
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5895

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Tom, Kohl-Welles, Fraser, and McDermott)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to improving residential real property construction
2 by creating the office of consumer education for home construction,
3 strengthening warranty protections applicable to residential real
4 property construction, creating remedies, requiring third-party
5 inspections, enhancing contractor registration requirements,
6 establishing worker certification standards, and enhancing bonding
7 requirements; amending RCW 18.27.075, 4.16.310, 64.50.010, 18.27.030,
8 and 18.27.040; reenacting and amending RCW 43.79A.040 and 43.79A.040;
9 adding new sections to chapter 43.10 RCW; adding new sections to
10 chapter 64.50 RCW; adding a new section to chapter 19.27 RCW; adding a
11 new section to chapter 18.27 RCW; creating new sections; providing an
12 effective date; and providing an expiration date.

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

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

16 (1) The office of consumer education for home construction is
17 created in the office of the attorney general.

18 (2) The office of consumer education for home construction shall
19 examine issues involved in establishing a recovery fund to provide

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

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

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

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

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 office
24 of consumer education for home construction. All fees charged under
25 RCW 18.27.075(2) and filing fees charged under section 9 of this act
26 must be deposited into the account. Expenditures from the account may
27 be used only to fund the office of consumer education for home
28 construction. Only the home construction board created under section
29 7 of this act or the board's designee may authorize expenditures from
30 the account. The account is subject to the allotment procedures under
31 chapter 43.88 RCW, but an appropriation is not required for
32 expenditures.

33 **Sec. 4.** RCW 43.79A.040 and 2008 c 208 s 9, 2008 c 128 s 20, and
34 2008 c 122 s 24 are each reenacted and amended to read as follows:

35 (1) Money in the treasurer's trust fund may be deposited, invested,

1 and reinvested by the state treasurer in accordance with RCW 43.84.080
2 in the same manner and to the same extent as if the money were in the
3 state treasury.

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

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

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

18 (b) The following accounts and funds shall receive their
19 proportionate share of earnings based upon each account's or fund's
20 average daily balance for the period: The Washington promise
21 scholarship account, the college savings program account, the
22 Washington advanced college tuition payment program account, the
23 agricultural local fund, the American Indian scholarship endowment
24 fund, the foster care scholarship endowment fund, the foster care
25 endowed scholarship trust fund, the students with dependents grant
26 account, the basic health plan self-insurance reserve account, the
27 contract harvesting revolving account, the Washington state combined
28 fund drive account, the commemorative works account, the Washington
29 international exchange scholarship endowment fund, the toll collection
30 account, the developmental disabilities endowment trust fund, the
31 energy account, the fair fund, the family leave insurance account, the
32 food animal veterinarian conditional scholarship account, the fruit and
33 vegetable inspection account, the future teachers conditional
34 scholarship account, the game farm alternative account, the GET ready
35 for math and science scholarship account, the grain inspection
36 revolving fund, the juvenile accountability incentive account, the law
37 enforcement officers' and firefighters' plan 2 expense fund, the local
38 tourism promotion account, the pilotage account, the produce railcar

1 pool account, the regional transportation investment district account,
2 the rural rehabilitation account, the stadium and exhibition center
3 account, the youth athletic facility account, the self-insurance
4 revolving fund, the sulfur dioxide abatement account, the children's
5 trust fund, the Washington horse racing commission Washington bred
6 owners' bonus fund account, the Washington horse racing commission
7 class C purse fund account, the individual development account program
8 account, the Washington horse racing commission operating account
9 (earnings from the Washington horse racing commission operating account
10 must be credited to the Washington horse racing commission class C
11 purse fund account), the life sciences discovery fund, the Washington
12 state heritage center account, the consumer education for home
13 construction account, and the reading achievement account. However,
14 the earnings to be distributed shall first be reduced by the allocation
15 to the state treasurer's service fund pursuant to RCW 43.08.190.

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

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

27 **Sec. 5.** RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9, 2008 c
28 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to read as
29 follows:

