

2SHB 1393 - H AMD 347

By Representative Springer

ADOPTED AS AMENDED 3/11/2009

1 Strike everything after the enacting clause and insert the
2 following:

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4

"PART I. OFFICE OF CONSUMER EDUCATION FOR HOME CONSTRUCTION

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NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10 RCW to read as follows:

8 (1) The office of consumer education for home construction is
9 created in the office of the attorney general to be the primary point
10 of contact for consumers in matters related to residential purchases
11 and construction.

12 (2) The office of consumer education for home construction shall:

13 (a) Educate consumers about residential purchase and sale
14 agreements and contracting for residential construction services,
15 including the requirements of chapter 18.27 RCW and methods available
16 to protect themselves against loss;

17 (b) Produce written and electronic consumer education materials
18 about purchasing homes, contracting for residential construction
19 services, and legal resources available to consumers;

20 (c) Create a pamphlet explaining a homeowner's legal rights and
21 remedies and provide contractors and other construction professionals
22 with a downloadable version of the pamphlet to attach to contracts for
23 purchase and sale of new residential real property or the substantial
24 remodel of existing residential real property. The office shall
25 periodically update this pamphlet;

26 (d) Identify and work collaboratively with agencies and
27 organizations who are already engaged in consumer education efforts

1 regarding residential purchases and construction, such as the
2 department of labor and industries, the department of licensing, local
3 governments, the construction industry, financial institutions, and
4 other interested organizations and individuals, to increase outreach
5 to consumers;

6 (e) Share consumer education materials with and serve as a
7 resource for agencies and organizations who are already engaged in
8 consumer education;

9 (f) Develop a uniform manner of receiving, cataloging, analyzing,
10 and responding to consumer complaints about residential construction,
11 and develop a system of tracking resolutions of complaints and of
12 claims received under section 8 of this act;

13 (g) Identify which agencies and organizations are already
14 receiving complaints and coordinate with them to ensure that all
15 agencies and organizations are requesting the same information from
16 complaining consumers and that all consumers are referred to the
17 office;

18 (h) Enter into data-sharing agreements with the department of
19 labor and industries, local governments, and other agencies with
20 enforcement duties in residential construction to increase assistance
21 to consumers and enforcement of construction-related laws;

22 (i) Report to the legislature on an annual basis the total number
23 of complaints about residential construction received and the total
24 number of claims filed under section 8 of this act. For complaints,
25 the office of consumer education for home construction shall summarize
26 the nature of the complaints. For claims, the office of consumer
27 education for home construction shall summarize the nature of the
28 claims, the monetary value of the claims, whether claims have been
29 resolved, and any other information that the office deems relevant.
30 The first report is due on January 1, 2010, and subsequent reports are
31 due on November 1st of each year thereafter; and

32 (j) Examine issues involved in establishing a recovery fund to
33 provide compensation to residential real property homeowners through a
34 claim filing process. The office of consumer education for home

1 construction shall consult with appropriate agencies and
2 representatives from organizations involved in the area of residential
3 construction. The office of consumer education for home construction
4 shall make recommendations to the legislature on the creation of a
5 recovery fund by December 1, 2010.

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7 **Sec. 2.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to
8 read as follows:

9 (1) The department shall charge a fee of one hundred dollars for
10 issuing or renewing a certificate of registration during the 2001-2003
11 biennium. The department shall revise this amount at least once every
12 two years for the purpose of recognizing economic changes as reflected
13 by the fiscal growth factor under chapter 43.135 RCW.

14 (2) The department shall also charge a consumer education fee
15 of one hundred dollars per year for issuing or renewing a
16 certificate of registration. The department shall deposit the fee
17 in the consumer education for home construction account created in
18 section 3 of this act.

19
20 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW
21 to read as follows:

22 The consumer education for home construction account is created in
23 the custody of the state treasury for the purpose of funding the
24 office of consumer education for home construction. All fees charged
25 under subsection (2) of section 2 of this act and filing fees charged
26 under section 8 of this act must be deposited into the account.
27 Expenditures from the account may be used only to fund the office of
28 consumer education for home construction. Only the home construction
29 board created under section 6 of this act or the board's designee may
30 authorize expenditure from the account. The account is subject to the
31 allotment procedures under chapter 43.88 RCW, but an appropriation is
32 not required for expenditures.

