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SENATE BILL 5232

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State of Washington

56th Legislature

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By Senators Horn, Heavey, Fairley, Oke, Franklin, Hochstatter, Kohl-Welles and Winsley

Read first time 01/18/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to consumer protection regarding contractors;  
2 amending RCW 18.27.010, 18.27.030, 18.27.040, 18.27.050, 18.27.070,  
3 18.27.100, 18.27.110, 18.27.114, 18.27.340, 60.04.021, 60.04.031, and  
4 60.04.041; adding new sections to chapter 18.27 RCW; creating a new  
5 section; 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) "Department" means the department of labor and industries.

7 (3) "Director" means the director of the department of labor and  
8 industries.

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

16 ~~((+3))~~ (5) "Partnership" means a business formed under Title 25  
17 RCW.

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

23 (7) "Specialty contractor" means a contractor whose operations do  
24 not fall within the ~~((foregoing))~~ definition of "general  
25 contractor~~((#))~~."

26 ~~((+4))~~ (8) "Substantial completion" means the earliest occurrence  
27 of either: (a) The date upon which the work of improvement has been  
28 completed as specified under the contract; (b) the date upon which the  
29 improvement becomes usable or fit for the purposes for which it was  
30 intended; (c) the date of issuance of a certificate of occupancy; or  
31 (d) the date of occupation or use of the improvement by the owner or an  
32 agent of the owner.

33 (9) "Unregistered contractor" means a person, firm, or corporation  
34 doing work as a contractor without being registered in compliance with  
35 this chapter. "Unregistered contractor" includes contractors whose  
36 registration is expired for more than thirty days beyond the renewal  
37 date or has been suspended.

38 ~~((+5)) "Department" means the department of labor and industries.~~

1       ~~(6) "Director" means the director of the department of labor and~~  
2 ~~industries.~~

3       ~~(7))~~ (10) "Verification" means the receipt and duplication by the  
4 city, town, or county of a contractor registration card that is current  
5 on its face, checking the department's contractor registration data  
6 base, or calling the department to confirm that the contractor is  
7 registered.

8       (11) "Work of improvement" means work performed or provided,  
9 including labor, materials, equipment, and professional services, that  
10 led to the improvement of real property for a private or public owner.  
11 Work of improvement includes incremental improvements that are in  
12 themselves complete but do not necessarily bring a property improvement  
13 to a state of substantial completion.

14       **Sec. 2.** RCW 18.27.030 and 1998 c 279 s 3 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) Evidence of workers' compensation coverage for the applicant's  
22 employees working in Washington, as follows:

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

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

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

34       (c) Employment security department number.

35       (d) State excise tax registration number.

36       (e) Unified business identifier (UBI) account number may be  
37 substituted for the information required by (b) of this subsection if

1 the applicant will not employ employees in Washington, and by (c) and  
2 (d) of this subsection.

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

5 (g) The name and address of each partner if the applicant is a firm  
6 or partnership, or the name and address of the owner if the applicant  
7 is an individual proprietorship, or the name and address of the  
8 corporate officers and statutory agent, if any, if the applicant is a  
9 corporation. The information contained in such application is a matter  
10 of public record and open to public inspection.

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

17 (3)(a) The department shall deny an application for registration  
18 if: (i) The applicant has been previously registered as a sole  
19 proprietor, partnership, or corporation and the department has notice  
20 that the applicant has an unsatisfied final judgment against him or her  
21 in an action based on this chapter that was incurred during a previous  
22 registration under this chapter; or (ii) the applicant was a principal  
23 or officer named on a previous application of a previously registered  
24 partnership or corporation that has an unsatisfied final judgment  
25 against it in an action based on this chapter that was incurred during  
26 a previous registration under this chapter.

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

31 (c) The department shall not deny an application or suspend a  
32 registration because of an unsatisfied final judgment if the  
33 applicant's or registrant's unsatisfied final judgment was the result  
34 of the fraud or negligence of another party.