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

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

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

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

12 (b) The following accounts and funds shall receive their
13 proportionate share of earnings based upon each account's or fund's
14 average daily balance for the period: The Washington promise
15 scholarship account, the college savings program account, the
16 Washington advanced college tuition payment program account, the
17 agricultural local fund, the American Indian scholarship endowment
18 fund, the foster care scholarship endowment fund, the foster care
19 endowed scholarship trust fund, the students with dependents grant
20 account, the basic health plan self-insurance reserve account, the
21 contract harvesting revolving account, the Washington state combined
22 fund drive account, the commemorative works account, the Washington
23 international exchange scholarship endowment fund, the toll collection
24 account, the developmental disabilities endowment trust fund, the
25 energy account, the fair fund, the family leave insurance account, the
26 food animal veterinarian conditional scholarship account, the fruit and
27 vegetable inspection account, the future teachers conditional
28 scholarship account, the game farm alternative account, the GET ready
29 for math and science scholarship account, the grain inspection
30 revolving fund, the juvenile accountability incentive account, the law
31 enforcement officers' and firefighters' plan 2 expense fund, the local
32 tourism promotion account, the pilotage account, the produce railcar
33 pool account, the regional transportation investment district account,
34 the rural rehabilitation account, the stadium and exhibition center
35 account, the youth athletic facility account, the self-insurance
36 revolving fund, the sulfur dioxide abatement account, the children's
37 trust fund, the Washington horse racing commission Washington bred
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1 class C purse fund account, the individual development account program
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3 (earnings from the Washington horse racing commission operating account
4 must be credited to the Washington horse racing commission class C
5 purse fund account), the life sciences discovery fund, the Washington
6 state heritage center account, the reduced cigarette ignition
7 propensity account, the consumer education for home construction
8 account, and the reading achievement account. However, the earnings to
9 be distributed shall first be reduced by the allocation to the state
10 treasurer's service fund pursuant to RCW 43.08.190.

11 (c) The following accounts and funds shall receive eighty percent
12 of their proportionate share of earnings based upon each account's or
13 fund's average daily balance for the period: The advanced right-of-way
14 revolving fund, the advanced environmental mitigation revolving
15 account, the city and county advance right-of-way revolving fund, the
16 federal narcotics asset forfeitures account, the high occupancy vehicle
17 account, the local rail service assistance account, and the
18 miscellaneous transportation programs account.

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

22 NEW SECTION. Sec. 6. A new section is added to chapter 43.10 RCW
23 to read as follows:

24 For the purposes of sections 7 through 12 of this act, the
25 following definitions apply:

26 (1) "Board" means the home construction board created in section 7
27 of this act.

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

31 (3) "Construction professional" has the same meaning as in section
32 15 of this act.

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

36 (5) "Damages" means the cost of repairs, or if the cost of repairs

1 is clearly disproportionate to the loss in market value, damages is the
2 loss in market value.

3 (6) "Defect" means a deficiency, an inadequacy, or an insufficiency
4 arising out of or relating to the construction, alteration, or repair
5 of residential real property. "Defect" also includes a deficiency, an
6 inadequacy, or an insufficiency in a system, component, or material
7 incorporated into residential real property.

8 (7) "Homeowner" means a person or persons owning residential real
9 property. "Homeowner" does not include government agencies, political
10 subdivisions, financial institutions, and any other entity that
11 purchases, guarantees, or insures a loan secured by real property.
12 "Homeowner" also does not include the spouse, domestic partner, or
13 personal representative of the contractor named in the claim filed
14 under section 9 of this act.

15 (8) "Residential real property" has the same meaning as in section
16 15 of this act.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.10 RCW
18 to read as follows:

19 (1) The home construction board is established within the office of
20 consumer education for home construction to administer a residential
21 real property homeowner and construction professional early resolution
22 mediation program.

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

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

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

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

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

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

36 (e) One member of the general public.

1 (4) Members of the board shall be appointed by the governor with
2 consent of the senate. The governor shall appoint initial members of
3 the board to staggered terms of from two to four years. Thereafter,
4 all members shall be appointed to full four-year terms. Members of the
5 board hold office until their successors are appointed. A vacancy
6 shall be filled by appointment by the governor for the unexpired
7 portion of the term in which the vacancy occurs.

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

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

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

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.10 RCW
15 to read as follows:

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

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

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.10 RCW
24 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) Upon receipt of a claim, the board shall give written notice to
32 the construction professional against whom the claim is made. The
33 notice of the claim shall describe the claim in reasonable detail
34 sufficient to determine the nature of the defect.

35 (2) Within twenty-one days after service of the notice of claim,
36 the construction professional shall serve a written response on the

1 homeowner by registered mail or personal service. The written response
2 shall:

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

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

14 (c) State that the construction professional disputes the claim and
15 will neither remedy the defect nor compromise and settle the claim.

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

20 (b) If the homeowner rejects the inspection proposal or the
21 settlement offer made by the construction professional pursuant to
22 subsection (2) of this section, the homeowner shall serve written
23 notice of the rejection on the construction professional and the board.
24 After service of the rejection, the board shall commence an
25 investigation and mediation of the claim.

26 (c) If the construction professional has not received from the
27 homeowner, within thirty days after the homeowner's receipt of the
28 construction professional's response, either an acceptance or rejection
29 of the inspection proposal or settlement offer, then at anytime
30 thereafter the construction professional may terminate the proposal or
31 offer by serving written notice to the homeowner, and the board shall
32 commence an investigation and mediation of the claim.