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1 **Sec. 4.** RCW 43.79A.040 and 2008 c 208 s 9 are each amended to
2 read as follows:

3 (1) Money in the treasurer's trust fund may be deposited,
4 invested, and reinvested by the state treasurer in accordance with RCW
5 43.84.080 in the same manner and to the same extent as if the money
6 were in the state treasury.

7 (2) All income received from investment of the treasurer's trust
8 fund shall be set aside in an account in the treasury trust fund to be
9 known as the investment income account.

10 (3) The investment income account may be utilized for the payment
11 of purchased banking services on behalf of treasurer's trust funds
12 including, but not limited to, depository, safekeeping, and
13 disbursement functions for the state treasurer or affected state
14 agencies. The investment income account is subject in all respects to
15 chapter 43.88 RCW, but no appropriation is required for payments to
16 financial institutions. Payments shall occur prior to distribution of
17 earnings set forth in subsection (4) of this section.

18 (4)(a) Monthly, the state treasurer shall distribute the earnings
19 credited to the investment income account to the state general fund
20 except under (b) and (c) of this subsection.

21 (b) The following accounts and funds shall receive their
22 proportionate share of earnings based upon each account's or fund's
23 average daily balance for the period: The Washington promise
24 scholarship account, the college savings program account, the
25 Washington advanced college tuition payment program account, the
26 agricultural local fund, the American Indian scholarship endowment
27 fund, the foster care scholarship endowment fund, the foster care
28 endowed scholarship trust fund, the students with dependents grant
29 account, the basic health plan self-insurance reserve account, the
30 contract harvesting revolving account, the Washington state combined
31 fund drive account, the commemorative works account, the Washington
32 international exchange scholarship endowment fund, the toll collection
33 account, the developmental disabilities endowment trust fund, the
34 energy account, the fair fund, the family leave insurance account, the

1 food animal veterinarian conditional scholarship account, the fruit
2 and vegetable inspection account, the future teachers conditional
3 scholarship account, the game farm alternative account, the GET ready
4 for math and science scholarship account, the grain inspection
5 revolving fund, the juvenile accountability incentive account, the law
6 enforcement officers' and fire fighters' plan 2 expense fund, the
7 local tourism promotion account, the produce railcar pool account, the
8 regional transportation investment district account, the rural
9 rehabilitation account, the stadium and exhibition center account, the
10 youth athletic facility account, the self-insurance revolving fund,
11 the sulfur dioxide abatement account, the children's trust fund, the
12 Washington horse racing commission Washington bred owners' bonus fund
13 account, the Washington horse racing commission class C purse fund
14 account, the individual development account program account, the
15 Washington horse racing commission operating account (earnings from
16 the Washington horse racing commission operating account must be
17 credited to the Washington horse racing commission class C purse fund
18 account), the life sciences discovery fund, the Washington state
19 heritage center account, the consumer education for home construction
20 account, and the reading achievement account. However, the earnings
21 to be distributed shall first be reduced by the allocation to the
22 state treasurer's service fund pursuant to RCW 43.08.190.

23 (c) The following accounts and funds shall receive eighty percent
24 of their proportionate share of earnings based upon each account's or
25 fund's average daily balance for the period: The advanced right of
26 way revolving fund, the advanced environmental mitigation revolving
27 account, the city and county advance right-of-way revolving fund, the
28 federal narcotics asset forfeitures account, the high occupancy
29 vehicle account, the local rail service assistance account, and the
30 miscellaneous transportation programs account.

31 (5) In conformance with Article II, section 37 of the state
32 Constitution, no trust accounts or funds shall be allocated earnings
33 without the specific affirmative directive of this section.

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1 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.10 RCW
2 to read as follows:

3 For the purposes of sections 6 through 10 of this act, the
4 following definitions apply:

5 (1) "Board" means the home construction board created in section 6
6 of this act.

7 (2) "Claim" means a claim filed with the board against a
8 construction professional under section 8 of this act and does not
9 mean a complaint as that term is used in section 1 of this act.

10 (3) "Construction professional" means a builder, builder-vendor,
11 contractor, subcontractor, or inspector, performing or furnishing the
12 design, supervision, inspection, construction, or observation of the
13 construction, of any improvement to residential real property, whether
14 operating as a sole proprietor, partnership, corporation, or other
15 business entity. "Construction professional" does not include a
16 supplier of materials who has otherwise had no involvement in
17 performing or furnishing the design, supervision, inspection,
18 construction, or observation of the construction, of any improvement
19 to residential real property. "Construction professional" does not
20 include an inspector who is an agent or employee of a local government
21 and acting in his or her official capacity as an inspector.

