions on the bond or deposit, no residential homeowners  
37 have commenced an action upon the bond or the security deposit, the  
38 amount reserved for claims by residential homeowners shall be used to  
39 satisfy any other claims filed in accordance with this section. This

1 subsection shall not apply to commercial contractors with no  
2 residential homeowners as clients.

3 (4) Any person, firm, or corporation having a claim against the  
4 contractor for any of the items referred to in this section may bring  
5 suit upon the bond or deposit in the superior court of the county in  
6 which the work was done or of any county in which jurisdiction of the  
7 contractor may be had. The surety issuing the bond shall be named as  
8 a party to any suit upon the bond. Action upon the bond or deposit  
9 shall be commenced by filing the summons and complaint with the clerk  
10 of the appropriate superior court within one year from the date of  
11 expiration of the certificate of registration in force at the time the  
12 claimed labor was performed and benefits accrued, taxes and  
13 contributions owing the state of Washington became due, materials and  
14 equipment were furnished, or the claimed contract work was completed,  
15 substantially completed, or abandoned. Service of process in an action  
16 against the contractor, the contractor's bond, or the deposit shall be  
17 exclusively by service upon the department. Three copies of the  
18 summons and complaint and a fee of ten dollars to cover the handling  
19 costs shall be served by registered or certified mail upon the  
20 department at the time suit is started and the department shall  
21 maintain a record, available for public inspection, of all suits so  
22 commenced. Service is not complete until the department receives the  
23 ten-dollar fee and three copies of the summons and complaint. The  
24 service shall constitute service on the registrant and the surety for  
25 suit upon the bond or deposit and the department shall transmit the  
26 summons and complaint or a copy thereof to the registrant at the  
27 address listed in the registrant's application and to the surety within  
28 forty-eight hours after it shall have been received.

29 ~~((4))~~ (5) The surety upon the bond shall not be liable in an  
30 aggregate amount in excess of the amount named in the bond nor for any  
31 monetary penalty assessed pursuant to this chapter for an infraction.  
32 The liability of the surety shall not cumulate where the bond has been  
33 renewed, continued, reinstated, reissued or otherwise extended. The  
34 surety upon the bond may, upon notice to the department and the  
35 parties, tender to the clerk of the court having jurisdiction of the  
36 action an amount equal to the claims thereunder or the amount of the  
37 bond less the amount of judgments, if any, previously satisfied  
38 therefrom and to the extent of such tender the surety upon the bond  
39 shall be exonerated but if the actions commenced and pending at any one

1 time exceed the amount of the bond then unimpaired, claims shall be  
2 satisfied from the bond in the following order:

3 (a) Employee labor and claims of laborers, including employee  
4 benefits;

5 (b) Claims for breach of contract by a party to the construction  
6 contract;

7 (c) Registered subcontractors, material, and equipment;

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

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

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

14 ~~((+5))~~ (6) If a final judgment impairs the liability of the surety  
15 upon the bond so furnished that there shall not be in effect a bond  
16 undertaking in the full amount prescribed in this section, the  
17 department shall suspend the registration of the contractor until the  
18 bond liability in the required amount unimpaired by unsatisfied  
19 judgment claims is furnished. If the bond becomes fully impaired, a  
20 new bond must be furnished at the rates prescribed by this section.

21 ~~((+6))~~ (7) In lieu of the surety bond required by this section the  
22 contractor may file with the department a deposit consisting of cash or  
23 other security acceptable to the department.

24 ~~((+7))~~ (8) Any person having filed and served a summons and  
25 complaint as required by this section having an unsatisfied final  
26 judgment against the registrant for any items referred to in this  
27 section may execute upon the security held by the department by serving  
28 a certified copy of the unsatisfied final judgment by registered or  
29 certified mail upon the department within one year of the date of entry  
30 of such judgment. Upon the receipt of service of such certified copy  
31 the department shall pay or order paid from the deposit, through the  
32 registry of the superior court which rendered judgment, towards the  
33 amount of the unsatisfied judgment. The priority of payment by the  
34 department shall be the order of receipt by the department, but the  
35 department shall have no liability for payment in excess of the amount  
36 of the deposit.