33 (4)(a) If the homeowner elects to allow the construction
34 professional to inspect in accordance with the construction
35 professional's proposal pursuant to this section, the homeowner shall
36 provide the construction professional and its contractors or other
37 agents reasonable access to the homeowner's residence during normal
38 working hours to inspect the premises and the claimed defect.

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

3 (i) A written offer to remedy the defect at no cost to the
4 homeowner, including a report of the scope of the inspection, the
5 findings and results of the inspection, a description of the additional
6 construction necessary to remedy the defect, and a timetable for the
7 completion of such construction;

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

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

12 (c) If the construction professional does not proceed further to
13 remedy the defect within the agreed timetable, or if the construction
14 professional fails to comply with the provisions of (b) of this
15 subsection, the homeowner shall provide written notification to the
16 board. The board shall commence an investigation and mediation of the
17 claim.

18 (d) If the homeowner rejects the offer made by the construction
19 professional pursuant to (b)(i) or (ii) of this subsection to either
20 remedy the defect or to compromise and settle the claim by monetary
21 payment, the homeowner shall serve written notice of the rejection on
22 the construction professional and the board. After service of the
23 rejection notice, the board shall commence an investigation and
24 mediation of the claim.

25 (e) If the construction professional has not received from the
26 homeowner, within thirty days after the homeowner's receipt of the
27 construction professional's response, either an acceptance or rejection
28 of the offer made pursuant to (b)(i) or (ii) of this subsection, then
29 at anytime thereafter the construction professional may terminate the
30 offer by serving written notice to the homeowner.

31 (5)(a) Any homeowner accepting the offer of a construction
32 professional to remedy the defect pursuant to subsection (4)(b)(i) of
33 this section shall do so by serving the construction professional with
34 a written notice of acceptance within a reasonable time period after
35 receipt of the offer, and no later than thirty days after receipt of
36 the offer. The homeowner shall also send a copy of the written notice
37 of acceptance to the board. The homeowner shall provide the
38 construction professional and its contractors or other agents

1 reasonable access to the homeowner's residence during normal working
2 hours to perform and complete the construction by the timetable stated
3 in the offer.

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

8 (6) Compliance with this section satisfies the requirements of RCW
9 64.50.020.

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

12 (1) If after compliance with the procedures established in section
13 10 of this act, a resolution has not been reached between the homeowner
14 and construction professional, the board shall investigate the claim.

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

18 (3) After the investigation is complete, the board shall provide
19 the parties with notification of the findings of the investigation. If
20 the parties do not provide the board with written notification within
21 fourteen days after receipt of the findings that the parties have
22 resolved the claim, the board shall mediate the claim.

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

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

33 (6) At the conclusion of the mediation, the board shall provide a
34 written notice of the completion of mediation to the parties. The
35 notice shall include a statement of the results of the mediation and a
36 copy of any written settlement agreement between the parties. If the

1 parties did not reach an agreement, the notice shall include a
2 statement that the parties may pursue any other right or remedy
3 provided by statutory or common law.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.10 RCW
5 to read as follows:

6 The board shall maintain and make available to the office of
7 consumer education for home construction a record of all claims filed
8 with the board against construction professionals under this chapter
9 and the outcomes of those claims.

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

12 The provisions of RCW 64.50.020 do not apply to a claim filed with
13 the home construction board under sections 9 through 11 of this act.

14 **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES,**
15 **LEGAL REMEDIES, AND THIRD-PARTY INSPECTIONS**

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.50 RCW
17 to read as follows:

18 (1) The legislature intends by this section to modify the common
19 law implied warranty of habitability to provide that this warranty may
20 not be contractually disclaimed, waived, modified, or limited. The
21 legislature does not intend to modify any other aspect of the common
22 law implied warranty of habitability as developed through case law.

23 (2) The common law implied warranty of habitability may not be
24 disclaimed, waived, modified, or limited by contractual agreement. A
25 provision of any contract for the purchase or sale of newly constructed
26 residential property that purports to disclaim, waive, modify, or limit
27 the implied warranty of habitability is void and unenforceable.

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

30 (1) A construction professional involved in the construction of new
31 residential real property, or the substantial remodel of existing
32 residential real property, warrants that the work, and any part

1 thereof, will be suitable for the ordinary uses of real property of its
2 type and that the work will be:

- 3 (a) Free from defective materials;
- 4 (b) Constructed in accordance with sound engineering and
5 construction standards;
- 6 (c) Constructed in a work-like manner; and
- 7 (d) Constructed in compliance with all laws then applicable to the
8 improvements.

9 (2) If a construction professional breaches a warranty arising
10 under this section and the breach results in damage to any portion of
11 the residential real property, the current owner of the residential
12 real property may bring a cause of action for damages against the
13 construction professional. Absence of privity of contract between the
14 owner and the construction professional is not a defense to the
15 enforcement of a warranty arising under this section.