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

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

1 (1) Each applicant shall file with the department a surety bond  
2 issued by a surety insurer who meets the requirements of chapter 48.28  
3 RCW in the sum of (~~six~~) twelve thousand dollars if the applicant is  
4 a general contractor and (~~four~~) six thousand dollars if the applicant  
5 is a specialty contractor. If no valid bond is already on file with  
6 the department at the time the application is filed, a bond must  
7 accompany the registration application. The bond shall have the state  
8 of Washington named as obligee with good and sufficient surety in a  
9 form to be approved by the department. The bond shall be continuous  
10 and may be canceled by the surety upon the surety giving written notice  
11 to the director of its intent to cancel the bond. A cancellation or  
12 revocation of the bond or withdrawal of the surety from the bond  
13 suspends the registration issued to the registrant until a new bond or  
14 reinstatement notice has been filed and approved as provided in this  
15 section. The bond shall be conditioned that the applicant will pay all  
16 persons performing labor, including employee benefits, for the  
17 contractor, will pay all taxes and contributions due to the state of  
18 Washington, and will pay all persons furnishing labor or material or  
19 renting or supplying equipment to the contractor and will pay all  
20 amounts that may be adjudged against the contractor by reason of breach  
21 of contract including negligent or improper work in the conduct of the  
22 contracting business. A change in the name of a business or a change  
23 in the type of business entity shall not impair a bond for the purposes  
24 of this section so long as one of the original applicants for such bond  
25 maintains partial ownership in the business covered by the bond.

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

34 (3) The total amount paid from a bond or deposit to claimants other  
35 than residential homeowners must not exceed in the aggregate fifty  
36 percent of the statutory bond required by this section.

37 (4) Any person, firm, or corporation having a claim against the  
38 contractor for any of the items referred to in this section may bring  
39 suit upon the bond or deposit in the superior court of the county in

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

24 ((+4)) (5) The surety upon the bond shall not be liable in an  
25 aggregate amount in excess of the amount named in the bond nor for any  
26 monetary penalty assessed pursuant to this chapter for an infraction.  
27 The liability of the surety shall not cumulate where the bond has been  
28 renewed, continued, reinstated, reissued or otherwise extended. The  
29 surety upon the bond may, upon notice to the department and the  
30 parties, tender to the clerk of the court having jurisdiction of the  
31 action an amount equal to the claims thereunder or the amount of the  
32 bond less the amount of judgments, if any, previously satisfied  
33 therefrom and to the extent of such tender the surety upon the bond  
34 shall be exonerated but if the actions commenced and pending at any one  
35 time exceed the amount of the bond then unimpaired, claims shall be  
36 satisfied from the bond in the following order:

37 (a) Employee labor and claims of laborers, including employee  
38 benefits;

1 (b) Claims for breach of contract by a party to the construction  
2 contract;

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

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

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

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

10 (~~(5)~~) (6) If a final judgment impairs the liability of the surety  
11 upon the bond so furnished that there shall not be in effect a bond  
12 undertaking in the full amount prescribed in this section, the  
13 department shall suspend the registration of the contractor until the  
14 bond liability in the required amount unimpaired by unsatisfied  
15 judgment claims is furnished. If the bond becomes fully impaired, a  
16 new bond must be furnished at the rates prescribed by this section.

17 (~~(6)~~) (7) In lieu of the surety bond required by this section the  
18 contractor may file with the department a deposit consisting of cash or  
19 other security acceptable to the department.

20 (~~(7)~~) (8) Any person having filed and served a summons and  
21 complaint as required by this section having an unsatisfied final  
22 judgment against the registrant for any items referred to in this  
23 section may execute upon the security held by the department by serving  
24 a certified copy of the unsatisfied final judgment by registered or  
25 certified mail upon the department within one year of the date of entry  
26 of such judgment. Upon the receipt of service of such certified copy  
27 the department shall pay or order paid from the deposit, through the  
28 registry of the superior court which rendered judgment, towards the  
29 amount of the unsatisfied judgment. The priority of payment by the  
30 department shall be the order of receipt by the department, but the  
31 department shall have no liability for payment in excess of the amount  
32 of the deposit.

