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SENATE BILL 6638

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State of Washington

55th Legislature

1998 Regular Session

By Senators Horn, Schow and Oke

Read first time 01/23/98. Referred to Committee on Commerce & Labor.

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; repealing RCW 18.27.075; and  
6 prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

1       (~~(7)~~) (9) "Verification" means the receipt and duplication by the  
2 city, town, or county of a contractor registration card that is current  
3 on its face, checking the department's contractor registration data  
4 base, or calling the department to confirm that the contractor is  
5 registered.

6       (10) "Residential homeowner" means an individual person or persons  
7 owning real property upon which one single-family residence is to be  
8 built with a total cost of five hundred thousand dollars or less or  
9 upon which there is a single-family residence to which construction  
10 improvements not exceeding five hundred thousand dollars are to be made  
11 and in which the owner intends to reside upon completion of any  
12 construction.

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

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

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

20       (a) Employer social security number.

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

26       (c) Employment security department number.

27       (d) State excise tax registration number.

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

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

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

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

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

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

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

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

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

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

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

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

4        (b) The department shall, beginning July 1, 2000, adjust the bond  
5 amounts required under (a) of this subsection on a biennial basis by  
6 use of either the implicit price deflator for personal consumption or  
7 another tool approved by the office of financial management for  
8 inflationary adjustments. If no valid bond is already on file with the  
9 department at the time the application is filed, a bond must accompany  
10 the registration application. The bond shall have the state of  
11 Washington named as obligee with good and sufficient surety in a form  
12 to be approved by the department. The bond shall be continuous and may  
13 be canceled by the surety upon the surety giving written notice to the  
14 director of its intent to cancel the bond. A cancellation or  
15 revocation of the bond or withdrawal of the surety from the bond  
16 suspends the registration issued to the registrant until a new bond or  
17 reinstatement notice has been filed and approved as provided in this  
18 section. The bond shall be conditioned that the applicant will pay all  
19 persons performing labor, including employee benefits, for the  
20 contractor, will pay all taxes and contributions due to the state of  
21 Washington, and will pay all persons furnishing labor or material or  
22 renting or supplying equipment to the contractor and will pay all  
23 amounts that may be adjudged against the contractor by reason of breach  
24 of contract including negligent or improper work in the conduct of the  
25 contracting business. A change in the name of a business or a change  
26 in the type of business entity shall not impair a bond for the purposes  
27 of this section so long as one of the original applicants for such bond  
28 maintains partial ownership in the business covered by the bond.

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

37        (3) One-half of the amount of the surety bond or the security  
38 deposit held by the department shall be reserved for claims by  
39 residential homeowners with a right to make claims against the bond or

1 deposit. If, within the time required under subsection (4) of this  
2 section for actions on the bond or deposit, no residential homeowners  
3 have commenced an action upon the bond or the security deposit, the  
4 amount reserved for claims by residential homeowners shall be used to  
5 satisfy any other claims filed in accordance with this section. This  
6 subsection shall not apply to commercial contractors with no  
7 residential homeowners as clients.

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

34 ((+4)) (5) The surety upon the bond shall not be liable in an  
35 aggregate amount in excess of the amount named in the bond nor for any  
36 monetary penalty assessed pursuant to this chapter for an infraction.  
37 The liability of the surety shall not cumulate where the bond has been  
38 renewed, continued, reinstated, reissued or otherwise extended. The  
39 surety upon the bond may, upon notice to the department and the

1 parties, tender to the clerk of the court having jurisdiction of the  
2 action an amount equal to the claims thereunder or the amount of the  
3 bond less the amount of judgments, if any, previously satisfied  
4 therefrom and to the extent of such tender the surety upon the bond  
5 shall be exonerated but if the actions commenced and pending at any one  
6 time exceed the amount of the bond then unimpaired, claims shall be  
7 satisfied from the bond in the following order:

8 (a) Employee labor and claims of laborers, including employee  
9 benefits;

10 (b) Claims for breach of contract by a party to the construction  
11 contract;

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

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

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

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

19 ~~((+5))~~ (6) The court may award reasonable attorneys' fees to a  
20 residential homeowner in a judgment against contractors, principals,  
21 and a contractor's surety bond or deposit and may award interest on any  
22 moneys owed to a residential homeowner. The amount of the awarded  
23 attorneys' fees and interest may be in excess of the amount of the bond  
24 or deposit but the surety upon the bond shall not be liable for an  
25 amount in excess of the named amount as provided in subsection (5) of  
26 this section.