16 (3) In a judicial proceeding for breach of a warranty arising under
17 this section, the plaintiff must show that the alleged breach has
18 adversely affected or will adversely affect the performance of that
19 portion of the property alleged to be in breach. To establish an
20 adverse effect, the person alleging the breach is not required to prove
21 that the breach renders the property unfit for occupancy. As used in
22 this subsection, "adverse effect" must be more than technical and must
23 be significant to a reasonable person.

24 (4) Proof of breach of a warranty arising under this section is not
25 proof of damages. Damages awarded for a breach of a warranty arising
26 under this section are the cost of repairs. However, if it is
27 established that the cost of repairs is clearly disproportionate to the
28 loss in market value caused by the breach, damages are limited to the
29 loss in market value.

30 (5)(a) A judicial proceeding for breach of a warranty arising under
31 this section must be commenced within four years after the cause of
32 action accrues. This period may not be reduced by either oral or
33 written agreement, or through the use of contractual claims or notice
34 procedures that require the filing or service of any claim or notice
35 prior to the expiration of the period specified in this section.

36 (b) Except as provided under (c) of this subsection, a judicial
37 proceeding for breach of a warranty arising under this section accrues,
38 regardless of the owner's lack of knowledge of the breach:

1 (i) In the case of the purchase of newly constructed residential
2 real property, on the date the initial owner enters into possession of
3 the property; or

4 (ii) In the case of the substantial remodel of existing residential
5 real property, on the date of substantial completion of construction or
6 termination of the construction project, whichever is later.

7 (c) A cause of action for breach of a warranty arising under this
8 section that is based on a latent structural defect or a latent water
9 penetration defect accrues when the claimant discovers or reasonably
10 should have discovered the latent structural defect or latent water
11 penetration defect.

12 (d) An action for breach of warranty under this section is subject
13 to the time limitations provided in RCW 4.16.310.

14 (6) If a written notice of claim is served under RCW 64.50.020
15 within the time prescribed for the filing of an action under this
16 section, the statute of limitations in this section and any applicable
17 statute of repose for construction-related claims are tolled until
18 sixty days after the period of time during which the filing of an
19 action is barred under RCW 64.50.020.

20 (7) The warranties provided under this section are in addition to
21 any other rights or remedies available under statutory law or common
22 law or provided for under contract. The warranties provided under this
23 section may not be waived, disclaimed, modified, or limited.

24 (8) In a judicial proceeding under this section, the court may
25 award reasonable attorneys' fees and costs to the prevailing party.

26 (9) This section is not intended to create an independent right to
27 maintain a class action against any construction professional.

28 (10) This section does not apply to condominiums subject to chapter
29 64.34 RCW.

30 (11) This section does not affect the application of the notice and
31 opportunity to cure requirements and procedures imposed under RCW
32 64.50.010 through 64.50.050.

33 (12) An action for breach of a warranty created under this section
34 is subject to any requirements for mandatory arbitration imposed under
35 chapter 7.06 RCW or state or local court rules.

36 (13) For the purposes of this section:

37 (a) "Construction professional" means an architect, builder,
38 builder vendor, contractor, subcontractor, engineer, or inspector,

1 performing or furnishing the design, supervision, inspection,
2 construction, or observation of the construction, of any improvement to
3 residential real property, whether operating as a sole proprietor,
4 partnership, corporation, or other business entity. "Construction
5 professional" does not include a supplier of materials who has
6 otherwise had no involvement in performing or furnishing the design,
7 supervision, inspection, construction, or observation of the
8 construction, of any improvement to residential real property.

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

11 (c) "Substantial completion of construction" means the state of
12 completion reached when an improvement upon real property may be used
13 or occupied for its intended use.

14 **Sec. 16.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read
15 as follows:

16 (1) All claims or causes of action as set forth in RCW 4.16.300
17 shall accrue, and the applicable statute of limitation shall begin to
18 run only during the period within six years after substantial
19 completion of construction, or during the period within six years after
20 the termination of the services enumerated in RCW 4.16.300, whichever
21 is later. The phrase "substantial completion of construction" shall
22 mean the state of completion reached when an improvement upon real
23 property may be used or occupied for its intended use. Any cause of
24 action which has not accrued within six years after such substantial
25 completion of construction, or within six years after such termination
26 of services, whichever is later, shall be barred: PROVIDED, That this
27 limitation shall not be asserted as a defense by any owner, tenant or
28 other person in possession and control of the improvement at the time
29 such cause of action accrues. The limitations prescribed in this
30 section apply to all claims or causes of action as set forth in RCW
31 4.16.300 brought in the name or for the benefit of the state which are
32 made or commenced after June 11, 1986.