33 (~~(8)~~) (9) The director may adopt rules necessary for the proper  
34 administration of the security.

35 **Sec. 4.** RCW 18.27.050 and 1987 c 303 s 1 are each amended to read  
36 as follows:

37 (1) At the time of registration and subsequent reregistration, the  
38 applicant shall furnish insurance or financial responsibility in the

1 form of an assigned account in the amount of (~~twenty~~) fifty thousand  
2 dollars for injury or damages to property, and (~~fifty~~) one hundred  
3 thousand dollars for injury or damage including death to any one  
4 person, and (~~one~~) two hundred thousand dollars for injury or damage  
5 including death to more than one person (~~or financial responsibility~~  
6 ~~to satisfy these amounts~~)).

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

10 (3)(a) Proof of financial responsibility authorized in this section  
11 may be given by providing, in the amount required by subsection (1) of  
12 this section, an assigned account acceptable to the department. The  
13 assigned account shall be held by the department to satisfy any  
14 execution on a judgment issued against the contractor for damage to  
15 property or injury or death to any person occurring in the contractor's  
16 contracting operations, according to the provisions of the assigned  
17 account agreement. The department shall have no liability for payment  
18 in excess of the amount of the assigned account.

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

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

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

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

28 (c) If a contractor chooses to file an assigned account as  
29 authorized in this section, the contractor shall, on any contracting  
30 project, notify each person with whom the contractor enters into a  
31 contract or to whom the contractor submits a bid that the contractor  
32 has filed an assigned account in lieu of insurance and that recovery  
33 from the account for any claim against the contractor for property  
34 damage or personal injury or death occurring in the project requires  
35 the claimant to obtain a court judgment.

36 **Sec. 5.** RCW 18.27.070 and 1997 c 314 s 7 are each amended to read  
37 as follows:



1 The department shall charge fees for issuance, renewal, and  
2 reinstatement of certificates of registration; and changes of name,  
3 address, or business structure. The department shall set the fees by  
4 rule. Notwithstanding any other provision of state law, the department  
5 shall set registration fees sufficient to meet the obligations of  
6 section 14 of this act and this chapter.

7 The entire amount of the fees are to be used solely to cover the  
8 full cost of issuing certificates, filing papers and notices, and  
9 administering and enforcing this chapter. The costs shall include  
10 reproduction, travel, per diem, and administrative and legal support  
11 costs.

12 NEW SECTION. Sec. 6. A new section is added to chapter 18.27 RCW  
13 to read as follows:

14 (1) Any moneys released to or obtained by an owner, developer,  
15 prime contractor, subcontractor, or person in charge of a construction  
16 project in connection with a work of improvement, must be regarded and  
17 held in trust for the benefit of those persons making the payment and  
18 those who provided the labor or furnished materials, equipment, or  
19 professional services in connection with the work of improvement giving  
20 rise to the receipt of the moneys. Nothing in this section may be  
21 interpreted to create any obligation on the part of a lender that has  
22 advanced such moneys to insure that they are properly disbursed. The  
23 failure to pay when due, as provided in section 7 of this act, those  
24 persons for whom the money is held in trust is a violation of this  
25 chapter and chapter 19.86 RCW. The filing of a lien by a person for  
26 whom the money is held in trust creates the presumption that the  
27 obligations of this section have not been met, and any person holding  
28 the money in trust then has the burden of showing that their  
29 obligations under this section have been met.

