

HOUSE BILL REPORT

HB 1535

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to procedures for written business contracts.

Brief Description: Providing requirements for business payment contracts.

Sponsors: Representatives Condotta, Kirby and Bailey.

Brief History:

Committee Activity:

Business & Financial Services: 2/1/11, 2/4/11 [DPS].

Brief Summary of Substitute Bill

- Requires business payment contracts containing a personal guarantee by the representative of a business entity to include a separate signature line preceded by a phrase notifying the signer that he or she is personally guaranteeing sums due pursuant to the agreement.
- Makes the personal guarantees in such contracts that do not meet these requirements void.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

Staff: Parker Howell (786-5793) and Alison Hellberg (786-7152).

Background:

Contracts are agreements between two or more parties to exchange acts or promises to act. Contracting parties often formalize the terms of their agreements in a written document to aid resolution of any disputes that might arise over performance of the contract. If a person who has signed a written contract fails to perform the promised act, the other party may file a

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lawsuit asking a court to force the signer to perform or to pay money damages to restore that party to the position he or she would have been in had the contract been carried out.

To shield themselves from legal liability arising from business contracts, including those for the purchase of goods and services, businesses often form limited liability companies (LLCs) or corporations. When a LLC fails to pay a debt, for example, creditors typically may not seek payment from individual members of the LLC. But a representative of a business entity may explicitly agree to personally guarantee a debt of that entity under the terms of a deal. Typically, the representative signs a separate guarantee in his or her individual capacity.

Summary of Substitute Bill:

Business payment contracts containing personal guarantees must include a specified notice regarding a signer's personal liability for sums due according to the agreement.

A "business payment contract containing a personal guarantee" is defined as a written agreement between two or more parties in which at least one party is an authorized business representative who promises to personally guarantee the debt of a business entity. An "authorized business representative" is defined as a natural person authorized to conduct business on behalf of a business entity, including a LLC, corporation, or nonprofit corporation that is registered in Washington or another state.

Every business payment contract containing a personal guarantee executed on or after January 1, 2012, must include a separate signature line, directly following and on the same page as any other signature line or lines that the authorized business representative must sign. The signature line must be preceded by a notification in clearly visible, 14-point bold type stating, "DISCLOSURE: By signing this contract you, the undersigned, are agreeing to PERSONALLY GUARANTEE payment according to the terms of this contract."

A personal guarantee in a business payment contract containing a personal guarantee that lacks these requirements is unenforceable.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that business payment contracts containing personal guarantees must include separate signature lines and notices. The substitute bill makes a personal guarantee in a contract that does not follow the bill's requirements unenforceable, rather than making the whole contract voidable.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Personal guarantees making someone personally liable for a debt may be buried in the fine print of a contract. Personal guarantees should be more obvious.

(In support with concerns) Definitions should be changed to make the bill apply only to business payment contracts containing personal guarantees. With this change, the bill would be a great change because people representing small businesses often get stuck with personal guarantees of which they are not aware.

(Opposed) The original language referencing personal payment fostered ambiguity about the role of a business representative and created a disincentive for parties to do business with business entities under Washington law. It seems fair to have a separate guarantee section or to call out in bold language that a contract creates personal liability. The bill should be revised to make personal guarantees unenforceable if requirements are not met, rather than making entire contracts voidable; the Washington law on assignment of employee inventions contains analogous language.

Persons Testifying: (In support) Representative Condotta, prime sponsor.

(In support with concerns) Gary Smith, Independent Business Association.

(Opposed) Ben Straughan, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.