33 If a written notice is filed under RCW 64.50.020 within the time
34 prescribed for the filing of an action under this chapter, the period
35 of time during which the filing of an action is barred under RCW
36 64.50.020 plus sixty days shall not be a part of the period limited for
37 the commencement of an action, nor for the application of this section.

1 (2) Actions and claims for fraud arising from including, but not
2 limited to, construction, alteration, repair, design, planning, survey,
3 and the engineering of improvements upon real property are not subject
4 to the time limitations under subsection (1) of this section. Such
5 actions and claims are governed under RCW 4.16.080.

6 **Sec. 17.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read
7 as follows:

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

10 (1) "Action" means any civil lawsuit or action in contract or tort
11 for damages or indemnity brought against a construction professional to
12 assert a claim, whether by complaint, counterclaim, or cross-claim, for
13 damage or the loss of use of real or personal property caused by a
14 defect in the construction of a residence or in the substantial remodel
15 of a residence. "Action" does not include any civil action in tort
16 alleging personal injury or wrongful death to a person or persons
17 resulting from a construction defect.

18 (2) "Association" means an association, master association, or
19 subassociation as defined and provided for in RCW 64.34.020(4),
20 64.34.276, 64.34.278, and 64.38.010(1).

21 (3) "Building enclosure" has the same meaning as in RCW 64.55.010.

22 (4) "Building enclosure design documents" has the same meaning as
23 in RCW 64.55.010.

24 (5) "Claimant" means a homeowner or association who asserts a claim
25 against a construction professional concerning a defect in the
26 construction of a residence or in the substantial remodel of a
27 residence.

28 (~~(4)~~) (6) "Construction professional" means an architect,
29 builder, builder vendor, contractor, subcontractor, engineer, or
30 inspector, including, but not limited to, a dealer as defined in RCW
31 64.34.020(~~(12)~~) (13) and a declarant as defined in RCW
32 64.34.020(~~(13)~~) (14), performing or furnishing the design,
33 supervision, inspection, construction, or observation of the
34 construction of any improvement to real property, whether operating as
35 a sole proprietor, partnership, corporation, or other business entity.

36 (~~(5)~~) (7) "Homeowner" means: (a) Any person, company, firm,
37 partnership, corporation, or association who contracts with a

1 construction professional for the construction, sale, or construction
2 and sale of a residence; and (b) an "association" as defined in this
3 section. "Homeowner" includes, but is not limited to, a subsequent
4 purchaser of a residence from any homeowner.

5 ~~((+6))~~ (8) "Qualified building inspector" has the same meaning as
6 in RCW 64.55.010.

7 (9) "Residence" means a building, including a single-family house,
8 duplex, triplex, quadraplex, or a unit in a multiunit residential
9 structure in which title to each individual unit is transferred to the
10 owner under a condominium or cooperative system, and shall include
11 common elements as defined in RCW 64.34.020(6) and common areas as
12 defined in RCW 64.38.010(4).

13 ~~((+7))~~ (10) "Serve" or "service" means personal service or
14 delivery by certified mail to the last known address of the addressee.

15 ~~((+8))~~ (11) "Stamped" has the same meaning as in RCW 64.55.010.

16 (12) "Substantial remodel" means a remodel of a residence, for
17 which the total cost exceeds one-half of the assessed value of the
18 residence for property tax purposes at the time the contract for the
19 remodel work was made.

20 NEW SECTION. Sec. 18. A new section is added to chapter 64.50 RCW
21 to read as follows:

22 (1) Any person applying for a building permit for construction of
23 a residential building or substantial remodel shall submit building
24 enclosure design documents to the appropriate building department prior
25 to the start of construction or substantial remodel. If construction
26 work on a building is not a substantial remodel because the cost of
27 thereof does not exceed one-half of the assessed value of the residence
28 for property tax purposes at the time the contract for the remodel work
29 was made, the person applying for a building permit shall submit to the
30 building department a letter so certifying. Any changes to the
31 building enclosure design documents that alter the manner in which the
32 building or its components is waterproofed, weatherproofed, and
33 otherwise protected from water or moisture intrusion must be stamped by
34 the architect or engineer and must be provided to the building
35 department and to the person conducting the course of construction
36 inspection in a timely manner to permit such person to inspect for

1 compliance therewith, and may be provided through individual updates,
2 cumulative updates, or as-built updates.

3 (2) The building department shall not issue a building permit for
4 construction of the building enclosure of a residential building or a
5 substantial remodel unless the building enclosure design documents
6 contain a stamped statement by the person stamping the building
7 enclosure design documents in substantially the following form: "The
8 undersigned has provided building enclosure documents that in my
9 professional judgment are appropriate to satisfy the requirements of
10 sections 18 through 24 of this act."