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

36 NEW SECTION. Sec. 7. A new section is added to chapter 18.27 RCW  
37 to read as follows:

1 The prime contractor shall pay amounts due subcontractors and  
2 suppliers for a work of improvement, and the subcontractor shall pay  
3 amounts due their suppliers and lower tier subcontractors for a work of  
4 improvement, no later than thirty days after the due date contractually  
5 specified or, if there is no due date specified contractually, thirty  
6 days after receipt of draws, progress payments, or final payment for  
7 that work of improvement. If there is a written notice of a dispute  
8 over all or any portion of the amount due from the prime contractor to  
9 a subcontractor, subcontractor to a subcontractor, or contractor to a  
10 supplier, then the prime contractor or subcontractor may withhold no  
11 more than one hundred fifty percent of the disputed amount. Others not  
12 party to a dispute are entitled to full and prompt payment of the  
13 amounts due them.

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

16 Sections 6 and 7 of this act apply only to works of improvement for  
17 residential homeowners.

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

20 (1) If a contractor, whether registered or not, defaults in a  
21 payment, penalty, or fine due to the department, the director or the  
22 director's designee may issue a notice of assessment certifying the  
23 amount due. The notice must be served upon the contractor by mailing  
24 the notice to the contractor by certified mail to the contractor's last  
25 known address or served in the manner prescribed for the service of a  
26 summons in a civil action.

27 (2) A notice of assessment becomes final thirty days from the date  
28 the notice was served upon the contractor unless a written request for  
29 reconsideration is filed with the department or an appeal is filed in  
30 superior court in the manner specified in RCW 34.05.510 through  
31 34.05.598. The request for reconsideration must set forth with  
32 particularity the reason for the contractor's request. The department,  
33 within thirty days after receiving a written request for  
34 reconsideration, may modify or reverse a notice of assessment, or may  
35 hold a notice of assessment in abeyance pending further investigation.  
36 If a final decision of a court in favor of the department is not  
37 appealed within the time allowed by law, then the amount of the

1 unappealed assessment, or such amount of the assessment as is found due  
2 by the final decision of the court, is final.

3 (3) The director or the director's designee may file with the clerk  
4 of any county within the state a warrant in the amount of the notice of  
5 assessment. The clerk of the county in which the warrant is filed  
6 shall immediately designate a superior court cause number for the  
7 warrant, and the clerk shall cause to be entered in the judgment docket  
8 under the superior court cause number assigned to the warrant, the name  
9 of the contractor mentioned in the warrant, the amount of payment,  
10 penalty, or fine due on it, and the date when the warrant was filed.  
11 The aggregate amount of the warrant as docketed is a lien upon the  
12 title to, and interest in, all real and personal property of the  
13 contractor against whom the warrant is issued, the same as a judgment  
14 in a civil case docketed in the office of the clerk. The sheriff shall  
15 proceed upon the warrant in all respects and with like effect as  
16 prescribed by law with respect to execution or other process issued  
17 against rights or property upon judgment in the superior court. The  
18 warrant so docketed is sufficient to support the issuance of writs of  
19 garnishment in favor of the state in a manner provided by law in case  
20 of judgment, wholly or partially unsatisfied. The clerk of the court  
21 is entitled to a filing fee of five dollars, which will be added to the  
22 amount of the warrant. A copy of the warrant must be mailed to the  
23 contractor within three days of filing with the clerk.

24 (4) The director or the director's designee may issue to any  
25 person, firm, corporation, municipal corporation, political subdivision  
26 of the state, a public corporation, or any agency of the state, a  
27 notice and order to withhold and deliver property of any kind  
28 whatsoever when he or she has reason to believe that there is in the  
29 possession of the person, firm, corporation, municipal corporation,  
30 political subdivision of the state, public corporation, or agency of  
31 the state, property that is or will become due, owing, or belonging to  
32 a contractor upon whom a notice of assessment has been served by the  
33 department for payments, penalties, or fines due to the department.  
34 The effect of a notice and order is continuous from the date the notice  
35 and order is first made until the liability out of which the notice and  
36 order arose is satisfied or becomes unenforceable because of lapse of  
37 time. The department shall release the notice and order when the  
38 liability out of which the notice and order arose is satisfied or  
39 becomes unenforceable by reason of lapse of time and shall notify the

1 person against whom the notice and order was made that the notice and  
2 order has been released.