22 (4) "Contractor" means a contractor, as defined in RCW 18.27.010,
23 that is registered with the department of labor and industries under
24 chapter 18.27 RCW.

25 (5) "Defect" means a deficiency, an inadequacy or an insufficiency
26 arising out of or relating to the construction, alteration, or repair
27 of residential real property. "Defect" also includes a deficiency, an
28 inadequacy or an insufficiency in a system, component, or material
29 incorporated into residential real property.

30 (6) "Damages" means the cost of repairs, or if the cost of repairs
31 is clearly disproportionate to the loss in market value, damages is
32 the loss in market value.

33 (7) "Homeowner" means a person or persons owning residential real
34 property. "Homeowner" does not include government agencies, political

1 subdivisions, financial institutions, and any other entity that
2 purchases, guarantees, or insures a loan secured by real property.
3 "Homeowner" also does not include the spouse, domestic partner, or
4 personal representative of the contractor named in the claim filed
5 under section 8 of this act.

6 (8) "Residential real property" has the same meaning as in section
7 14 of this act.

8
9 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.10 RCW
10 to read as follows:

11 (1) The home construction board is established within the office
12 of consumer education for home construction to administer a
13 residential real property homeowner and construction professional
14 early resolution mediation program.

15 (2) The purpose of the board is to provide homeowners and
16 construction professionals with a cost-effective and time-efficient
17 process to resolve disputes arising from alleged construction.

18 (3) The board consists of the following seven members:

19 (a) Three members possessing a minimum of ten years of
20 experience in the construction of residences and directly, or as
21 employees or officers of a firm, registered under chapter 18.27 RCW;

22 (b) One member possessing a minimum of ten years of experience
23 in the remodeling of residences and directly, or as employees or
24 officers of a firm, registered under chapter 18.27 RCW;

25 (c) One architect licensed under chapter 18.08 RCW or
26 professional engineer registered under chapter 18.43 RCW;

27 (d) One building inspector employed by a city or county; and

28 (e) One member of the general public.

29 (4) Members of the board shall be appointed by the governor with
30 consent of the Senate. The governor shall appoint initial members
31 of the board to staggered terms of from two to four years.
32 Thereafter, all members shall be appointed to full four-year terms.
33 Members of the board hold office until their successors are

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1 appointed. A vacancy shall be filled by appointment by the governor
2 for the unexpired portion of the term in which the vacancy occurs.

3 (5) The board shall select from its members a chair person, vice
4 chair person, and any other officer the board determines is
5 necessary to perform its duties.

6 (6) The board shall meet a minimum of four times per year to carry
7 out its functions.

8 (7) The board may adopt rules to implement the board's duties.

9
10 NEW SECTION. Sec. 7. A new section is added to chapter 43.10 RCW
11 to read as follows:

12 (1) The board shall investigate and mediate claims filed by a
13 homeowner against a construction professional for alleged construction
14 defects to residential real property.

15 (2) The board may use the services of neutral third party experts
16 to assist the board in investigating, assessing, and mediating claims.
17 The board may rely on the national building standards and other
18 recognized standards or codes that the board finds appropriate in
19 investigating and assessing the claim.

20 (3) The board shall dismiss a claim if the board determines that
21 the claim is against a contractor who is not registered under chapter
22 18.27 RCW.

23
24 NEW SECTION. Sec. 8. A new section is added to chapter 43.10 RCW
25 to read as follows:

26 (1) A homeowner of residential real property alleging that a
27 construction professional has performed defective work must, prior to
28 commencing an action against the construction professional, file a
29 claim against the construction professional with the board.

30 (2) The claim shall be in the form required by the board, and
31 shall include, at a minimum:

32 (a) The name and mailing address of the homeowner or the
33 homeowner's legal representative, if any;

34 (b) The address and location of the residential real property;

1 (c) The names and addresses of the construction professionals, to
2 the extent known to the homeowner, who performed the work;

3 (d) Whether the work performed involved construction of new
4 residential real property or a substantial remodel of residential real
5 property and the date that the homeowner took possession of the new
6 residential real property or, for a substantial remodel, the date the
7 work was substantially completed or the project was terminated;

8 (e) A description of the defective work performed and the actual
9 or estimated costs of repair;

10 (f) Any report, estimates, and other documents evidencing the
11 defect and the costs of repair;

12 (g) Whether there is a written contract between the construction
13 professional and the homeowner and whether the contract contains
14 warranties related to the work performed or the materials used.

