
Judiciary Committee

HB 1393

Title: An act relating to improving residential real property construction by creating a home construction consumer education office, strengthening warranty protections applicable to residential real property construction, enhancing contractor registration requirements, and establishing worker certification standards.

Brief Description: Addressing residential real property construction improvements through consumer education, warranty protections, contractor registration requirements, and worker certification standards.

Sponsors: Representatives Springer, Kessler, Eddy, Ormsby, Van De Wege, Liias, Morrell, Roberts, Upthegrove and Sullivan.

Brief Summary of Bill

- Establishes the Office of Consumer Education for Home Construction to be the primary point of contact for consumers in the area of residential construction.
- Provides that the common law implied warranty of habitability may not be contractually disclaimed or limited.
- Creates statutory implied warranties applicable to certain components of residential property construction.
- Declares an intent to establish worker certification requirements for those doing construction work in the areas of foundations, framing, siding, roofing, windows and doors.
- Requires applicants for contractor registration to provide additional information and expands the authority of the Department of Labor and Industries to deny or suspend contractor registrations.

Hearing Date: 2/4/09

Staff: Edie Adams (786-7180)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Consumer Education for Residential Construction

A number of agencies and entities independently provide consumer education relating to residential contractors and take consumer complaints against contractors. For example, the Department of Labor and Industries and the Attorney General's Office (AGO) both provide consumer education relating to contractor registration requirements and hiring residential contractors. In addition, private sector entities, such as the Better Business Bureau, provide consumer education regarding residential contractors. These same agencies and entities also take consumer complaints against contractors, but there is no central repository for these complaints and there is very little coordination or sharing of complaint information between these entities.

Warranties for Residential Construction

A homeowner who suffers losses due to defects in the construction of the home may be able to seek redress through a cause of action for breach of contract or for breach of an implied warranty of habitability. There are no statutory warranties governing residential construction, except in the case of condominiums.

Common Law Implied Warranty of Habitability

Under the common law, the buyer of a new home may sue the builder of the home for a breach of an implied warranty of habitability. This warranty covers structural defects in the house and its foundation that make the home unfit for its intended purpose. The warranty extends only to the first purchaser who occupies the home and may not be assigned to subsequent purchasers. The sale must be of a commercial nature and the relative bargaining positions of the parties must be inherently unfair to the buyer. The implied warranty of habitability may be disclaimed by the seller if the disclaimer is conspicuous, known to the buyer, and specifically bargained for.

Statutory Warranties for Condominiums

There are no statutory warranties applicable to new home construction except in the case of condominiums. The Washington Condominium Act (WCA) establishes the following implied warranties: the condominium is suitable for the ordinary uses of real estate of its type and is free from defective materials; and the condominium has been constructed in accordance with sound engineering and construction standards, in a workmanlike manner, and in compliance with all applicable laws. Damages are recoverable only if the breach of the implied warranty had an adverse effect that is more than technical and that would be significant to a reasonable person. Damages that may be awarded for a breach are the cost of repairs. However, if those costs are clearly disproportionate to the diminution in the condominium's market value, damages are limited to the loss in market value.

A cause of action for breach of an implied warranty under the WCA must be brought within four years after the cause of action accrues. For an individual condominium unit, accrual occurs when the purchaser takes possession. For common areas, accrual occurs upon the later of occupancy of a unit or completion of the common area.

Right to Cure Statute

The contractor right to cure statute provides that a homeowner may not file suit against a construction professional for alleged construction defects until the homeowner has given the construction professional notice of the defect and an opportunity to cure the defect within time lines set out in the statute. A suit filed before the owner provides the right to cure notice must be dismissed by the court.

Worker Certification and Contractor Registration

The Contractor Registration Act (Act) requires contractors to register with the Department of Labor and Industries. The definition of "contractor" includes any person who undertakes to construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building or other structure.

An applicant for registration must submit a form that contains certain information, including the applicant's unified business identifier number and the names and addresses of owners, principals, members, or officers of the contracting business. The applicant must also file a surety bond and furnish proof of liability insurance. An applicant is not required to take any special classes or tests to register.

The L&I must deny an application under certain circumstances, including if the applicant owes the L&I penalties or fees, or if the applicant, or a prior business in which the applicant was an owner or principal, has an unsatisfied final judgment in an action based on work performed subject to the Act.

The L&I must suspend an active registration under certain conditions, including where the registrant has, or is an owner or principal of a registered contractor that has, an unsatisfied final judgment against it for work within the scope of the Act. The L&I may suspend a registration if an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

The L&I also administers and enforces laws governing certain construction-related trades. These laws require persons who perform electrical, plumbing, or conveyance work to have appropriate certificates of competency or licenses. There are no certification requirements for other construction workers.