37 ~~((+8))~~ (9) The director may adopt rules necessary for the proper  
38 administration of the security.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 82.01 RCW  
2 to read as follows:

3        The department of revenue shall verify, upon inquiry from the  
4 department of labor and industries, if a contractor's gross revenues  
5 fall within the ranges entered on the contractor's application under  
6 RCW 18.27.040(1)(a).

7        **Sec. 5.**    RCW 18.27.050 and 1987 c 303 s 1 are each amended to read  
8 as follows:

9        (1) At the time of registration and subsequent reregistration, the  
10 applicant shall furnish insurance or financial responsibility in the  
11 form of an assigned account in the amount of (~~twenty~~) fifty thousand  
12 dollars for injury or damages to property, and (~~fifty~~) one hundred  
13 thousand dollars for injury or damage including death to any one  
14 person, and (~~one~~) two hundred thousand dollars for injury or damage  
15 including death to more than one person (~~or financial responsibility~~  
16 ~~to satisfy these amounts~~)).

17        (2) Failure to maintain insurance or financial responsibility  
18 relative to the contractor's activities shall be cause to suspend or  
19 deny the contractor his or her or their registration.

20        (3)(a) Proof of financial responsibility authorized in this section  
21 may be given by providing, in the amount required by subsection (1) of  
22 this section, an assigned account acceptable to the department. The  
23 assigned account shall be held by the department to satisfy any  
24 execution on a judgment issued against the contractor for damage to  
25 property or injury or death to any person occurring in the contractor's  
26 contracting operations, according to the provisions of the assigned  
27 account agreement. The department shall have no liability for payment  
28 in excess of the amount of the assigned account.

29        (b) The assigned account filed with the director as proof of  
30 financial responsibility shall be canceled at the expiration of three  
31 years after:

32        (i) The contractor's registration has expired or been revoked; or

33        (ii) The contractor has furnished proof of insurance as required by  
34 subsection (1) of this section;

35 if, in either case, no legal action has been instituted against the  
36 contractor or on the account at the expiration of the three-year  
37 period.



1 (c) If a contractor chooses to file an assigned account as  
2 authorized in this section, the contractor shall, on any contracting  
3 project, notify each person with whom the contractor enters into a  
4 contract or to whom the contractor submits a bid that the contractor  
5 has filed an assigned account in lieu of insurance and that recovery  
6 from the account for any claim against the contractor for property  
7 damage or personal injury or death occurring in the project requires  
8 the claimant to obtain a court judgment.

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

11 (1) Any moneys released to or obtained by an owner, developer,  
12 prime contractor, subcontractor, or person in charge of a construction  
13 project in connection with a work of improvement, shall be regarded and  
14 held in trust for the benefit of those persons making the payment and  
15 those who provided the labor or furnished materials, equipment, or  
16 professional services in connection with the work of improvement giving  
17 rise to the receipt of the moneys. Nothing in this section shall be  
18 interpreted to create any obligation on the part of a lender that has  
19 advanced such moneys to insure that they are properly disbursed.  
20 Except as provided in subsection (3) of this section, the use of trust  
21 moneys for any other purpose than to first pay when due those persons  
22 for whom the money is held in trust is a violation of this chapter and  
23 chapter 19.86 RCW. The filing of a lien by a person for whom the money  
24 is held in trust creates the presumption that the obligations of this  
25 section have not been met, and any person holding the money in trust  
26 shall then have the burden of showing that their obligations under this  
27 section have been met.

28 (2) Nothing contained in this section shall be construed as  
29 requiring moneys held in trust by an owner, contractor, or  
30 subcontractor under subsection (1) of this section to be placed in a  
31 separate account. If an owner, contractor, or subcontractor commingles  
32 moneys held in trust under this section with other moneys, the mere  
33 commingling of the moneys does not constitute a violation of this  
34 chapter.

35 (3) Unless otherwise agreed to in writing, up to ten percent of any  
36 payment that is due to those persons for whom the money is held in  
37 trust may be withheld until completion of the work of improvement. The  
38 amounts withheld shall remain in trust and shall be released no later

1 than sixty days from the date of substantial completion of the work of  
2 improvement. If there is a good faith dispute over release of any  
3 amount withheld, no more than one hundred fifty percent of the  
4 estimated value of the issue in dispute may be withheld.