15 (3) The board may not process a claim against a construction
16 professional unless the claim is filed with the board within the
17 applicable statute of limitations.

18 (4) When a claim is filed with the board within the applicable
19 statute of limitations, the filing of the claim tolls any applicable
20 statute of limitations and any applicable statute of repose for
21 construction-related claims for the period of time until fifteen days
22 after the board provides written notice of completion of mediation.

23 (5) Any action commenced in court by a homeowner prior to
24 compliance with the requirements of this section shall be subject to
25 dismissal without prejudice, and may not be recommenced until the
26 homeowner has complied with the requirements of this section.

27 (6) The board by rule may impose a processing fee for claims filed
28 under this section not to exceed one hundred dollars. The fee shall
29 be deposited into the consumer education for home construction account
30 created under section 3 of this act.

31
32 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.10 RCW
33 to read as follows:
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1 (1) Upon receipt of a claim, the board shall give written notice
2 to the construction professional against whom the claim is made. The
3 notice of the claim shall describe the claim in reasonable detail
4 sufficient to determine the nature of the defect.

5 (2) Within twenty-one days after service of the notice of claim,
6 the construction professional shall serve a written response on the
7 homeowner by registered mail or personal service. The written
8 response shall:

9 (a) Propose to inspect the residence that is the subject of the
10 claim and to complete the inspection within a specified time frame.
11 The proposal shall include the statement that the construction
12 professional shall, based on the inspection, offer to remedy the
13 defect, compromise by payment, or dispute the claim;

14 (b) Offer to compromise and settle the claim by monetary payment
15 without inspection. A construction professional's offer under this
16 subsection (2)(b) to compromise and settle a homeowner's claim may
17 include, but is not limited to, an express offer to purchase the
18 homeowner's residence that is the subject of the claim, and to pay the
19 homeowner's reasonable relocation costs; or

20 (c) State that the construction professional disputes the claim
21 and will neither remedy the defect nor compromise and settle the
22 claim.

23 (3)(a) If the construction professional disputes the claim or does
24 not respond to the notice of claim within the time stated in
25 subsection (2) of this section, the board shall commence an
26 investigation and mediation of the claim.

27 (b) If the homeowner rejects the inspection proposal or the
28 settlement offer made by the construction professional pursuant to
29 subsection (2) of this section, the homeowner shall serve written
30 notice of the rejection on the construction professional and the
31 board. After service of the rejection, the board shall commence an
32 investigation and mediation of the claim.

33 (c) If the construction professional has not received from the
34 homeowner, within thirty days after the homeowner's receipt of the

1 construction professional's response, either an acceptance or
2 rejection of the inspection proposal or settlement offer, then at
3 anytime thereafter the construction professional may terminate the
4 proposal or offer by serving written notice to the homeowner, and the
5 board shall commence an investigation and mediation of the claim.

6 (4)(a) If the homeowner elects to allow the construction
7 professional to inspect in accordance with the construction
8 professional's proposal pursuant to this section, the homeowner shall
9 provide the construction professional and its contractors or other
10 agents reasonable access to the homeowner's residence during normal
11 working hours to inspect the premises and the claimed defect.

12 (b) Within fourteen days following completion of the inspection,
13 the construction professional shall serve on the homeowner:

14 (i) A written offer to remedy the defect at no cost to the
15 homeowner, including a report of the scope of the inspection, the
16 findings and results of the inspection, a description of the
17 additional construction necessary to remedy the defect, and a
18 timetable for the completion of such construction;

19 (ii) A written offer to compromise and settle the claim by
20 monetary payment pursuant to subsection (2)(b) of this section; or

21 (iii) A written statement that the construction professional will
22 not proceed further to remedy the defect.

23 (c) If the construction professional does not proceed further to
24 remedy the defect within the agreed timetable, or if the construction
25 professional fails to comply with the provisions of (b) of this
26 subsection, the homeowner shall provide written notification to the
27 board. The board shall commence an investigation and mediation of the
28 claim.

