

SENATE BILL REPORT

2SHB 1534

As Reported by Senate Committee On:
Labor & Commerce, March 21, 2023

Title: An act relating to strengthening protections for consumers in the construction industry.

Brief Description: Strengthening protections for consumers in the construction industry.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orwall, Berry and Fosse).

Brief History: Passed House: 3/8/23, 95-0.

Committee Activity: Labor & Commerce: 3/20/23, 3/21/23 [DPA-WM, w/oRec].

Brief Summary of Amended Bill

- Requires the Department of Labor and Industries (L&I) to deny an application for contractor registration when the applicant is a successor to a business entity with an unsatisfied final judgment against it.
- Increases the required bond amounts for contractor registration from \$12,000 to \$30,000 for general contractors and from \$6,000 to \$15,000 for specialty contractors.
- Increases the fine for failure to register as a contractor from a range of \$1,000 to \$5,000 to a range of \$1,200 to \$10,000.
- Creates the Homeowner Recovery Account and requires fines and penalties collected under the Contractor Registration Act to be deposited into the account.
- Establishes the Homeowner Recovery Program for eligible homeowners to receive recovery payments for unsatisfied final judgments brought against a contractor.

SENATE COMMITTEE ON LABOR & COMMERCE

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

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; MacEwen, Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Jarrett Sacks (786-7448)

Background: The Contractor Registration Act requires general and specialty contractors to register with the Department of Labor and Industries (L&I). A general contractor works in more than one building trade or craft in a single job, project, or building permit, while a specialty contractor works in one trade or craft. To register as a general or specialty contractor, an applicant must submit an application, file a bond and proof of insurance, and pay a fee.

In 2019, as part of SB 5795, the Legislature required L&I to convene a work group to consider additional safeguards for consumers who engage contractors. It also required the work group to submit a report to the Legislature addressing whether:

- bond amounts are sufficient and appropriate to protect consumers, workers, and suppliers and meet tax obligations;
- additional criteria for contractors would provide a greater level of protection;
- strategies to discourage the transfer of business to a different entity for the purpose of evading penalties or judgments should be implemented;
- any other registration requirements or options for consumer recovery should be changed to increase protections for consumers; and
- incentives to adopt industry best practices would increase consumer protections.

The work group submitted its report with its findings and recommendations in December 2021.

Denial of Applications for Registration. L&I is required to deny an application for registration under certain circumstances, including when the applicant has an unsatisfied final judgment against them relating to work governed under the Contractor Registration Act or when the applicant owes L&I money for penalties resulting from a final judgment.

Contractor Bonding Requirements. The required bond amount is \$12,000 for a general contractor and \$6,000 for a specialty contractor. The bond is conditioned upon the contractor paying persons performing labor for the contractor, persons furnishing material or renting or supplying equipment to the contractor, amounts adjudged against the contractor for breach of contract, and taxes due to the state. A contractor may file an assigned savings account in lieu of a bond.

A person with a claim against a contractor may bring a lawsuit against the contractor and

the bond in superior court. If claims exceed the amount of the bond, the claims are satisfied in the following order:

- employee labor;
- breach of contract;
- subcontractors, material, and equipment;
- taxes; and
- any court costs, interest, and attorneys' fees.

One-half of the bond amount is protected for residential homeowners. For a claim against a specialty contractor, the protected amount is one-half the bond amount or \$4,000, whichever is greater. If a residential homeowner prevails in a claim for breach of contract, the homeowner is entitled to costs, interest, and reasonable attorneys' fees.

L&I may require an applicant applying to renew, reinstate, or apply for a new registration to file a bond of up to three times the normal amount if it determines the applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years one final judgment in actions under the Contractor Registration Act involving a single-family dwelling.

Fees and Penalties. L&I sets the fees for issuance, renewal, and reinstatement of certificates of registration by rule. Revenues from those fees and other charges, excluding penalties, are deposited in the Contractor Registration Inspection Account. Until June 30, 2023, 7 percent of those revenues, as well as penalties collected under the Contractor Registration Act, go into the State General Fund.

L&I must assess a fine of not less than \$1,000, nor more than \$5,000, for failure to register as a contractor. However, L&I may reduce the fine to \$500 for a first violation if the person registers within ten days of receiving notice. For other violations, L&I must assess a penalty of not less than \$200, nor more than \$5,000. L&I may waive collection in favor of payment of restitution to a consumer complainant.

Summary of Amended Bill: Applications for Contractor Registration. In lieu of the employer's social security number, an applicant may provide an individual taxpayer identification number.