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

7 (1) The owner of real property shall pay amounts due the prime  
8 contractor for a work of improvement no later than thirty days after  
9 receipt of draws or loan disbursements, or receipt, possession, or  
10 availability, regardless of source, of construction funds. The prime  
11 contractor shall pay amounts due subcontractors and suppliers for a  
12 work of improvement, and the subcontractor shall pay amounts due their  
13 suppliers and lower tier subcontractors for a work of improvement, no  
14 later than thirty days after receipt of draws, progress payments, or  
15 final payment for that work of improvement.

16 (2) If there is a written notice of a good faith dispute over all  
17 or any portion of the amount due from the owner to the prime  
18 contractor, prime contractor to a subcontractor, subcontractor to a  
19 subcontractor, or contractor to a supplier, then the owner, prime  
20 contractor, or subcontractor may withhold no more than one hundred  
21 fifty percent of the disputed amount.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.27 RCW  
23 to read as follows:

24 Sections 6 and 7 of this act shall apply only to works of  
25 improvement for residential homeowners.

26 **Sec. 9.** RCW 18.27.100 and 1997 c 314 s 9 are each amended to read  
27 as follows:

28 (1) Except as provided in RCW 18.27.065 for partnerships and joint  
29 ventures, no person who has registered under one name as provided in  
30 this chapter shall engage in the business, or act in the capacity, of  
31 a contractor under any other name unless such name also is registered  
32 under this chapter.

33 (2) All advertising and all contracts, correspondence, cards,  
34 signs, posters, papers, and documents which show a contractor's name or  
35 address shall show the contractor's name or address as registered under  
36 this chapter.

1 (3)(a) All advertising that shows the contractor's name or address  
2 shall show the contractor's current registration number. The  
3 registration number may be omitted in an alphabetized listing of  
4 registered contractors stating only the name, address, and telephone  
5 number: PROVIDED, That signs on motor vehicles subject to RCW  
6 46.16.010 and on-premise signs shall not constitute advertising as  
7 provided in this section. All materials used to directly solicit  
8 business from retail customers who are not businesses shall show the  
9 contractor's current registration number. A contractor shall not use  
10 a false or expired registration number in purchasing or offering to  
11 purchase an advertisement for which a contractor registration number is  
12 required. Advertising by airwave transmission shall not be subject to  
13 this subsection (3)(a).

14 (b) The director may issue a subpoena to any person or entity  
15 selling any advertising subject to this section for the name, address,  
16 and telephone number provided to the seller of the advertising by the  
17 purchaser of the advertising. The subpoena must have enclosed a  
18 stamped, self-addressed envelope and blank form to be filled out by the  
19 seller of the advertising. If the seller of the advertising has the  
20 information on file, the seller shall, within a reasonable time, return  
21 the completed form to the department. The subpoena must be issued  
22 before forty-eight hours after the expiration of the issue or  
23 publication containing the advertising or after the broadcast of the  
24 advertising. The good-faith compliance by a seller of advertising with  
25 a written request of the department for information concerning the  
26 purchaser of advertising shall constitute a complete defense to any  
27 civil or criminal action brought against the seller of advertising  
28 arising from such compliance. Advertising by airwave or electronic  
29 transmission is subject to this subsection (3)(b).

30 (4) No contractor shall advertise that he or she is bonded and  
31 insured because of the bond required to be filed and sufficiency of  
32 insurance as provided in this chapter.

33 (5) A contractor shall not falsify a registration number and use  
34 it, or use an expired registration number, in connection with any  
35 solicitation or identification as a contractor. All individual  
36 contractors and all partners, associates, agents, salesmen, solicitors,  
37 officers, and employees of contractors shall use their true names and  
38 addresses at all times while engaged in the business or capacity of a  
39 contractor or activities related thereto.

1 (6) Any advertising by a person, firm, or corporation soliciting  
2 work as a contractor when that person, firm, or corporation is not  
3 registered pursuant to this chapter is a violation of this chapter.

4 (7)(a) The finding of a violation of this section by the director  
5 at a hearing held in accordance with the Administrative Procedure Act,  
6 chapter 34.05 RCW, shall subject the person committing the violation to  
7 a penalty of not more than ((five)) ten thousand dollars as determined  
8 by the director.

9 (b) Penalties under this section shall not apply to a violation  
10 determined to be an inadvertent error.