Residential Contractor Study

A budget proviso in 2008 directed the Department of Licensing (DOL) to conduct a review of the need for regulation of contractors involved in the repair, alteration, or construction of single-family homes. The recommendations from the study include:

- Strengthen registration requirements by authorizing the L&I to suspend registration for cause. Establish mechanisms for monitoring industry performance.
- Ensure that enforcement resources are adequate to establish compliance by contractors.
- Strengthen registration by requiring disclosure of prior business names and/or bankruptcy, two years experience in the construction industry, and evidence of training in regulations and business practices in the construction industry.

- Develop and require the use of model construction documents and specify prohibited provisions.
- Create a central complaint repository within state government. Establish a database and encourage state agencies and local authorities to share information in a uniform format.
- Encourage an integrated/coordinated consumer education program. Involve the AGO, L&I, DOL, industry associations, the Better Business Bureau, consumer advocates and other stakeholders sharing common values.

Summary of Bill:

Consumer Education for Residential Construction

The Office of Consumer Education for Home Construction (Office) is created in the AGO to be the primary point of contact for consumers in matters related to residential construction. The duties of the Office include the following:

- Educate consumers about contracting for residential construction services and the legal resources available to consumers.
- Create a pamphlet explaining a homeowner's legal rights and remedies.
- Identify and work collaboratively with agencies and organizations who are already engaged in consumer education efforts in the area of residential construction.
- Develop a uniform manner of receiving, cataloging, analyzing, and responding to consumer complaints about residential construction.
- Enter into data-sharing agreements with other agencies with enforcement duties in residential construction to increase assistance to consumers and enforcement of construction-related laws.

The Office must report to the Legislature on an annual basis regarding the collection of complaints. The first report is due on January 1, 2010, with subsequent reports due on November 1 each year.

Warranties for Residential Construction

Common Law Implied Warranty of Habitability

The common law implied warranty of habitability is modified to provide that it may not be contractually disclaimed, waived, modified or limited.

Statutory Implied Warranties

Statutory implied warranties are established for the new construction or substantial remodel of residential real property. "Residential real property" means a single-family home, duplex, triplex, or quadriplex. A construction professional involved in the construction of new residential real property or the substantial remodel of existing residential real property warrants that any work to the foundation, framing, siding, roofing, windows and doors will not impair the suitability of the property for the ordinary uses of real estate of its type and that the work will be free from defective materials and constructed in accordance with sound engineering and construction standards.

A current owner may bring an action against a construction professional for a breach of any of the warranties. Absence of privity of contract is not a defense to an action for breach of the warranties. The damages that are awarded for a breach are the cost of repairs. However, if the cost of repairs is clearly disproportionate to the loss in market value, the damages are limited to loss in market value.

An action for breach of a warranty must be brought within three years after the date the cause of action accrues, except in the case of a latent structural defect to the foundation, in which case the cause of action must be brought within four years after the cause of action accrues. The cause of action accrues: (1) In the case of newly constructed residential real property, on the date the first owner takes possession; and (2) in the case of improvements on existing residential real property, upon the later of substantial completion of construction or termination of the construction project.

Condominiums are exempt from the statutory warranty provisions. The statutory warranties apply to new construction of and substantial remodels of residential real property commenced on or after January 1, 2010.

Worker Certification and Contractor Registration

Worker Certification

It is the intent of the Legislature to establish a worker certification requirement for those doing construction work in the areas of foundation, framing, siding, roofing, windows and doors. The Department of Labor and Industries (L&I) is directed to hire a consultant to work with stakeholders to develop recommendations on the education, experience, and examination requirements of the certification. Recommendations must be submitted to the Legislature by November 1, 2009.

Contractor Registration

In addition to other required information, an applicant for contractor registration must provide the L&I with the following information:

- whether the work the contractor performs is residential, commercial, or both;
- the social security number, date of birth, and driver's license number of owners, principals, or officers of the contracting business;
- the registration numbers and unified business identifier account numbers of previously or currently registered businesses involving the same owner, principal, or officer as the applicant;
- disclosure of any bankruptcy proceedings against the applicant;
- information about any construction licenses, certifications, or registrations that have been issued to the applicant by other states; and
- details about any denials, suspensions, revocations, or any construction-related enforcement actions against the applicant by other states.

The L&I must deny a contractor registration if another state has taken enforcement action against the applicant for activities that would be a violation of Washington's Contractor Registration Act (Act) if they had occurred in Washington.

The L&I must suspend a registration if another state has taken enforcement action against the applicant for activities that would be a violation of the Act if they had occurred in Washington or if the registrant failed to reasonably supervise employees, agents, or subcontractors or performed negligently or in breach of contract so as to cause injury or harm to the public.

Appropriation: None.

Fiscal Note: Requested on January 29, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.