Denial of Applications for Registration. L&I must deny an application for registration if the applicant is a successor to an entity with an unsatisfied final judgment against it in an action that was incurred for contractor work performed or owes L&I money for penalties assessed or fees due as a result of a final judgment. It is presumed an applicant knew or should have known of the relevant unsatisfied final judgment. If an applicant demonstrates by a preponderance of the evidence that the applicant did not know of the unsatisfied final judgment, by having exercised due diligence and timely verification with L&I, L&I may grant the application for registration.

A successor is an applicant operating with all or part of the assets of another entity previously registered under the Contractor Registration Act, where the applicant is under substantially common ownership, management, or control of the other entity.

L&I must deny an application if the applicant is under 18 years old at the time of application.

Contractor Bonding Requirements. For initial registrations and renewal contractor registrations occurring on or after July 1, 2024, the required bond amount is increased to \$30,000 for general contractors and \$15,000 for specialty contractors. One-half of the bond amount is protected for residential homeowners.

Fees and Penalties. Beginning July 1, 2024, the fine for failure to register as a contractor is increased to a range of \$1,200 to \$10,000. L&I may reduce the fee to no less than \$600 for a first violation if the person registers within ten days of receiving notice. The maximum penalty for transferring a valid registration to an unregistered contractor or subcontracting or using an unregistered contractor is increased from \$5,000 to \$10,000.

Homeowner Recovery Program. The Homeowner Recovery Account (Account) is established. Revenues from all fines and penalties collected under the Contractor Registration Act must be transferred into the Account. Expenditures from the Account may only be used for the Homeowner Recovery Program (Program) established in the bill.

Subject to a specific appropriation, the Program is created and administered by L&I. Beginning July 1, 2026, a person is eligible to recover from the Program, if:

- the applicant is a claimant with a final judgment in a court of competent jurisdiction against a registered contractor for work on their primary residence;
- the judgment specifies the actual damages suffered as a consequence of the claim;
- the claimant has proceeded against any existing bond covering the contractor;
- the judgment has not been satisfied in full; and
- an application for recovery under the Program is made within 90 days after the conclusion of any civil action.

Payments for eligible applicants are made from the Account and are limited to actual damages awarded after recovery against the bond. Payments for other costs related to or pursuant to civil proceedings, such as attorneys' fees, court costs, or punitive damages, are prohibited. Payments may not exceed \$25,000 per contractor per parcel, or the amount unpaid on the judgment, whichever is less.

If a claimant is issued payment, the claimant must assign their right, title, and interest in any final judgment to L&I to the extent of such payment. L&I may pursue reimbursement from the contractor, the insurer, or any third party for the amount paid from the Account. L&I may establish reimbursement payment plans up to 36 months, but any payment plan longer than 12 months must assess interest.

The priority of payment for eligible applications must be by the order of receipt by L&I. Total payments from the Account for a fiscal year may not be greater than 80 percent of the account balance calculated at the end of the previous fiscal year. L&I must create and maintain a waitlist for any eligible applications unpaid due to insufficient funds in the Account. Eligibility under the Program does not create a right to payment under the Program, and payments under the Program are discretionary. The bill does not create an entitlement to payment or services, and does not create a right of action.

Annually until 2034, L&I must submit to the Legislature an annual report on the total applications to and payments made under the Program and the status of any waitlist and the solvency of the Account. From 2035 onward, L&I must report to the Legislature if L&I finds there is a significant waitlist or there is insufficient funds to sustain the Program.

Beginning June 30, 2023, 3.5 percent of the revenues from the Construction Registration Inspection Account must be transferred to the State General Fund on an ongoing, quarterly basis.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):

- Increases the maximum penalty for failing to register as a contractor from \$6,000 to \$10,000.
- Increases the maximum penalty for transferring a valid registration to an unregistered contractor or subcontracting or using an unregistered contractor is increased from \$5,000 to \$10,000.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill addresses some longstanding issues in the construction industry. The penalties for failing to register as a contractor have not changed for 30 years and the bond requirements have not changed for 20. The bill comes from a workgroup with a well-worked process and proposes solutions everyone can live with. The bill, most importantly, does not punish legitimate contractors. Consumers can lose thousands of dollars from shady contractors and it takes an emotional toll as well. The new fund will allow at least some recovery for homeowners who face barriers to recover damages.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; James King, Independent Business Association; Tom Kwieciak, Building Industry Association of WA; Bobbi Cussins; Laurel Gibson.

Persons Signed In To Testify But Not Testifying: No one.