11 **Sec. 10.** RCW 18.27.114 and 1997 c 314 s 12 are each amended to  
12 read as follows:

13 (1) Any contractor agreeing to perform any contracting project:  
14 (a) For the repair, alteration, or construction of four or fewer  
15 residential units or accessory structures on such residential property  
16 when the bid or contract price totals one thousand dollars or more; or  
17 (b) for the repair, alteration, or construction of a commercial  
18 building when the bid or contract price totals one thousand dollars or  
19 more but less than sixty thousand dollars, must provide the customer  
20 with the following disclosure statement in substantially the following  
21 form using lower case and upper case twelve-point and bold type where  
22 appropriate, prior to starting work on the project:

23 "NOTICE TO CUSTOMER

24 ((This contractor is registered with the state of Washington,  
25 registration no. . . . ., as a general/specialty contractor and  
26 has posted with the state a bond or cash deposit of  
27 \$6,000/\$4,000 for the purpose of satisfying claims against the  
28 contractor for negligent or improper work or breach of contract  
29 in the conduct of the contractor's business. The expiration  
30 date of this contractor's registration is . . . . . This  
31 bond or cash deposit may not be sufficient to cover a claim  
32 which might arise from the work done under your contract. If  
33 any supplier of materials used in your construction project or  
34 any employee of the contractor or subcontractor is not paid by  
35 the contractor or subcontractor on your job, your property may  
36 be liened to force payment. If you wish additional protection,  
37 you may request the contractor to provide you with original

1 ~~"lien release" documents from each supplier or subcontractor on~~  
2 ~~your project. The contractor is required to provide you with~~  
3 ~~further information about lien release documents if you request~~  
4 ~~it. General information is also available from the department~~  
5 ~~of labor and industries."))~~

6 This contractor is registered with the state of Washington,  
7 registration no. . . . , and has posted with the state a bond or  
8 cash deposit of . . . . for the purpose of satisfying claims  
9 against the contractor for negligent or improper work or breach  
10 of contract in the conduct of the contractor's business. The  
11 expiration date of this contractor's registration is . . . . .

12 **THIS BOND OR CASH DEPOSIT MAY NOT BE SUFFICIENT TO COVER A**  
13 **CLAIM WHICH MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

14 This bond or deposit is not for your exclusive use because it  
15 covers all work performed by this contractor. The bond or  
16 deposit is intended to pay valid claims up to . . . . . that  
17 you and other customers, suppliers, subcontractors, or taxing  
18 authorities may have.

19 **FOR GREATER PROTECTION YOU MAY REQUEST YOUR CONTRACTOR TO**  
20 **PROVIDE YOU WITH A PERFORMANCE BOND FOR YOUR JOB.**

21 Your contractor may obtain a performance bond for an additional  
22 fee. A performance bond would give you greater protection in  
23 the event your contractor fails to perform as agreed.

24 **YOUR PROPERTY MAY BE LIENED.**

25 If any supplier of materials used in your construction project  
26 or any employee or subcontractor of your contractor or  
27 subcontractors is not paid, your property may be liened to  
28 force payment and you could pay twice for the same work.

29 **FOR ADDITIONAL PROTECTION, YOU SHOULD MAKE CHECKS PAYABLE**  
30 **JOINTLY TO THE CONTRACTOR AND SUPPLIERS OR SUBCONTRACTORS AND**  
31 **REQUIRE THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN**  
32 **RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR**  
33 **PROJECT.**

34 The contractor is required to provide you with further  
35 information about lien release documents if you request it.

1        General information is also available from the department of  
2        labor and industries by phoning (360) 902-5578."

3        (2) A contractor subject to this section shall notify any consumer  
4 to whom notice is required under subsection (1) of this section if the  
5 contractor's registration has expired or is revoked or suspended by the  
6 department prior to completion or other termination of the contract  
7 with the consumer.

8        (3) No contractor subject to this section may bring or maintain any  
9 lien claim under chapter 60.04 RCW based on any contract to which this  
10 section applies without alleging and proving that the contractor has  
11 provided the customer with a copy of the disclosure statement as  
12 required in subsection (1) of this section.

13        (4) This section does not apply to contracts authorized under  
14 chapter 39.04 RCW or to contractors contracting with other contractors.

15        (5) Failure to comply with this section shall constitute an  
16 infraction under the provisions of this chapter.

