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HOUSE BILL 1752

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State of Washington

66th Legislature

2019 Regular Session

By Representatives Orwall and Sells; by request of Department of Labor & Industries

1 AN ACT Relating to construction contractors but only with respect  
2 to providing financial recourse to harmed consumers not to include a  
3 warranty and creating a work group; and amending RCW 18.27.040.

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

5 **Sec. 1.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to  
6 read as follows:

7 (1) Each applicant shall file with the department a surety bond  
8 issued by a surety insurer who meets the requirements of chapter  
9 48.28 RCW in the sum of twelve thousand dollars if the applicant is a  
10 general contractor and six thousand dollars if the applicant is a  
11 specialty contractor. If no valid bond is already on file with the  
12 department at the time the application is filed, a bond must  
13 accompany the registration application. The bond shall have the state  
14 of Washington named as obligee with good and sufficient surety in a  
15 form to be approved by the department. The bond shall be continuous  
16 and may be canceled by the surety upon the surety giving written  
17 notice to the director. A cancellation or revocation of the bond or  
18 withdrawal of the surety from the bond automatically suspends the  
19 registration issued to the contractor until a new bond or  
20 reinstatement notice has been filed and approved as provided in this  
21 section. The bond shall be conditioned that the applicant will pay

1 all persons performing labor, including employee benefits, for the  
2 contractor, will pay all taxes and contributions due to the state of  
3 Washington, and will pay all persons furnishing material or renting  
4 or supplying equipment to the contractor and will pay all amounts  
5 that may be adjudged against the contractor by reason of breach of  
6 contract including improper work in the conduct of the contracting  
7 business. A change in the name of a business or a change in the type  
8 of business entity shall not impair a bond for the purposes of this  
9 section so long as one of the original applicants for such bond  
10 maintains partial ownership in the business covered by the bond.

11 (2) At the time of initial registration or renewal, the  
12 contractor shall provide a bond or other security deposit as required  
13 by this chapter and comply with all of the other provisions of this  
14 chapter before the department shall issue or renew the contractor's  
15 certificate of registration. Any contractor registered as of July 1,  
16 2001, who maintains that registration in accordance with this chapter  
17 is in compliance with this chapter until the next renewal of the  
18 contractor's certificate of registration.

19 (3) Any person, firm, or corporation having a claim against the  
20 contractor for any of the items referred to in this section may bring  
21 suit against the contractor and the bond or deposit in the superior  
22 court of the county in which the work was done or of any county in  
23 which jurisdiction of the contractor may be had. The surety issuing  
24 the bond shall be named as a party to any suit upon the bond. Action  
25 upon the bond or deposit brought by a residential homeowner for  
26 breach of contract by a party to the construction contract shall be  
27 commenced by filing the summons and complaint with the clerk of the  
28 appropriate superior court within two years from the date the claimed  
29 contract work was substantially completed or abandoned, whichever  
30 occurred first. Action upon the bond or deposit brought by any other  
31 authorized party shall be commenced by filing the summons and  
32 complaint with the clerk of the appropriate superior court within one  
33 year from the date the claimed labor was performed and benefits  
34 accrued, taxes and contributions owing the state of Washington became  
35 due, materials and equipment were furnished, or the claimed contract  
36 work was substantially completed or abandoned, whichever occurred  
37 first. Service of process in an action filed under this chapter  
38 against the contractor and the contractor's bond or the deposit shall  
39 be exclusively by service upon the department. Three copies of the  
40 summons and complaint and a fee adopted by rule of not less than

1 fifty dollars to cover the costs shall be served by registered or  
2 certified mail, or other delivery service requiring notice of  
3 receipt, upon the department at the time suit is started and the  
4 department shall maintain a record, available for public inspection,  
5 of all suits so commenced. Service is not complete until the  
6 department receives the fee and three copies of the summons and  
7 complaint. The service shall constitute service and confer personal  
8 jurisdiction on the contractor and the surety for suit on claimant's  
9 claim against the contractor and the bond or deposit and the  
10 department shall transmit the summons and complaint or a copy thereof  
11 to the contractor at the address listed in the contractor's  
12 application and to the surety within two days after it shall have  
13 been received.