29 (d) If the homeowner rejects the offer made by the construction
30 professional pursuant to (b)(i) or (ii) of this subsection (4) to
31 either remedy the defect or to compromise and settle the claim by
32 monetary payment, the homeowner shall serve written notice of the
33 rejection on the construction professional and the board. After
34

1 service of the rejection notice, the board shall commence an
2 investigation and mediation of the claim.

3 (e) If the construction professional has not received from the
4 homeowner, within thirty days after the homeowner's receipt of the
5 construction professional's response, either an acceptance or
6 rejection of the offer made pursuant to (b)(i) or (ii) of this
7 subsection (4), then at anytime thereafter the construction
8 professional may terminate the offer by serving written notice to the
9 homeowner.

10 (5)(a) Any homeowner accepting the offer of a construction
11 professional to remedy the defect pursuant to subsection (4)(b)(i) of
12 this section shall do so by serving the construction professional with
13 a written notice of acceptance within a reasonable time period after
14 receipt of the offer, and no later than thirty days after receipt of
15 the offer. The homeowner shall also send a copy of the written notice
16 of acceptance to the board. The homeowner shall provide the
17 construction professional and its contractors or other agents
18 reasonable access to the homeowner's residence during normal working
19 hours to perform and complete the construction by the timetable stated
20 in the offer.

21 (b) The homeowner and construction professional may, by written
22 mutual agreement, alter the extent of construction or the timetable
23 for completion of construction stated in the offer, including, but not
24 limited to, repair of additional defects.

25 (6) Compliance with this section satisfies the requirements of RCW
26 64.50.020.

27
28 NEW SECTION. Sec. 10. A new section is added to chapter 43.10 RCW
29 to read as follows:

30 (1) If, after compliance with the procedures established in
31 section 9 of this act, a resolution has not been reached between the
32 homeowner and construction professional, the board shall investigate
33 the claim.

1 (2) The board may use the services of neutral third party experts
2 to conduct on-site investigations, make recommendations to the board,
3 and assist the board in investigating and mediating claims.

4 (3) After the investigation is complete, the board shall provide
5 the parties with notification of the findings of the investigation.
6 If the parties do not provide the board with written notification
7 within fourteen days after receipt of the findings that the parties
8 have resolved the claim, the board shall mediate the claim.

9 (4) The mediation shall be conducted by a panel of three members
10 of the board in accordance with rules adopted by the board.

11 (5) All proceedings of the mediation conference, including any
12 statement made by any party, attorney or other participant, shall be
13 privileged and not reported, recorded, placed in evidence, used for
14 impeachment, made known to a court or jury, or construed for any
15 purpose as an admission. No party shall be bound by anything done or
16 said at the mediation conference unless a settlement is reached, in
17 which event the agreement upon a settlement shall be reduced to
18 writing and shall be binding upon all parties to that agreement.

19 (6) At the conclusion of the mediation the board shall provide a
20 written notice of the completion of mediation to the parties. The
21 notice shall include a statement of the results of the mediation and a
22 copy of any written settlement agreement between the parties. If the
23 parties did not reach an agreement, the notice shall include a
24 statement that the parties may pursue any other right or remedy
25 provided under statutory or common law. However, a homeowner who
26 files an action under the common law implied warranty of habitability
27 waives any available claim under express contract warranties. A
28 homeowner who files a claim under express contract warranties waives
29 any claim under the common law implied warranty of habitability.

30
31 NEW SECTION. Sec. 11. A new section is added to chapter 43.10 RCW
32 to read as follows:

33 (1) The board shall maintain and make available to the office of
34 consumer education for home construction a record of all claims filed

1 with the board against construction professionals under this chapter
2 and the outcomes of those claims.

3 (2) The office of consumer education for home construction shall
4 compile a summary of the claims into a report for the legislature as
5 required under section 1 of this act.

6
7 NEW SECTION. **Sec. 12.** A new section is added to chapter 64.50 RCW
8 to read as follows:

9 The provisions of RCW 64.50.020 do not apply to a claim filed with
10 the home construction board under sections 8 through 10 of this act.

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PART II. RESIDENTIAL REAL PROPERTY WARRANTIES

14

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

17 (1) The common law implied warranty of habitability may not be
18 disclaimed, waived, modified, or limited by contractual agreement. A
19 provision of any contract for the purchase or sale of newly
20 constructed residential property that purports to disclaim, waive,
21 modify, or limit the implied warranty of habitability is void and
22 unenforceable.