27 (7) If a final judgment impairs the liability of the surety upon  
28 the bond so furnished that there shall not be in effect a bond  
29 undertaking in the full amount prescribed in this section, the  
30 department shall suspend the registration of the contractor until the  
31 bond liability in the required amount unimpaired by unsatisfied  
32 judgment claims is furnished. If the bond becomes fully impaired, a  
33 new bond must be furnished at the rates prescribed by this section.

34 ~~((+6))~~ (8) In lieu of the surety bond required by this section the  
35 contractor may file with the department a deposit consisting of cash or  
36 other security acceptable to the department.

37 ~~((+7))~~ (9) Any person having filed and served a summons and  
38 complaint as required by this section having an unsatisfied final  
39 judgment against the registrant for any items referred to in this

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

11 ~~((+8))~~ (10) The director may adopt rules necessary for the proper  
12 administration of the security.

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

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

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

21 (1) At the time of registration and subsequent reregistration, the  
22 applicant shall furnish insurance or financial responsibility in the  
23 form of an assigned account in the amount of ~~((twenty))~~ fifty thousand  
24 dollars for injury or damages to property, and ~~((fifty))~~ one hundred  
25 thousand dollars for injury or damage including death to any one  
26 person, and ~~((one))~~ two hundred thousand dollars for injury or damage  
27 including death to more than one person ~~((or financial responsibility~~  
28 ~~to satisfy these amounts))~~.

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

32 (3)(a) Proof of financial responsibility authorized in this section  
33 may be given by providing, in the amount required by subsection (1) of  
34 this section, an assigned account acceptable to the department. The  
35 assigned account shall be held by the department to satisfy any  
36 execution on a judgment issued against the contractor for damage to  
37 property or injury or death to any person occurring in the contractor's



1 contracting operations, according to the provisions of the assigned  
2 account agreement. The department shall have no liability for payment  
3 in excess of the amount of the assigned account.

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

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

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

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

13 (c) If a contractor chooses to file an assigned account as  
14 authorized in this section, the contractor shall, on any contracting  
15 project, notify each person with whom the contractor enters into a  
16 contract or to whom the contractor submits a bid that the contractor  
17 has filed an assigned account in lieu of insurance and that recovery  
18 from the account for any claim against the contractor for property  
19 damage or personal injury or death occurring in the project requires  
20 the claimant to obtain a court judgment.

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

23 (1) Any moneys released to or obtained by an owner, developer,  
24 prime contractor, subcontractor, or person in charge of a construction  
25 project in connection with a work of improvement, shall be regarded and  
26 held in trust for the benefit of those persons making the payment and  
27 those who provided the labor or furnished materials, equipment, or  
28 professional services in connection with the work of improvement giving  
29 rise to the receipt of the moneys. Nothing in this section shall be  
30 interpreted to create any obligation on the part of a lender that has  
31 advanced such moneys to insure that they are properly disbursed.  
32 Except as provided in subsection (3) of this section, the use of trust  
33 moneys for any other purpose than to first pay when due those persons  
34 for whom the money is held in trust is a violation of this chapter and  
35 chapter 19.86 RCW. The filing of a lien by a person for whom the money  
36 is held in trust creates the presumption that the obligations of this  
37 section have not been met, and any person holding the money in trust

1 shall then have the burden of showing that their obligations under this  
2 section have been met.

3 (2) Nothing contained in this section shall be construed as  
4 requiring moneys held in trust by an owner, contractor, or  
5 subcontractor under subsection (1) of this section to be placed in a  
6 separate account. If an owner, contractor, or subcontractor commingles  
7 moneys held in trust under this section with other moneys, the mere  
8 commingling of the moneys does not constitute a violation of this  
9 chapter.

10 (3) Unless otherwise agreed to in writing, up to ten percent of any  
11 payment that is due to those persons for whom the money is held in  
12 trust may be withheld until completion of the work of improvement. The  
13 amounts withheld shall remain in trust and shall be released no later  
14 than sixty days from the date of substantial completion of the work of  
15 improvement. If there is a good faith dispute over release of any  
16 amount withheld, no more than one hundred fifty percent of the  
17 estimated value of the issue in dispute may be withheld.