3 The notice and order to withhold and deliver must be served by the  
4 sheriff of the county or by the sheriff's deputy, by certified mail,  
5 return receipt requested, or by an authorized representative of the  
6 director. A person, firm, corporation, municipal corporation,  
7 political subdivision of the state, public corporation, or agency of  
8 the state upon whom service has been made shall answer the notice  
9 within twenty days exclusive of the day of service, under oath and in  
10 writing, and shall make true answers to the matters inquired of in the  
11 notice and order. Upon service of the notice and order, if the party  
12 served possesses any property that may be subject to the claim of the  
13 department, the party shall promptly deliver the property to the  
14 director or the director's authorized representative. The director  
15 shall hold the property in trust for application on the contractor's  
16 indebtedness to the department, or for return without interest, in  
17 accordance with a final determination of a petition for review. In the  
18 alternative, the party shall furnish a good and sufficient surety bond  
19 satisfactory to the director conditioned upon final determination of  
20 liability. If a party served and named in the notice fails to answer  
21 the notice within the time prescribed in this section, the court may  
22 render judgment by default against the party for the full amount  
23 claimed by the director in the notice, together with costs. If a  
24 notice is served upon a contractor and the property subject to it is  
25 wages, the contractor may assert in the answer all exemptions provided  
26 for by chapter 6.27 RCW to which the wage earner is entitled.

27 (5) In addition to the procedure for collection of a payment,  
28 penalty, or fine due to the department as set forth in this section,  
29 the department may recover civil penalties imposed under this chapter  
30 in a civil action in the name of the department brought in the superior  
31 court of the county where the violation is alleged to have occurred.

32 **Sec. 10.** RCW 18.27.100 and 1997 c 314 s 9 are each amended to read  
33 as follows:

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

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

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

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

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

37 ~~(5))~~) A contractor shall not falsify a registration number and use  
38 it, or use an expired registration number, in connection with any  
39 solicitation or identification as a contractor. All individual

1 contractors and all partners, associates, agents, salesmen, solicitors,  
2 officers, and employees of contractors shall use their true names and  
3 addresses at all times while engaged in the business or capacity of a  
4 contractor or activities related thereto.

5 ~~((+6+))~~ (5) Any advertising by a person, firm, or corporation  
6 soliciting work as a contractor when that person, firm, or corporation  
7 is not registered pursuant to this chapter is a violation of this  
8 chapter.

9 ~~((+7+))~~ (6)(a) The finding of a violation of this section by the  
10 director at a hearing held in accordance with the Administrative  
11 Procedure Act, chapter 34.05 RCW, shall subject the person committing  
12 the violation to a penalty of not more than ~~((five))~~ ten thousand  
13 dollars as determined by the director.

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

16 **Sec. 11.** RCW 18.27.110 and 1997 c 314 s 11 are each amended to  
17 read as follows:

18 (1) No city, town or county shall issue a construction building  
19 permit for work which is to be done by any contractor required to be  
20 registered under this chapter without verification that such contractor  
21 is currently registered as required by law. When such verification is  
22 made, nothing contained in this section is intended to be, nor shall be  
23 construed to create, or form the basis for any liability under this  
24 chapter on the part of any city, town or county, or its officers,  
25 employees or agents. However, failure to verify the contractor  
26 registration number results in liability to the city, town, or county  
27 to a penalty to be imposed according to RCW 18.27.100~~((+7+))~~ (6)(a).

28 (2) At the time of issuing the building permit, all cities, towns,  
29 or counties are responsible for:

30 (a) Printing the contractor registration number on the building  
31 permit; and

32 (b) Providing a written notice to the building permit applicant  
33 informing them of contractor registration laws and the potential risk  
34 and monetary liability to the homeowner for using an unregistered  
35 contractor.

