

## CHAPTER 197

[Engrossed Substitute Senate Bill No. 4722]  
CONTRACTOR REGISTRATION

AN ACT Relating to registration of contractors; amending RCW 18.27.020, 18.27.210, 18.27.230, 18.27.240, 18.27.250, 18.27.270, 18.27.300, 18.27.310, 18.27.320, 18.27.340, 18.27.110, 19.30.040, 19.30.081, 19.30.160, and 19.30.170; adding new sections to chapter 18.27 RCW; adding a new section to chapter 19.30 RCW; repealing RCW 18.27.330; prescribing penalties; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 77, Laws of 1963 as last amended by section 17, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.020 are each amended to read as follows:

(1) Every contractor shall register with the department.

(2) It is a misdemeanor for any contractor having knowledge of the registration requirements of this chapter to:

(a) Offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended; or

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(3) All misdemeanor actions under this chapter shall be prosecuted in the county where the infraction occurs.

Sec. 2. Section 2, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.210 are each amended to read as follows:

((An authorized representative of the department may)) The director shall appoint compliance inspectors to investigate alleged or apparent violations of this chapter. If the name of the contractor allegedly or apparently in violation of this chapter is not known, or if the name of the contractor does not appear on the latest list of registered contractors compiled under RCW 18.27.120(1), upon presentation of credentials, ((an authorized representative)) a compliance inspector of the department may inspect sites at which a contractor had bid or presently is working to determine whether the contractor is registered in accordance with this chapter. Upon request of the ((authorized representative)) compliance inspector of the department, a contractor or an employee of the contractor shall provide information identifying the contractor. If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the employer-contractor, and issuance of the infraction to the employee is notice to the employer-contractor that the contractor is in violation of this chapter. An employee who is cited by a compliance inspector shall not be liable

for any of the alleged violations contained in the citation unless the employee is also the contractor.

Sec. 3. Section 3, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.230 are each amended to read as follows:

The department may issue a notice of infraction if the department reasonably believes that the contractor required to be registered by this chapter has failed to do so. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by ~~((an authorized representative of the department))~~ the department's compliance inspectors or service can be made by certified mail directed to the contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the contractor if the department is able to obtain the contractor's address.

Sec. 4. Section 5, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.240 are each amended to read as follows:

~~((f))~~ The form of the notice of infraction issued under this chapter ~~((shall be prescribed by the supreme court following consultation with the department. To the extent practicable, the notice of infraction issued under this chapter shall conform to the notice of traffic infraction prescribed by the supreme court pursuant to RCW 46.63.060.~~

~~(2) The notice of infraction))~~ shall include the following:

~~((a))~~ (1) A statement that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

~~((b))~~ (2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

~~((c))~~ (3) A statement of the specific ~~((infraction for))~~ violation which ~~((the notice was issued))~~ necessitated issuance of the infraction;

~~((d))~~ (4) A statement ~~((that a one hundred dollar monetary penalty has been established for each infraction))~~ of penalty involved if the infraction is established;

~~((e))~~ (5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

~~((f))~~ (6) A statement that at any hearing to contest the ~~((determination))~~ notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the ~~((authorized representative))~~ compliance inspector of the department who issued and served the notice of infraction;

~~((g))~~ (7) A statement, which the person who has been served with the notice of infraction shall sign, that the contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

~~((h))~~ (8) A statement that refusal to sign the infraction as directed in subsection ~~((2)(g))~~ (7) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and

~~((i))~~ (9) A statement that a contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 5. Section 4, chapter 2, Laws of 1983 1st ex. sess. and RCW 18-27.250 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by ~~((a district court. A notice of infraction shall be filed in the district court district in which the infraction is alleged to have occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party))~~ an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department, within twenty days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred.