17        (6) The department shall produce model disclosure statements, and  
18 public service announcements detailing the information needed to assist  
19 contractors and contractors' customers to comply under this section.  
20 As necessary, the department shall periodically update these education  
21 materials.

22        **Sec. 11.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to  
23 read as follows:

24        (1) Except as otherwise provided in subsection (3) of this section,  
25 a contractor found to have committed an infraction under RCW 18.27.200  
26 shall be assessed a monetary penalty of not less than two hundred  
27 dollars and not more than five thousand dollars.

28        (2) The director may waive collection in favor of payment of  
29 restitution to a consumer complainant.

30        (3) A contractor found to have committed an infraction under RCW  
31 18.27.200 for failure to register shall be assessed a fine of not less  
32 than one thousand dollars, nor more than ~~((five))~~ ten thousand dollars.  
33 The director may reduce the penalty for failure to register, but in no  
34 case below five hundred dollars, if the person becomes registered  
35 within ten days of receiving a notice of infraction and the notice of  
36 infraction is for a first offense.

37        (4) ~~((Monetary penalties collected under this chapter shall be~~  
38 ~~deposited in the general fund.))~~ Revenue generated through fines and

1 penalties for infractions of this chapter shall be retained by the  
2 department for the purposes of administering and enforcing this  
3 chapter.

4 NEW SECTION. Sec. 12. A new section is added to chapter 18.27 RCW  
5 to read as follows:

6 There is created in the department of labor and industries the  
7 professional contractors' board.

8 (1) The board shall consist of:

9 (a) Five contractors who have been actively engaged in the  
10 contracting business for a minimum of five years, two of whom are  
11 contractors primarily engaged in commercial construction, two of whom  
12 are contractors primarily engaged in residential construction, and one  
13 of whom is a specialty contractor. At least three of the contractor  
14 members shall be general contractors and at least one of the contractor  
15 members shall be a specialty contractor;

16 (b) One member of a labor organization representing the building  
17 trades;

18 (c) One local building official; and

19 (d) Four public members who are knowledgeable of and represent  
20 consumer's interests in construction issues but do not meet any of the  
21 qualifications of (a) through (c) of this subsection.

22 (2) All board members shall be appointed by the governor except the  
23 four public members, one of whom shall be appointed by the speaker of  
24 the house of representatives, one of whom shall be appointed by the  
25 minority leader of the house of representatives, one of whom shall be  
26 appointed by the majority leader of the senate, and one of whom shall  
27 be appointed by the minority leader of the senate. The term of office  
28 for each board member shall be for four years. The governor may remove  
29 any member of the board for misconduct, incompetency, or neglect of  
30 duty. Vacancies shall be filled by appointment by the appropriate  
31 person under this subsection for the balance of the unexpired term.

32 (3) The board shall meet at least quarterly. The officers of the  
33 board shall be selected by the board at the first board meeting of each  
34 fiscal year. The chair of the board shall be selected by the board  
35 from among the public members. The board shall adopt bylaws consistent  
36 with this section and chapter 34.05 RCW. Six members constitute a  
37 quorum at a board meeting. Due notice of the time and place of each  
38 meeting must be given each member.

1 (4) Each member of the board shall receive compensation in  
2 accordance with RCW 43.03.240 and shall be reimbursed for travel  
3 expenses in accordance with RCW 43.03.050 and 43.03.060.

4 (5) The board is vested with all functions and duties relating to  
5 the administration of this chapter, except those functions and duties  
6 vested in the department or the director. Notwithstanding any other  
7 provision of state law, the department shall set registration fees  
8 sufficient to meet the obligations of this chapter. A member or  
9 committee of the board may administer oaths and may take testimony and  
10 proofs concerning all matters within the jurisdiction of the board.