36 (3) If a building permit is obtained by an applicant or contractor  
37 who falsifies information to obtain an exemption provided under RCW  
38 18.27.090, the building permit shall be forfeited.

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

- 3       (1) Any contractor agreeing to perform any contracting project:
- 4 (a) For the repair, alteration, or construction of four or fewer
  - 5 residential units or accessory structures on such residential property
  - 6 when the bid or contract price totals one thousand dollars or more; or
  - 7 (b) for the repair, alteration, or construction of a commercial
  - 8 building when the bid or contract price totals one thousand dollars or
  - 9 more but less than sixty thousand dollars, must provide the customer
  - 10 with the following disclosure statement in substantially the following
  - 11 form using lower case and upper case twelve-point and bold type where
  - 12 appropriate, prior to starting work on the project:

13                                   "NOTICE TO CUSTOMER

14       (~~(This contractor is registered with the state of Washington,~~  
15 ~~registration no. . . . ., as a general/specialty contractor and~~

16 ~~has posted with the state a bond or cash deposit of~~  
17 ~~\$6,000/\$4,000 for the purpose of satisfying claims against the~~  
18 ~~contractor for negligent or improper work or breach of contract~~  
19 ~~in the conduct of the contractor's business. The expiration~~  
20 ~~date of this contractor's registration is . . . . . This~~  
21 ~~bond or cash deposit may not be sufficient to cover a claim~~  
22 ~~which might arise from the work done under your contract. If~~  
23 ~~any supplier of materials used in your construction project or~~  
24 ~~any employee of the contractor or subcontractor is not paid by~~  
25 ~~the contractor or subcontractor on your job, your property may~~  
26 ~~be liened to force payment. If you wish additional protection,~~  
27 ~~you may request the contractor to provide you with original~~  
28 ~~"lien release" documents from each supplier or subcontractor on~~  
29 ~~your project. The contractor is required to provide you with~~  
30 ~~further information about lien release documents if you request~~  
31 ~~it. General information is also available from the department~~  
32 ~~of labor and industries."))~~

33       This contractor is registered with the state of Washington,  
34 registration no. . . . ., and has posted with the state a bond or  
35 cash deposit of . . . . . for the purpose of satisfying claims  
36 against the contractor for breach of contract including  
37 negligent or improper work in the conduct of the contractor's

1 business. The expiration date of this contractor's  
2 registration is . . . . .

3 **THIS BOND OR CASH DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A**  
4 **CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

5 This bond or deposit is not for your exclusive use because it  
6 covers all work performed by this contractor. The bond or  
7 deposit is intended to pay valid claims up to . . . . . that  
8 you and other customers, suppliers, subcontractors, or taxing  
9 authorities may have.

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

12 Your contractor may obtain a performance bond for an additional  
13 fee. A performance bond would give you greater protection if  
14 your contractor fails to perform as agreed.

15 **YOUR PROPERTY MAY BE LIENED.**

16 If a supplier of materials used in your construction project or  
17 an employee or subcontractor of your contractor or  
18 subcontractors is not paid, your property may be liened to  
19 force payment and you could pay twice for the same work.

20 **FOR ADDITIONAL PROTECTION, YOU SHOULD MAKE CHECKS PAYABLE**  
21 **JOINTLY TO THE CONTRACTOR AND SUPPLIERS OR SUBCONTRACTORS AND**  
22 **REQUIRE THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN**  
23 **RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR**  
24 **PROJECT.**

25 The contractor is required to provide you with further  
26 information about lien release documents if you request it.  
27 General information is also available from the state Department  
28 of Labor and Industries by phoning (360) 902-5578."

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

34 (3) No contractor subject to this section may bring or maintain any  
35 lien claim under chapter 60.04 RCW based on any contract to which this



1 section applies without alleging and proving that the contractor has  
2 provided the customer with a copy of the disclosure statement as  
3 required in subsection (1) of this section.