14 (4) The surety upon the bond shall not be liable in an aggregate  
15 amount in excess of the amount named in the bond nor for any monetary  
16 penalty assessed pursuant to this chapter for an infraction. The  
17 liability of the surety shall not cumulate where the bond has been  
18 renewed, continued, reinstated, reissued or otherwise extended. The  
19 surety upon the bond may, upon notice to the department and the  
20 parties, tender to the clerk of the court having jurisdiction of the  
21 action an amount equal to the claims thereunder or the amount of the  
22 bond less the amount of judgments, if any, previously satisfied  
23 therefrom and to the extent of such tender the surety upon the bond  
24 shall be exonerated but if the actions commenced and pending and  
25 provided to the department as required in subsection (3) of this  
26 section, at any one time exceed the amount of the bond then  
27 unimpaired, claims shall be satisfied from the bond in the following  
28 order:

29 (a) Employee labor and claims of laborers, including employee  
30 benefits;

31 (b) Claims for breach of contract by a party to the construction  
32 contract;

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

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

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

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

1 (5) The total amount paid from a bond or deposit required of a  
2 general contractor by this section to claimants other than  
3 residential homeowners must not exceed one-half of the bond amount.  
4 The total amount paid from a bond or deposit required of a specialty  
5 contractor by this section to claimants other than residential  
6 homeowners must not exceed one-half of the bond amount or four  
7 thousand dollars, whichever is greater.

8 (6) The prevailing party in an action filed under this section  
9 against the contractor and contractor's bond or deposit, for breach  
10 of contract by a party to the construction contract involving a  
11 residential homeowner, is entitled to costs, interest, and reasonable  
12 attorneys' fees. The surety upon the bond or deposit is not liable in  
13 an aggregate amount in excess of the amount named in the bond or  
14 deposit nor for any monetary penalty assessed pursuant to this  
15 chapter for an infraction.

16 (7) If a final judgment impairs the liability of the surety upon  
17 the bond or deposit so furnished that there is not in effect a bond  
18 or deposit in the full amount prescribed in this section, the  
19 registration of the contractor is automatically suspended until the  
20 bond or deposit liability in the required amount unimpaired by  
21 unsatisfied judgment claims is furnished.

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

25 (9) Any person having filed and served a summons and complaint as  
26 required by this section having an unsatisfied final judgment against  
27 the registrant for any items referred to in this section may execute  
28 upon the security held by the department by serving a certified copy  
29 of the unsatisfied final judgment by registered or certified mail  
30 upon the department within one year of the date of entry of such  
31 judgment. Upon the receipt of service of such certified copy the  
32 department shall pay or order paid from the deposit, through the  
33 registry of the superior court which rendered judgment, towards the  
34 amount of the unsatisfied judgment. The priority of payment by the  
35 department shall be the order of receipt by the department, but the  
36 department shall have no liability for payment in excess of the  
37 amount of the deposit.

38 (10) Within ten days after resolution of the case, a certified  
39 copy of the final judgment and order, or any settlement documents  
40 where a case is not disposed of by a court trial, a certified copy of

1 the dispositive settlement documents must be provided to the  
2 department by the prevailing party. Failure to provide a copy of the  
3 final judgment and order or the dispositive settlement documents to  
4 the department within ten days of entry of such an order constitutes  
5 a violation of this chapter and a penalty adopted by rule of not less  
6 than two hundred fifty dollars may be assessed against the prevailing  
7 party.

8 (11) The director may require an applicant applying to renew or  
9 reinstate a registration or applying for a new registration to file a  
10 bond of up to three times the normally required amount, if the  
11 director determines that an applicant, or a previous registration of  
12 a corporate officer, owner, or partner of a current applicant, has  
13 had in the past five years (~~a total of three~~) one final  
14 judgment(~~s~~) in actions under this chapter involving a residential  
15 single-family dwelling (~~on two or more different structures~~).

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

18 (13)(a) The department must convene a work group no later than  
19 August 1, 2019, to consider additional safeguards for consumers who  
20 engage contractors. The department must provide staff support for the  
21 work group and include in the work group: Department staff; large and  
22 small contractors that primarily contract with residential  
23 homeowners, those that build new and rehabilitate residences, and  
24 other interested contractors; surety bond companies; realtors or  
25 their representatives; workers and/or their representatives;  
26 representatives from the consumer protection division of the office  
27 of the attorney general; consumers and/or advocates representing  
28 them; and local building officials.

29 The work group shall submit a report with recommendations to the  
30 department and, if applicable, the appropriate committees of the  
31 legislature by June 30, 2020. The report must address whether:

32 (i) Bond amounts are sufficient and appropriate to protect  
33 consumers, workers, and suppliers and meet tax obligations;

34 (ii) Additional criteria for contractors would provide a greater  
35 level of protection;

36 (iii) Strategies to discourage the transfer of a business to a  
37 different entity for the purpose of evading penalties or judgments  
38 under this chapter should be implemented;

1       (iv) Any other registration requirements or options for consumer  
2 recovery under this chapter should be changed to increase protections  
3 for consumers; and

4       (v) Incentives to adopt industry best practices would increase  
5 consumer protections.

6       (b) The work group must dissolve once the report is submitted.

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