23 (2) The common law implied warranty of habitability for newly
24 constructed residential real property extends to any homeowner who
25 purchases the property within six years of its construction, and is
26 not limited to the initial owner-occupant of the property. A
27 homeowner who purchases the property subsequent to the initial owner-
28 occupant, and within six years of the construction of the property,
29 receives the same protections of the common law implied warranty of
30 habitability as possessed by the person from whom the property was
31 purchased.

32 (3) Damages awarded for a breach of the implied warranty of
33 habitability are the cost of repairs. However, if it is established
34 that the cost of repairs is clearly disproportionate to the loss in

1 market value caused by the breach, damages are limited to the loss in
2 market value.

3
4 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.50
5 RCW to read as follows:

6 (1) Every contract for the sale or construction of new residential
7 real property shall provide for written express warranties to the
8 purchaser or owner of the residential real property.

9 (2) The express warranties shall meet the following requirements:

10 (a) The express warranties must assure timely resolution of
11 homeowners' complaints or claims covered under subsection (j) of this
12 section.

13 (b) The entire cost to the homeowner for the express warranties
14 coverage must be prepaid by the entity providing the express
15 warranties, or the express warranties issuer must give irrevocable
16 coverage, at the time of settlement.

17 (c) Unexpired express warranties coverage must be automatically
18 transferred, without additional cost, to subsequent homeowners.

19 (d) Issued express warranties coverage must be noncancellable by
20 the express warranties issuer or by its insurance backers.

21 (e) Exclusions from express warranties coverage must not defeat
22 coverage objectives stated in subsection (j) of this section and must
23 permit normal homeowner use of the covered property, including normal
24 maintenance and emergency property protection measures.

25 (f) (i) Unless prohibited by applicable law, express warranties
26 must, at a minimum, stipulate that all homeowner complaints covered by
27 express warranties, including those regarding construction
28 deficiencies and structural defects claims, will be settled in the
29 amount of their actual cost to correct or for the original sales price
30 of the property, whichever is the lesser, subject to a deductible not
31 to exceed a total of two hundred fifty dollars for all claims filed by
32 a homeowner during the first two years of coverage and not to exceed a
33 maximum of two hundred fifty dollars per claim during the third
34 through the tenth year of coverage.

1 (ii) A homeowner shall be liable for a deductible only if the
2 entity providing the express warranties defaults on warranty
3 performance and the express warranties issuer has to make the covered
4 corrections. When the entity providing the express warranties
5 performs corrections under the warranties, no deductible that may be
6 included in the express warranties is applicable.

7 (g) In the event of any dispute regarding a homeowner complaint or
8 structural defect claim, express warranties must, unless prohibited by
9 applicable law, provide for binding arbitration proceedings arranged
10 through a nationally recognized dispute settlement organization. The
11 sharing of arbitration charges shall be as determined by the express
12 warranties. Express warranties must contain pre-arbitration
13 conciliation provisions at no cost to the homeowner, and provision for
14 judicial resolution of disputes, but arbitration, which must be
15 available to a homeowner during the entire term of the coverage
16 contract, must be an assured recourse for a dissatisfied homeowner.

17 (h) An express warranties issuer must provide homeowners an
18 executed coverage contract clearly describing:

- 19 (i) The identity of the property covered;
- 20 (ii) The time at which coverage begins;
- 21 (iii) The maximum amount of express warranties liability;
- 22 (iv) Noncancellability of the coverage contract by the express
23 warranties or its insurance backers;
- 24 (v) No-cost transferability of unexpired coverage to successors in
25 title;
- 26 (vi) The property coverage provided;
- 27 (vii) Any exclusions from coverage;
- 28 (viii) Performance standards for resolving homeowner complaints
29 and claims, if standards for complaint and claim adjustment are
30 promulgated as part of the express warranties;
- 31 (ix) Dispute settlement procedures;
- 32 (x) The names, addresses, and telephone numbers of the express
33 warranties issuer and its insurance backers; and

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1 (xi) When, to whom, under what conditions, and to what address
2 homeowners should submit any construction deficiency complaints or
3 structural defects claims.

4 (i) Express warranties will not be required to warrant that a
5 covered property complies with:

6 (i) Original dwelling plans and specifications;

7 (ii) Applicable building codes; or

8 (iii) Specific terms of a homeowner's contract to purchase a
9 property.