11 (3) The building department is not charged with determining whether
12 the building enclosure design documents are adequate or appropriate to
13 satisfy the requirements of this section and sections 19 through 24 of
14 this act. This section and sections 19 through 24 of this act do not
15 require a building department to review, approve, or disapprove
16 enclosure design documents.

17 NEW SECTION. **Sec. 19.** A new section is added to chapter 64.50 RCW
18 to read as follows:

19 All residential buildings must have the building enclosure
20 inspected by a qualified inspector during the course of initial
21 construction and during a substantial remodel.

22 NEW SECTION. **Sec. 20.** A new section is added to chapter 64.50 RCW
23 to read as follows:

24 (1) A qualified building enclosure inspector:

25 (a) Must be a person with substantial and verifiable training and
26 experience in building enclosure design and construction;

27 (b) Must be free from improper interference or influence relating
28 to the inspections; and

29 (c) May not be an employee, officer, or director of, or have any
30 pecuniary interest in, the declarant, developer, association, or any
31 party providing services or materials for the project, or any of their
32 respective affiliates, except that the qualified inspector may be the
33 architect or engineer who approved the building enclosure design
34 documents or the architect or engineer of record. The qualified
35 inspector may, but is not required to, assist with the preparation of
36 the design documents.

1 (2) This section does not alter the requirements for licensure of
2 any architect, engineer, or other professional, and does not alter the
3 jurisdiction, authority, or scope of practice of architects, engineers,
4 other professionals, or general contractors.

5 NEW SECTION. **Sec. 21.** A new section is added to chapter 64.50 RCW
6 to read as follows:

7 (1) An inspection required under this chapter must include, at a
8 minimum, the following:

9 (a) Water penetration resistance testing of a representative sample
10 of windows and window installations. These tests must be conducted
11 according to industry standards. Where appropriate, tests must be
12 conducted with an induced air pressure difference across the window and
13 window installation. Additional testing is not required if the same
14 assembly has previously been tested in situ within the previous two
15 years in the project under construction by the builder, by another
16 member of the construction team such as an architect or engineer, or by
17 an independent testing laboratory; and

18 (b) An independent periodic review of the building enclosure during
19 the course of construction or rehabilitative construction to ascertain
20 whether the residential building has been constructed, or the
21 substantial remodel has been performed, in substantial compliance with
22 the building enclosure design documents.

23 (2) Subsection (1)(a) of this section does not apply to substantial
24 remodels if the windows and adjacent cladding are not altered in the
25 substantial remodel.

26 (3) For the purposes of this section, "project" means one or more
27 parcels of land in a single ownership, which are under development
28 pursuant to a single land use approval or building permit, where window
29 installation is performed by the owner with its own forces, or by the
30 same general contractor, or, if the owner is contracting directly with
31 trade contractors, is performed by the same trade contractor.

32 NEW SECTION. **Sec. 22.** A new section is added to chapter 64.50 RCW
33 to read as follows:

34 Upon completion of an inspection required under this chapter, the
35 qualified inspector shall prepare and submit to the appropriate
36 building department a signed letter certifying that the building

1 enclosure has been inspected during the course of construction or
2 substantial remodel and that it has been constructed or reconstructed
3 in substantial compliance with the building enclosure design documents,
4 as updated under section 18 of this act. The building department shall
5 not issue a final certificate of occupancy or other equivalent final
6 acceptance until the letter required under this section has been
7 submitted. The building department is not charged with and has no
8 responsibility for determining whether the building enclosure
9 inspection is adequate or appropriate to satisfy the requirements of
10 this chapter.

11 NEW SECTION. **Sec. 23.** A new section is added to chapter 64.50 RCW
12 to read as follows:

13 (1) This chapter is not intended to and does not:

14 (a) Create a private right of action against an inspector,
15 architect, or engineer based upon compliance or noncompliance with this
16 chapter; or

17 (b) Create an independent basis for liability against an inspector,
18 architect, or engineer.

19 (2) The qualified inspector, architect, or engineer and the
20 developer that retained the inspector, architect, or engineer may
21 contractually agree to the amount of their liability to the developer.

22 NEW SECTION. **Sec. 24.** A new section is added to chapter 64.50 RCW
23 to read as follows:

24 A qualified inspector's report or testimony regarding an inspection
25 conducted under this chapter is not entitled to an evidentiary
26 presumption in any arbitration or court proceeding. This chapter does
27 not restrict the admissibility of the qualified inspector's report or
28 testimony, and questions of the admissibility of the report or
29 testimony are determined under the rules of evidence.