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

20 (1) The owner of real property shall pay amounts due the prime  
21 contractor for a work of improvement no later than ten days after  
22 receipt of draws or loan disbursements, or receipt, possession, or  
23 availability, regardless of source, of construction funds. The prime  
24 contractor shall pay amounts due subcontractors and suppliers for a  
25 work of improvement, and the subcontractor shall pay amounts due their  
26 suppliers and lower tier subcontractors for a work of improvement, no  
27 later than ten days after receipt of draws, progress payments, or final  
28 payment for that work of improvement.

29 (2) If there is a written notice of a good faith dispute over all  
30 or any portion of the amount due from the owner to the prime  
31 contractor, prime contractor to a subcontractor, subcontractor to a  
32 subcontractor, or contractor to a supplier, then the owner, prime  
33 contractor, or subcontractor may withhold no more than one hundred  
34 fifty percent of the disputed amount.

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

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

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

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

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

14 (3)(a) All advertising that shows the contractor's name or address  
15 shall show the contractor's current registration number. The  
16 registration number may be omitted in an alphabetized listing of  
17 registered contractors stating only the name, address, and telephone  
18 number: PROVIDED, That signs on motor vehicles subject to RCW  
19 46.16.010 and on-premise signs shall not constitute advertising as  
20 provided in this section. All materials used to directly solicit  
21 business from retail customers who are not businesses shall show the  
22 contractor's current registration number. A contractor shall not use  
23 a false or expired registration number in purchasing or offering to  
24 purchase an advertisement for which a contractor registration number is  
25 required. Advertising by airwave transmission shall not be subject to  
26 this subsection (3)(a).

27 (b) The director may issue a subpoena to any person or entity  
28 selling any advertising subject to this section for the name, address,  
29 and telephone number provided to the seller of the advertising by the  
30 purchaser of the advertising. The subpoena must have enclosed a  
31 stamped, self-addressed envelope and blank form to be filled out by the  
32 seller of the advertising. If the seller of the advertising has the  
33 information on file, the seller shall, within a reasonable time, return  
34 the completed form to the department. The subpoena must be issued  
35 before forty-eight hours after the expiration of the issue or  
36 publication containing the advertising or after the broadcast of the  
37 advertising. The good-faith compliance by a seller of advertising with  
38 a written request of the department for information concerning the

1 purchaser of advertising shall constitute a complete defense to any  
2 civil or criminal action brought against the seller of advertising  
3 arising from such compliance. Advertising by airwave or electronic  
4 transmission is subject to this subsection (3)(b).

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

8 (5) A contractor shall not falsify a registration number and use  
9 it, or use an expired registration number, in connection with any  
10 solicitation or identification as a contractor. All individual  
11 contractors and all partners, associates, agents, salesmen, solicitors,  
12 officers, and employees of contractors shall use their true names and  
13 addresses at all times while engaged in the business or capacity of a  
14 contractor or activities related thereto.

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

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

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

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

27 (1) Any contractor agreeing to perform any contracting project:  
28 (a) For the repair, alteration, or construction of four or fewer  
29 residential units or accessory structures on such residential property  
30 when the bid or contract price totals one thousand dollars or more; or  
31 (b) for the repair, alteration, or construction of a commercial  
32 building when the bid or contract price totals one thousand dollars or  
33 more but less than sixty thousand dollars, must provide the customer  
34 with the following disclosure statement prior to starting work on the  
35 project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . ., as a general/specialty contractor and has posted with the state a bond or cash deposit of ((\$6,000/\$4,000)) . . . . . for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. This bond or deposit covers all work performed by this contractor and is intended to pay valid claims that you and other customers, suppliers, or subcontractors or taxing authorities may have up to the statutory limit of the bond or deposit. This bond is not a performance bond. Performance bonds can provide greater compensation in the event of nonperformance by your contractor. This bond is not for your exclusive use. The expiration date of this contractor's registration is . . . . . This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. (~~If you wish~~) For additional protection, you ((may)) should make checks payable jointly to the contractor and suppliers or subcontractors or request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

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

(3) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has

1 provided the customer with a copy of the disclosure statement as  
2 required in subsection (1) of this section.

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

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

7 (6) The department shall produce model disclosure statements, and  
8 public service announcements detailing the information needed to assist  
9 contractors and contractors' customers to comply under this section.  
10 As necessary, the department shall periodically update these education  
11 materials.