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 14.** (1) The professional contractors' advisory  
33 board is created in the department. The director shall appoint the  
34 board to consist of:

35 (a) Five contractors who have been actively engaged in the  
36 contracting business for a minimum of five years, two of whom are  
37 contractors primarily engaged in commercial construction, two of whom

1 are contractors primarily engaged in residential construction, and one  
2 of whom is a specialty contractor. At least three of the contractor  
3 members must be general contractors, and at least one of the contractor  
4 members must be a specialty contractor;

5 (b) One member of a labor organization representing the building  
6 trades;

7 (c) One local building official; and

8 (d) Four public members who are knowledgeable of and represent  
9 consumer's interests in construction issues but do not meet any of the  
10 qualifications of (a) through (c) of this subsection (1).

11 (2) The board shall develop a dispute resolution process for  
12 construction disputes that are currently experienced in the residential  
13 remodeling and construction market and recommend it to the legislature  
14 and the director along with such implementation steps as the board  
15 feels are warranted.

16 (3) Each member of the board will receive compensation in  
17 accordance with RCW 43.03.240 and reimbursement for travel expenses in  
18 accordance with RCW 43.03.050 and 43.03.060.

19 (4) The professional contractors' advisory board is terminated on  
20 February 1, 2000.

21 **Sec. 15.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read  
22 as follows:

23 Except as provided in RCW 60.04.031, any person furnishing labor,  
24 professional services, materials, or equipment for the improvement of  
25 real property shall have a lien upon the improvement for the contract  
26 price of labor, professional services, materials, or equipment  
27 furnished at the instance of the owner, or the agent or construction  
28 agent of the owner. With the exception of lien claims by laborers, the  
29 right to claim a lien upon the improvement of residential property may  
30 not be exercised if the prime contractor is not registered or licensed  
31 as required by law.

32 **Sec. 16.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read  
33 as follows:

34 (1) Except as otherwise provided in this section, every person  
35 furnishing professional services, materials, or equipment for the  
36 improvement of real property shall give the owner or reputed owner  
37 notice in writing of the right to claim a lien. If the prime

1 contractor is in compliance with the requirements of RCW 19.27.095,  
2 60.04.230, and 60.04.261, this notice shall also be given to the prime  
3 contractor as described in this subsection unless the potential lien  
4 claimant has contracted directly with the prime contractor. The notice  
5 may be given at any time but only protects the right to claim a lien  
6 for professional services, materials, or equipment supplied after the  
7 date which is sixty days before:

8 (a) Mailing the notice by certified or registered mail to the owner  
9 or reputed owner; or

10 (b) Delivering or serving the notice personally upon the owner or  
11 reputed owner and obtaining evidence of delivery in the form of a  
12 receipt or other acknowledgement signed by the owner or reputed owner  
13 or an affidavit of service.

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

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

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

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

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

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

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

37 (b) Who do not contract directly with the (~~owner-occupier~~) owner  
38 or (~~their~~) the owner's common law agent shall give notice of the  
39 right to claim a lien to the (~~owner-occupier~~) owner. Liens of

1 persons furnishing professional services, materials, or equipment who  
2 do not contract directly with the (~~owner-occupier~~) owner or (~~their~~)  
3 the owner's common law agent may only be satisfied from amounts not yet  
4 paid to the prime contractor by the owner at the time the notice  
5 described in this section is received, regardless of whether amounts  
6 not yet paid to the prime contractor are due. For the purposes of this  
7 subsection "received" means actual receipt of notice by personal  
8 service, or registered or certified mail, or three days after mailing  
9 by registered or certified mail, excluding Saturdays, Sundays, or legal  
10 holidays.

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

15 NOTICE TO OWNER

16 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
17 CAREFULLY.