10 (j) Express warranties coverage must take effect at closing or
11 settlement following the initial sale of the property to the homeowner
12 and must include the following minimum level of coverage:

13 (i) During the first year of coverage, the express warranties must
14 provide for a warranty against defects in workmanship and materials
15 resulting from the failure of the covered property to comply with
16 standards of quality as measured by acceptable trade practices, as
17 well as correct the problems with, or restore the reliable function
18 of, appliances and equipment damaged during installation or improperly
19 installed. The express warranties must also cover structural defects
20 as defined in subsection (4) of this section.

21 (ii) During the first and second year of coverage, the express
22 warranties must provide a warranty against defects in the wiring,
23 piping and ductwork in the electrical, plumbing, heating, cooling,
24 ventilating, and mechanical systems.

25 (iii) Basement slabs in designated areas must be covered by a
26 warranty against damage from the first through the fourth year.

27 (iv) From the first through the tenth year, structural defect, as
28 defined in subsection (4) of this section, except as provided in (iii)
29 of this subsection (j), must be covered by a warranty in the express
30 warranties.

31 (k) The express warranties must provide insurance coverage for
32 default on any warranty obligation.

33 (3) This section does not apply to condominiums subject to chapter
34 64.34 RCW.

1 (4) For the purposes of this section:

2 (a) "Construction deficiencies" are defects, not of a structural
3 nature, in residential real property covered by express warranties
4 that are attributable to poor workmanship or to the use of inferior
5 materials which result in the impaired functioning of the residential
6 real property or some part thereof. Defects resulting from homeowner
7 abuse or from normal wear and tear are not considered construction
8 deficiencies.

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

11 (c) "Structural defect" is actual physical damage to the
12 designated load-bearing portions of residential real property caused
13 by failure of such load-bearing portions that affects their load-
14 bearing functions to the extent that the structure becomes unsafe,
15 unsanitary, or otherwise unlivable. "Load-bearing components" for the
16 purpose of defining structural defects are defined as follows: footing
17 and foundation systems; beams; girders; lintels; columns; load-bearing
18 walls and partitions; roof framing systems; and floor systems.
19 "Structural defect" does not include damage to the following nonload-
20 bearing portions of the structure: roofing; drywall and plaster;
21 exterior siding; brick, stone, or stucco veneer; floor covering
22 material; wall tile and other wall coverings; nonload-bearing walls
23 and partitions; concrete floors in attached garages; electrical;
24 plumbing, heating, cooling and ventilation systems; appliances,
25 fixtures and items of equipment; paint; doors and windows; trim,
26 cabinets, hardware, and insulation.

27

28

29 **PART III. CONTRACTOR REGISTRATION**

30

31 **Sec. 15.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to
32 read as follows:

33 (1) An applicant for registration as a contractor shall submit an
34 application under oath upon a form to be prescribed by the director

1 and which shall include the following information pertaining to the
2 applicant:

3 (a) Employer social security number.

4 (b) Unified business identifier number.

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

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

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

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

18 (d) Employment security department number.

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

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

24 (g) Type of work performed, whether residential, commercial, or
25 both.

26 (h) The name ((and)), address, social security number, date of
27 birth, and driver's license number of each partner if the applicant is
28 a firm or partnership, or the name ((and)), address, social security
29 number, date of birth, and driver's license number of the owner if the
30 applicant is an individual proprietorship, or the name ((and)),
31 address, social security number, date of birth, and driver's license
32 number of the corporate officers and statutory agent, if any, if the
33 applicant is a corporation, or the name ((and)), address, social
34 security number, date of birth, and driver's license number of all

1 members of other business entities. The information contained in such
2 application is a matter of public record and open to public
3 inspection.

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

7 (j) Disclosure of any bankruptcy proceedings filed by or against
8 the applicant.

9 (k) Information about any construction licenses, certifications,
10 or registrations that have been issued to the applicant by other
11 states. The applicant shall also provide details about any denials,
12 suspensions, revocations, or any enforcement actions related to
13 construction against the applicant by other states.