11 (6) The board shall, with the approval of the director, appoint a  
12 registrar of contractors and fix the registrar's compensation. The  
13 registrar shall be the executive officer and secretary of the board and  
14 shall carry out all of the administrative duties as provided in this  
15 chapter and as delegated to him or her by the board. Upon the  
16 recommendation of the registrar, the board may appoint, with the  
17 approval of the director, such other administrative officers or staff  
18 as are necessary to carry out the administration of this chapter.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 18.27 RCW  
20 to read as follows:

21 The professional contractors' board shall:

22 (1) Examine the potential benefits to consumers of establishing a  
23 licensing process for contractors and make recommendations to the  
24 legislature on: (a) Whether there should be a licensing process; (b)  
25 whether any licensing process should be optional; (c) whether there  
26 should be more than one category of licenses; and (d) if a licensing  
27 process is recommended, what the licensing requirements should be;

28 (2) Review practices of the department relating to enforcement of  
29 contractor requirements and make recommendations to the director  
30 regarding the need for the development of a comprehensive enforcement  
31 program and the need for additional inspectors, enforcement staff, and  
32 compliance officers;

33 (3) Review practices of the department relating to consumer  
34 awareness and contractor education and determine the best methods for:  
35 (a) Educating consumers on ways to protect themselves from financial  
36 loss when using contractors; and (b) informing contractors of the  
37 contractors' obligations under this chapter;



1 (4) Establish and administer a recovery account for homeowners who,  
2 after recovering against a bond, still have unrecovered losses. The  
3 fund must be established within the department with proceeds from  
4 penalties and fines levied against contractors. The director shall  
5 direct ten percent of contractor registration fees into the recovery  
6 account. The board shall establish a cap on the amount of money in the  
7 fund;

8 (5) Examine current dispute resolution mechanisms available for  
9 construction disputes and develop such alternative processes as the  
10 board determines will best meet consumers' needs;

11 (6) Manage a consumer complaint process, investigate consumer  
12 complaints, and maintain a computerized enforcement tracking system for  
13 consumer complaints;

14 (7) Make recommendations to the director on such rules as the board  
15 determines are necessary to carry out the intent and purposes of this  
16 chapter; and

17 (8) Make a report available to the public by December 1st, of each  
18 year. The report must include any findings, recommendations, or action  
19 taken by the board. A copy of the report must be sent to the director  
20 and to the legislature.

21 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.131  
22 RCW to read as follows:

23 The professional contractors' board shall be terminated on June 30,  
24 2003, as provided in section 15 of this act.

25 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131  
26 RCW to read as follows:

27 The following acts or parts of acts, as now existing or hereafter  
28 amended, are each repealed, effective June 30, 2004:

29 (1) RCW 18.27.--- and 1998 c . . . s 12 (section 12 of this act);  
30 and

31 (2) RCW 18.27.--- and 1998 c . . . s 13 (section 13 of this act).

32 **Sec. 16.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read  
33 as follows:

34 Except as provided in RCW 60.04.031, any person furnishing labor,  
35 professional services, materials, or equipment for the improvement of  
36 real property shall have a lien upon the improvement for the contract

1 price of labor, professional services, materials, or equipment  
2 furnished at the instance of the owner, or the agent or construction  
3 agent of the owner. With the exception of lien claims by laborers, the  
4 right to claim a lien upon the improvement of residential property may  
5 not be exercised if the prime contractor is not registered or licensed  
6 as required by law.

7 **Sec. 17.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read  
8 as follows:

9 (1) Except as otherwise provided in this section, every person  
10 furnishing professional services, materials, or equipment for the  
11 improvement of real property shall give the owner or reputed owner  
12 notice in writing of the right to claim a lien. If the prime  
13 contractor is in compliance with the requirements of RCW 19.27.095,  
14 60.04.230, and 60.04.261, this notice shall also be given to the prime  
15 contractor as described in this subsection unless the potential lien  
16 claimant has contracted directly with the prime contractor. The notice  
17 may be given at any time but only protects the right to claim a lien  
18 for professional services, materials, or equipment supplied after the  
19 date which is sixty days before:

20 (a) Mailing the notice by certified or registered mail to the owner  
21 or reputed owner; or

22 (b) Delivering or serving the notice personally upon the owner or  
23 reputed owner and obtaining evidence of delivery in the form of a  
24 receipt or other acknowledgement signed by the owner or reputed owner  
25 or an affidavit of service.

26 In the case of new construction of a single-family residence, the  
27 notice of a right to claim a lien may be given at any time but only  
28 protects the right to claim a lien for professional services,  
29 materials, or equipment supplied after a date which is ten days before  
30 the notice is given as described in this subsection.