30 NEW SECTION. **Sec. 25.** A new section is added to chapter 19.27 RCW
31 to read as follows:

32 (1) The state building code council must adopt rules requiring that
33 natural or manufactured wood framing members used in residential
34 construction be tested by a special inspector or the local building
35 jurisdiction for maximum allowable moisture content prior to enclosing

1 the framing. The rules adopted under this section must provide for the
2 maximum percentage of moisture allowed, the various locations in a
3 building that must be tested, the standards that need to be applied
4 during testing, and procedures for retesting the structure if the
5 moisture content exceeds the maximum allowable amount at the time of
6 inspection. The rules may include a requirement that the special
7 inspector be tested and certified by the Washington association of
8 building officials certification and registration program and be
9 approved by the local building official.

10 (2) After the inspection, the special inspector must provide a
11 certificate of compliance to the local building official showing
12 compliance with the requirements of this section and the rules adopted
13 under this section.

14 **PART III. CONTRACTOR REGISTRATION,**
15 **WORKER CERTIFICATION, AND BONDING**

16 NEW SECTION. **Sec. 26.** (1) The legislature finds that there is
17 inadequate protection for consumers in the area of residential
18 construction. The legislature further finds that a significant amount
19 of the problems in the construction of new residential real property,
20 or the substantial remodel of existing residential real property,
21 pertain to water intrusion and unstable foundations and develop from
22 poor installation of roofing, siding, framing, foundations, doors, and
23 windows. The legislature recognizes that it is important to assure
24 consumers that those doing construction work are properly trained. The
25 legislature, therefore, intends to establish a worker certification
26 requirement for those doing construction work in the areas of roofing,
27 siding, framing, foundations, doors, and windows.

28 (2) The department of labor and industries shall contract for
29 consultant services to develop recommendations to the legislature on
30 the education, experience, and examination requirements of the program
31 to certify workers engaged in the installation of roofing, siding,
32 framing, foundations, doors, and windows. In developing the
33 recommendations, the consultant and the department shall closely
34 involve and consult with stakeholders. The recommendations must be
35 submitted to the legislature by November 1, 2009.

36 (3) This section expires December 31, 2009.

1 **Sec. 27.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read
2 as follows:

3 (1) An applicant for registration as a contractor shall submit an
4 application under oath upon a form to be prescribed by the director and
5 which shall include the following information pertaining to the
6 applicant:

7 (a) Employer social security number.

8 (b) Unified business identifier number.

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

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

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

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

22 (d) Employment security department number.

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

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

28 (g) Type of work performed, whether residential, commercial, or
29 both.

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

1 security number, date of birth, and driver's license number of all
2 members of other business entities. The information contained in such
3 application is a matter of public record and open to public 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, or
10 registrations that have been issued to the applicant by other states.
11 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 the
19 other state that the applicant is employing employees in Washington.

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

1 different state has taken enforcement action against the applicant for
2 activities that would be a violation of this chapter if they had
3 occurred in Washington state.

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

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

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

32 NEW SECTION. Sec. 28. A new section is added to chapter 18.27 RCW
33 to read as follows:

34 A registered contractor, by or against whom a petition in
35 bankruptcy has been filed, shall notify the department of the
36 proceedings in bankruptcy, including the identity and location of the

1 court in which the proceedings are pending, within ten days of the
2 filing.

3 **Sec. 29.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to read
4 as follows:

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

30 (2) At the time of initial registration or renewal, the contractor
31 shall provide a bond or other security deposit as required by this
32 chapter and comply with all of the other provisions of this chapter
33 before the department shall issue or renew the contractor's certificate
34 of registration. Any contractor registered as of July 1, 2001, who
35 maintains that registration in accordance with this chapter is in
36 compliance with this chapter until the next renewal of the contractor's
37 certificate of registration.

1 (3) Any person, firm, or corporation having a claim against the
2 contractor for any of the items referred to in this section may bring
3 suit against the contractor and the bond or deposit in the superior
4 court of the county in which the work was done or of any county in
5 which jurisdiction of the contractor may be had. The surety issuing
6 the bond shall be named as a party to any suit upon the bond. Action
7 upon the bond or deposit brought by a residential homeowner for breach
8 of contract by a party to the construction contract shall be commenced
9 by filing the summons and complaint with the clerk of the appropriate
10 superior court within two years from the date the claimed contract work
11 was substantially completed or abandoned, whichever occurred first.
12 Action upon the bond or deposit brought by any other authorized party
13 shall be commenced by filing the summons and complaint with the clerk
14 of the appropriate superior court within one year from the date the
15 claimed labor was performed and benefits accrued, taxes and
16 contributions owing the state of Washington became due, materials and
17 equipment were furnished, or the claimed contract work was
18 substantially completed or abandoned, whichever occurred first.
19 Service of process in an action filed under this chapter against the
20 contractor and the contractor's bond or the deposit shall be
21 exclusively by service upon the department. Three copies of the
22 summons and complaint and a fee adopted by rule of not less than fifty
23 dollars to cover the costs shall be served by registered or certified
24 mail, or other delivery service requiring notice of receipt, upon the
25 department at the time suit is started and the department shall
26 maintain a record, available for public inspection, of all suits so
27 commenced. Service is not complete until the department receives the
28 fee and three copies of the summons and complaint. The service shall
29 constitute service and confer personal jurisdiction on the contractor
30 and the surety for suit on claimant's claim against the contractor and
31 the bond or deposit and the department shall transmit the summons and
32 complaint or a copy thereof to the contractor at the address listed in
33 the contractor's application and to the surety within two days after it
34 shall have been received.