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

21 (3)(a) The department shall deny an application for registration
22 if: (i) The applicant has been previously performing work subject to
23 this chapter as a sole proprietor, partnership, corporation, or other
24 entity and the department has notice that the applicant has an
25 unsatisfied final judgment against him or her in an action based on
26 work performed subject to this chapter or the applicant owes the
27 department money for penalties assessed or fees due under this chapter
28 as a result of a final judgment; (ii) the applicant was an owner,
29 principal, or officer of a partnership, corporation, or other entity
30 that either has an unsatisfied final judgment against it in an action
31 that was incurred for work performed subject to this chapter or owes
32 the department money for penalties assessed or fees due under this
33 chapter as a result of a final judgment; (iii) the applicant does not
34 have a valid unified business identifier number; (iv) the department

1 determines that the applicant has falsified information on the
2 application, unless the error was inadvertent; ~~((e))~~ (v) the
3 applicant does not have an active and valid certificate of
4 registration with the department of revenue; or (vi) the department
5 has determined that a different state has taken enforcement action
6 against the applicant for activities that would be a violation of this
7 chapter if they had occurred in Washington state.

8 (b) The department shall suspend an active registration if: (i)
9 The department has determined that the registrant has an unsatisfied
10 final judgment against it for work within the scope of this chapter;
11 (ii) the department has determined that the registrant is a sole
12 proprietor or an owner, principal, or officer of a registered
13 contractor that has an unsatisfied final judgment against it for work
14 within the scope of this chapter; (iii) the registrant does not
15 maintain a valid unified business identifier number; (iv) the
16 department has determined that the registrant falsified information on
17 the application, unless the error was inadvertent; ~~((e))~~ (v) the
18 registrant does not have an active and valid certificate of
19 registration with the department of revenue; or (vi) the department
20 has determined that a different state has taken enforcement action
21 against the registrant for activities that would be a violation of
22 this chapter if they had occurred in Washington state.

23 (c) The department may suspend an active registration if the
24 department has determined that an owner, principal, partner, or
25 officer of the registrant was an owner, principal, or officer of a
26 previous partnership, corporation, or other entity that has an
27 unsatisfied final judgment against it.

28 (4) The department shall not deny an application or suspend a
29 registration because of an unsatisfied final judgment if the
30 applicant's or registrant's unsatisfied final judgment was determined
31 by the director to be the result of the fraud or negligence of another
32 party.

33

34

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 18.27
2 RCW to read as follows:

3 A registered contractor, by or against whom a petition in
4 bankruptcy has been filed, shall notify the department of the
5 proceedings in bankruptcy, including the identity and location of the
6 court in which the proceedings are pending, within ten days of the
7 filing.

8
9 NEW SECTION. **Sec. 17.** Sections 5 through 12 of this act take
10 effect January 1, 2010.

11
12 NEW SECTION. **Sec. 18.** Part headings used in this act are not any
13 part of the law."

14
15 Correct the title.

16

EFFECT: The striking amendment makes the following changes:

A. Creates a seven-member Home Construction Board (Board) within the Office of Consumer Education for Home Construction (Office) to investigate and mediate construction defect claims. Allows the Board to use the services of neutral third parties to investigate, assess, and mediate claims.

- Requires a homeowner to file a claim with the Board prior to commencing a lawsuit alleging a construction defect. Requires the Board to dismiss a claim filed against an unregistered contractor.
- Creates notice and opportunity to cure procedures when a homeowner files a claim with the Board.
- Requires the board to investigate and mediate a claim that has not been settled by the parties after the notice and right to cure process.
- Provides that if the parties do not settle the claim through the mediation process, the homeowner may pursue any other right or remedy provided under statutory or common law. However, a homeowner who files a claim under the common law implied warranty of habitability waives the right to pursue any applicable express warranty claim, and a homeowner who files a claim under an express

warranty waives the right to pursue a claim under the common law implied warranty of habitability.

- Allows the Board to impose a fee of up to \$100 for claims filed with the Board.

B. Creates an account to fund the Office and requires the Department of Labor and Industries to charge contractors a \$100 fee to be deposited in the account. Requires the Office to examine issues involved in establishing a recovery fund to provide compensation to residential real property homeowners through a claim filing process.

C. Provides that the common law implied warranty of habitability extends to subsequent purchasers who purchase the property within six years of construction. Limits damages recoverable under the common law implied warranty of habitability to the cost of repairs, or if those are clearly disproportionate to the loss in market value, limits damages to the loss in market value.

D. Removes the statutory implied warranties contained in the underlying bill. Requires every contract for the sale or construction of new residential real property to provide for written express warranties to the purchaser or owner of the property. Provides that the written express warranties must comply with detailed requirements, including minimum levels of coverage.

--- END ---