31 (2) Notices of a right to claim a lien shall not be required of:

32 (a) Persons who contract directly with the owner or the owner's  
33 common law agent;

34 (b) Laborers whose claim of lien is based solely on performing  
35 labor; or

36 (c) Subcontractors who contract for the improvement of real  
37 property directly with the prime contractor, except as provided in  
38 subsection (3)(b) of this section.

1 (3) Persons who furnish professional services, materials, or  
2 equipment in connection with the repair, alteration, or remodel of an  
3 existing owner-occupied single-family residence or appurtenant garage  
4 or in connection with the new construction of a single-family residence  
5 for a residential homeowner:

6 (a) Who contract directly with the (~~owner-occupier~~) owner or  
7 (~~their~~) the owner's common law agent shall not be required to send a  
8 written notice of the right to claim a lien and shall have a lien for  
9 the full amount due under their contract, as provided in RCW 60.04.021;  
10 or

11 (b) Who do not contract directly with the (~~owner-occupier~~) owner  
12 or (~~their~~) the owner's common law agent shall give notice of the  
13 right to claim a lien to the (~~owner-occupier~~) owner. Liens of  
14 persons furnishing professional services, materials, or equipment who  
15 do not contract directly with the (~~owner-occupier~~) owner or (~~their~~)  
16 the owner's common law agent may only be satisfied from amounts not yet  
17 paid to the prime contractor by the owner at the time the notice  
18 described in this section is received, regardless of whether amounts  
19 not yet paid to the prime contractor are due. For the purposes of this  
20 subsection "received" means actual receipt of notice by personal  
21 service, or registered or certified mail, or three days after mailing  
22 by registered or certified mail, excluding Saturdays, Sundays, or legal  
23 holidays.

24 (4) The notice of right to claim a lien described in subsection (1)  
25 of this section, shall include but not be limited to the following  
26 information and shall substantially be in the following form, using  
27 lower-case and upper-case ten-point type where appropriate.

28 NOTICE TO OWNER

29 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
30 CAREFULLY.

31 PROTECT YOURSELF FROM PAYING TWICE

32 To: . . . . . Date: . . . . .  
33 Re: (description of property: Street address or general  
34 location.)  
35 From: . . . . .

1 AT THE REQUEST OF: \_\_\_\_\_ (Name of person ordering the professional  
2 services, materials, or equipment) \_\_\_\_\_

3 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH  
4 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:

5 This notice is sent to you to tell you who is providing professional  
6 services, materials, or equipment for the improvement of your property  
7 and to advise you of the rights of these persons and your  
8 responsibilities. Also take note that laborers on your project may  
9 claim a lien without sending you a notice.

10 OWNER/OCCUPIER OF EXISTING  
11 RESIDENTIAL PROPERTY AND/OR  
12 NEW RESIDENTIAL PROPERTY

13 Under Washington law, those who furnish labor, professional services,  
14 materials, or equipment for the repair, remodel, or alteration of your  
15 owner-occupied principal residence and who are not paid, have a right  
16 to enforce their claim for payment against your property. This claim  
17 is known as a construction lien.

18 The law limits the amount that a lien claimant can claim against your  
19 property. If the improvement to your property is the construction of  
20 a new single-family residence, a lien may be claimed for all  
21 professional services, materials, or equipment furnished after ten days  
22 before this notice was given to you or mailed to you. Claims may only  
23 be made against that portion of the contract price you have not yet  
24 paid to your prime contractor as of the time this notice was given to  
25 you or three days after this notice was mailed to you. Review the back  
26 of this notice for more information and ways to avoid lien claims.

27 COMMERCIAL (~~AND/OR NEW~~  
28 ~~RESIDENTIAL~~) PROPERTY

29 We have or will be providing professional services, materials, or  
30 equipment for the improvement of your commercial (~~or new residential~~)  
31 project. In the event you or your contractor fail to pay us, we may  
32 file a lien against your property. A lien may be claimed for all  
33 professional services, materials, or equipment furnished after a date  
34 that is sixty days before this notice was given to you or mailed to  
35 you(~~, unless the improvement to your property is the construction of~~

1 a new single family residence, then ten days before this notice was  
2 given to you or mailed to you)).