35 (4) The surety upon the bond shall not be liable in an aggregate
36 amount in excess of the amount named in the bond nor for any monetary
37 penalty assessed pursuant to this chapter for an infraction. The
38 liability of the surety shall not cumulate where the bond has been

1 renewed, continued, reinstated, reissued or otherwise extended. The
2 surety upon the bond may, upon notice to the department and the
3 parties, tender to the clerk of the court having jurisdiction of the
4 action an amount equal to the claims thereunder or the amount of the
5 bond less the amount of judgments, if any, previously satisfied
6 therefrom and to the extent of such tender the surety upon the bond
7 shall be exonerated but if the actions commenced and pending and
8 provided to the department as required in subsection (3) of this
9 section, at any one time exceed the amount of the bond then unimpaired,
10 claims shall be satisfied from the bond in the following order:

11 (a) Employee labor and claims of laborers, including employee
12 benefits;

13 (b) Claims for breach of contract by a party to the construction
14 contract;

15 (c) Registered or licensed subcontractors, material, and equipment;

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

17 (e) Any court costs, interest, and attorneys' fees plaintiff may be
18 entitled to recover. The surety is not liable for any amount in excess
19 of the penal limit of its bond.

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

22 (5) The total amount paid from a bond or deposit required of a
23 general contractor by this section to claimants other than residential
24 homeowners must not exceed one-half of the bond amount. The total
25 amount paid from a bond or deposit required of a specialty contractor
26 by this section to claimants other than residential homeowners must not
27 exceed one-half of the bond amount or four thousand dollars, whichever
28 is greater.

29 (6) The prevailing party in an action filed under this section
30 against the contractor and contractor's bond or deposit, for breach of
31 contract by a party to the construction contract involving a
32 residential homeowner, is entitled to costs, interest, and reasonable
33 attorneys' fees. The surety upon the bond or deposit is not liable in
34 an aggregate amount in excess of the amount named in the bond or
35 deposit nor for any monetary penalty assessed pursuant to this chapter
36 for an infraction.

37 (7) If a final judgment impairs the liability of the surety upon
38 the bond or deposit so furnished that there is not in effect a bond or

1 deposit in the full amount prescribed in this section, the registration
2 of the contractor is automatically suspended until the bond or deposit
3 liability in the required amount unimpaired by unsatisfied judgment
4 claims is furnished.

5 (8) In lieu of the surety bond required by this section the
6 contractor may file with the department an assigned savings account,
7 upon forms provided by the department.

8 (9) Any person having filed and served a summons and complaint as
9 required by this section having an unsatisfied final judgment against
10 the registrant for any items referred to in this section may execute
11 upon the security held by the department by serving a certified copy of
12 the unsatisfied final judgment by registered or certified mail upon the
13 department within one year of the date of entry of such judgment. Upon
14 the receipt of service of such certified copy the department shall pay
15 or order paid from the deposit, through the registry of the superior
16 court which rendered judgment, towards the amount of the unsatisfied
17 judgment. The priority of payment by the department shall be the order
18 of receipt by the department, but the department shall have no
19 liability for payment in excess of the amount of the deposit.

20 (10) Within ten days after resolution of the case, a certified copy
21 of the final judgment and order, or any settlement documents where a
22 case is not disposed of by a court trial, a certified copy of the
23 dispositive settlement documents must be provided to the department by
24 the prevailing party. Failure to provide a copy of the final judgment
25 and order or the dispositive settlement documents to the department
26 within ten days of entry of such an order constitutes a violation of
27 this chapter and a penalty adopted by rule of not less than two hundred
28 fifty dollars may be assessed against the prevailing party.

29 (11) The director may require an applicant applying to renew or
30 reinstate a registration or applying for a new registration to file a
31 bond of up to three times the normally required amount, if the director
32 determines that an applicant, or a previous registration of a corporate
33 officer, owner, or partner of a current applicant, has had in the past
34 five years a total of three final judgments in actions under this
35 chapter involving a residential single-family dwelling on two or more
36 different structures.

37 (12) The director may adopt rules necessary for the proper
38 administration of the security.

1 NEW SECTION. **Sec. 30.** Sections 6 through 13 of this act take
2 effect January 1, 2010.

3 NEW SECTION. **Sec. 31.** Part headings used in this act are not any
4 part of the law.

--- END ---