18 PROTECT YOURSELF FROM PAYING TWICE

19 To: . . . . . Date: . . . . .

20 Re: (description of property: Street address or general  
21 location.)

22 From: . . . . .

23 AT THE REQUEST OF: (Name of person ordering the professional  
24 services, materials, or equipment)

25 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH  
26 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:  
27 This notice is sent to you to tell you who is providing professional  
28 services, materials, or equipment for the improvement of your property  
29 and to advise you of the rights of these persons and your  
30 responsibilities. Also take note that laborers on your project may  
31 claim a lien without sending you a notice.

1 OWNER/OCCUPIER OF EXISTING  
2 RESIDENTIAL PROPERTY AND/OR  
3 NEW RESIDENTIAL PROPERTY

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

9 The law limits the amount that a lien claimant can claim against your  
10 property. If the improvement to your property is the construction of  
11 a new single-family residence, a lien may be claimed for all  
12 professional services, materials, or equipment furnished after ten days  
13 before this notice was given to you or mailed to you. Claims may only  
14 be made against that portion of the contract price you have not yet  
15 paid to your prime contractor as of the time this notice was given to  
16 you or three days after this notice was mailed to you. Review the back  
17 of this notice for more information and ways to avoid lien claims.

18 COMMERCIAL (~~AND/OR NEW~~  
19 ~~RESIDENTIAL~~) PROPERTY

20 We have or will be providing professional services, materials, or  
21 equipment for the improvement of your commercial (~~or new residential~~)  
22 project. In the event you or your contractor fail to pay us, we may  
23 file a lien against your property. A lien may be claimed for all  
24 professional services, materials, or equipment furnished after a date  
25 that is sixty days before this notice was given to you or mailed to  
26 you(~~, unless the improvement to your property is the construction of~~  
27 ~~a new single-family residence, then ten days before this notice was~~  
28 ~~given to you or mailed to you~~)).

29 Sender: . . . . .  
30 Address: . . . . .  
31 Telephone: . . . . .

32 Brief description of professional services, materials, or equipment  
33 provided or to be provided: . . . . .

1                                    IMPORTANT INFORMATION  
2                                    ON REVERSE SIDE

3                                    IMPORTANT INFORMATION  
4                                    FOR YOUR PROTECTION

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

10 LEARN more about the lien laws and the meaning of this notice by  
11 discussing them with your contractor, suppliers, Department of Labor  
12 and Industries, the firm sending you this notice, your lender, or your  
13 attorney.

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

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

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

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

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

29                                    \* \* \* \* \*

30         (5) Every potential lien claimant providing professional services  
31 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been  
32 commenced, and the professional services provided are not visible from  
33 an inspection of the real property may record in the real property  
34 records of the county where the property is located a notice which

1 shall contain the professional service provider's name, address,  
2 telephone number, legal description of the property, the owner or  
3 reputed owner's name, and the general nature of the professional  
4 services provided. If such notice is not recorded, the lien claimed  
5 shall be subordinate to the interest of any subsequent mortgagee and  
6 invalid as to the interest of any subsequent purchaser if the mortgagee  
7 or purchaser acts in good faith and for a valuable consideration  
8 acquires an interest in the property prior to the commencement of an  
9 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
10 the professional services being provided. The notice described in this  
11 subsection shall be substantially in the following form:

12 NOTICE OF FURNISHING  
13 PROFESSIONAL SERVICES

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

17 [Legal Description  
18 is mandatory]

19 The general nature of the professional services provided is . . .  
20 . . . . .  
21 The owner or reputed owner of the real property is . . . . .  
22 . . . . .

23 . . . . .  
24 (Signature)

25 . . . . .  
26 (Name of Claimant)

27 . . . . .  
28 (Street Address)

29 . . . . .  
30 (City, State, Zip Code)

31 . . . . .  
32 (Phone Number)

33 (6) A lien authorized by this chapter: (a) Shall not be enforced  
34 against property after a new purchaser has acquired it; and (b) shall

1 not be enforced unless the lien claimant has complied with the  
2 applicable provisions of this section.

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

5 **Sec. 17.** RCW 60.04.041 and 1992 c 126 s 4 are each amended to read  
6 as follows:

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

--- END ---