3 Sender: . . . . .  
4 Address: . . . . .  
5 Telephone: . . . . .

6 Brief description of professional services, materials, or equipment  
7 provided or to be provided: . . . . .

8 IMPORTANT INFORMATION  
9 ON REVERSE SIDE

10 IMPORTANT INFORMATION  
11 FOR YOUR PROTECTION

12 This notice is sent to inform you that we have or will provide  
13 professional services, materials, or equipment for the improvement of  
14 your property. We expect to be paid by the person who ordered our  
15 services, but if we are not paid, we have the right to enforce our  
16 claim by filing a construction lien against your property.

17 LEARN more about the lien laws and the meaning of this notice by  
18 discussing them with your contractor, suppliers, Department of Labor  
19 and Industries, the firm sending you this notice, your lender, or your  
20 attorney.

21 COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods  
22 available to protect your property from construction liens. The  
23 following are two of the more commonly used methods.

24 DUAL PAYCHECKS (Joint Checks): When paying your contractor for  
25 services or materials, you may make checks payable jointly to  
26 the contractor and the firms furnishing you this notice.

27 LIEN RELEASES: You may require your contractor to provide lien  
28 releases signed by all the suppliers and subcontractors from  
29 whom you have received this notice. If they cannot obtain lien  
30 releases because you have not paid them, you may use the dual  
31 payee check method to protect yourself.

32 YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

1 YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW  
2 TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT  
3 RECEIVED IT, ASK THEM FOR IT.

4 \* \* \* \* \*

5 (5) Every potential lien claimant providing professional services  
6 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been  
7 commenced, and the professional services provided are not visible from  
8 an inspection of the real property may record in the real property  
9 records of the county where the property is located a notice which  
10 shall contain the professional service provider's name, address,  
11 telephone number, legal description of the property, the owner or  
12 reputed owner's name, and the general nature of the professional  
13 services provided. If such notice is not recorded, the lien claimed  
14 shall be subordinate to the interest of any subsequent mortgagee and  
15 invalid as to the interest of any subsequent purchaser if the mortgagee  
16 or purchaser acts in good faith and for a valuable consideration  
17 acquires an interest in the property prior to the commencement of an  
18 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
19 the professional services being provided. The notice described in this  
20 subsection shall be substantially in the following form:

21 NOTICE OF FURNISHING  
22 PROFESSIONAL SERVICES

23 That on the \_\_\_(day)\_\_\_ day of \_\_\_(month and year)\_\_\_, \_\_\_(name of  
24 provider)\_\_\_ began providing professional services upon or for the  
25 improvement of real property legally described as follows:

26 [Legal Description  
27 is mandatory]

28 The general nature of the professional services provided is . . .  
29 . . . . .  
30 The owner or reputed owner of the real property is . . . . .  
31 . . . . .

32 . . . . .  
33 (Signature)

34 . . . . .  
35 (Name of Claimant)

1 . . . . .  
2 (Street Address)  
3 . . . . .  
4 (City, State, Zip Code)  
5 . . . . .  
6 (Phone Number)

7 (6) A lien authorized by this chapter: (a) Shall not be enforced  
8 against property after a new purchaser has acquired it; and (b) shall  
9 not be enforced unless the lien claimant has complied with the  
10 applicable provisions of this section.

11 (7) For the purposes of this section "commercial property" includes  
12 residential property that is not owned by a residential homeowner.

13 **Sec. 18.** RCW 60.04.041 and 1992 c 126 s 4 are each amended to read  
14 as follows:

15 A contractor or subcontractor required to be registered under  
16 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise  
17 required to be registered or licensed by law, shall be deemed the  
18 construction agent of the owner for the purposes of establishing the  
19 lien created by this chapter only if so registered or licensed.  
20 Persons dealing with contractors or subcontractors may rely, for the  
21 purposes of this section, upon a certificate of registration issued  
22 pursuant to chapter 18.27 RCW or license issued pursuant to chapter  
23 19.28 RCW, or other certificate or license issued pursuant to law,  
24 covering the period when the labor, professional services, material, or  
25 equipment shall be furnished, and the lien rights shall not be lost by  
26 suspension or revocation of registration or license without their  
27 knowledge. Except as provided in RCW 60.04.021, no lien rights  
28 described in this chapter shall be lost or denied by virtue of the  
29 absence, suspension, or revocation of such registration or license with  
30 respect to any contractor or subcontractor not in immediate contractual  
31 privity with the lien claimant.

--- END ---