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

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

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

20 (3) A contractor found to have committed an infraction under RCW  
21 18.27.200 for failure to register shall be assessed a fine of not less  
22 than one thousand dollars, nor more than five thousand dollars. The  
23 director may reduce the penalty for failure to register, but in no case  
24 below five hundred dollars, if the person becomes registered within ten  
25 days of receiving a notice of infraction and the notice of infraction  
26 is for a first offense.

27 (4) ~~((Monetary penalties collected under this chapter shall be  
28 deposited in the general fund.))~~ Revenue generated through fines and  
29 penalties for infractions of this chapter shall be retained by the  
30 department for the purposes of administering and enforcing this  
31 chapter.

32 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.27 RCW  
33 to read as follows:

34 There is created in the department of labor and industries the  
35 professional contractors' board.

36 (1) The board shall consist of:

1 (a) Five contractors who have been actively engaged in the  
2 contracting business for a minimum of five years, two of whom are  
3 contractors primarily engaged in commercial construction, two of whom  
4 are contractors primarily engaged in residential construction, and one  
5 of whom is a specialty contractor. At least three of the contractor  
6 members shall be general contractors and at least one of the contractor  
7 members shall be a specialty contractor;

8 (b) One member of a labor organization representing the building  
9 trades;

10 (c) One local building official; and

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

14 (2) All board members shall be appointed by the governor except the  
15 four public members, one of whom shall be appointed by the speaker of  
16 the house of representatives, one of whom shall be appointed by the  
17 minority leader of the house of representatives, one of whom shall be  
18 appointed by the majority leader of the senate, and one of whom shall  
19 be appointed by the minority leader of the senate. The term of office  
20 for each board member shall be for four years. The governor may remove  
21 any member of the board for misconduct, incompetency, or neglect of  
22 duty. Vacancies shall be filled by appointment by the appropriate  
23 person under this subsection for the balance of the unexpired term.

24 (3) The board shall meet at least quarterly. The officers of the  
25 board shall be selected by the board at the first board meeting of each  
26 fiscal year. The chair of the board shall be selected by the board  
27 from among the public members. The board shall adopt bylaws consistent  
28 with this section and chapter 34.05 RCW. Six members constitute a  
29 quorum at a board meeting. Due notice of the time and place of each  
30 meeting must be given each member.

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

34 (5) The board is vested with all functions and duties relating to  
35 the administration of this chapter, except those functions and duties  
36 vested in the department or the director. Notwithstanding any other  
37 provision of state law, the department shall set registration fees  
38 sufficient to meet the obligations of this chapter. A member or

1 committee of the board may administer oaths and may take testimony and  
2 proofs concerning all matters within the jurisdiction of the board.

3 (6) The board shall, with the approval of the director, appoint a  
4 registrar of contractors and fix the registrar's compensation. The  
5 registrar shall be the executive officer and secretary of the board and  
6 shall carry out all of the administrative duties as provided in this  
7 chapter and as delegated to him or her by the board. Upon the  
8 recommendation of the registrar, the board may appoint, with the  
9 approval of the director, such other administrative officers or staff  
10 as are necessary to carry out the administration of this chapter.

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

13 The professional contractors' board shall:

14 (1) Determine whether establishing a licensing process for  
15 contractors would benefit consumers. If the board determines that  
16 establishing a licensing process for contractors would benefit  
17 consumers, it shall establish the requirements for a contractor's  
18 license and such classifications of specialty contractors' licenses as  
19 it deems appropriate. The requirements may include passage of a  
20 licensing examination administered by the board. The board shall  
21 determine whether licensing will be optional for registered  
22 contractors;

23 (2) Determine whether establishing more than one category of  
24 contractors' licenses would benefit consumers. If the board determines  
25 that more than one category of contractors' licenses would benefit  
26 consumers, the board shall establish the licensing requirements for  
27 each category of contractors;

28 (3) 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 (4) 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 (5) 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 (6) Examine current dispute resolution mechanisms available for  
9 construction disputes and develop and administer such alternative  
10 processes as the board determines will best meet consumers' needs;

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

14 (8) 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 (9) 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.

32 NEW SECTION. **Sec. 19.** RCW 18.27.075 and 1983 c 74 s 2 are each  
33 repealed.

--- END ---