Sec. 6. Section 7, chapter 2, Laws of 1983 1st ex. sess. and RCW 18-27.270 are each amended to read as follows:

(1) A contractor who ~~((receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served))~~ is issued a notice of infraction shall respond within twenty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not ~~((want to contest the determination, the contractor shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department))~~ elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction ~~((wants to contest the determination, the contractor shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either~~

~~by mail or in person, to the court specified on the notice. The court shall notify the contractor in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen days from the date of the notice of hearing, except by agreement of the parties)) elects to contest the notice of infraction, the contractor shall respond by filing an answer of protest with the department specifying the grounds of protest.~~

(4) If any contractor issued a notice of infraction((:

(a) ~~Fails to respond to the notice of infraction as provided in subsection (2) of this section; or~~

(b) ~~Fails to appear at a hearing requested pursuant to subsection (3) of this section;~~

~~the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure of the contractor to respond to the notice of infraction or to appear at a requested hearing.~~

~~(5) An order entered by the court under subsection (4)(b) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions in courts of limited jurisdiction)) fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.~~

~~(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived, reduced, or suspended pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.~~

~~(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.~~

Sec. 7. Section 8, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.300 are each amended to read as follows:

A contractor subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in ~~((any proceeding))~~ administrative proceedings and any subsequent appeals under this chapter.

Sec. 8. Section 9, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.310 are each amended to read as follows:

(1) ~~((A hearing held to contest the determination that an infraction has been committed shall be without a jury.~~

(2) ~~The court may consider the notice of infraction and any sworn statement submitted by the department's authorized representative who is sued and served the notice in lieu of his or her personal appearance at the~~

hearing. ~~The contractor named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.~~

~~(3))~~ The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.04 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued, the defendant was registered by the department or was exempt from registration.

~~((4))~~ (3) After consideration of the evidence and argument, the ~~((court))~~ administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered ~~((in the court's records))~~ in the record of the proceedings. If it has been established that the infraction was committed, ~~((an appropriate order shall be entered in the court's records))~~ the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

~~((5))~~ (4) An appeal from the ~~((court's))~~ administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

Sec. 9. Section 13, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.320 are each amended to read as follows:

The ~~((court))~~ administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered at the time the notice of infraction was issued.

Sec. 10. Section 15, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.340 are each amended to read as follows:

(1) A contractor found to have committed an infraction under RCW 18.27.200 shall be assessed a monetary penalty of ~~((one hundred dollars))~~ not less than two hundred dollars and not more than three thousand dollars.

(2) The ~~((court))~~ administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction only upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

(3) Monetary penalties collected under this chapter shall be ~~((remitted as provided in chapter 3.62 RCW))~~ deposited in the general fund.

NEW SECTION. Sec. 11. A new section is added to chapter 18.27 RCW to read as follows:

The consumers of this state have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under this chapter shall be deemed to affect the public interest and shall constitute a violation of chapter 19.80 RCW. The surety bond shall not be liable for monetary penalties or violations of chapter 19.86 RCW.

NEW SECTION. Sec. 12. A new section is added to chapter 18.27 RCW to read as follows:

The director shall adopt rules in compliance with chapter 34.04 RCW to effect the purposes of this chapter.

NEW SECTION. Sec. 13. Section 14, chapter 2, Laws of 1983 1st ex. sess. and RCW 18.27.330 are each repealed.

Sec. 14. Section 4, chapter 126, Laws of 1967 and RCW 18.27.110 are each amended to read as follows:

No city, town or county shall issue a construction building permit for work which is to be done by any contractor required to be registered under chapter 77, Laws of 1963 and chapter 18.27 RCW without ((proof)) verification that such contractor is currently registered as required by law. When such verification is made, nothing contained in this section is intended to be, nor shall be construed to create, or form the basis for any liability under this chapter on the part of any city, town or county, or its officers, employees or agents.

Sec. 15. Section 4, chapter 392, Laws of 1955 as amended by section 4, chapter 280, Laws of 1985 and RCW 19.30.040 are each amended to read as follows:

(1) The director shall require the deposit of a surety bond by any person acting as a farm labor contractor under this chapter to insure compliance with the provisions of this chapter. Such bond shall be in an amount specified by the director in accordance with such criteria as the director adopts by rule but shall not be less than five thousand dollars. The bond shall be payable to the state of Washington and shall be conditioned ((that the contractor will comply with this chapter and will pay all sums legally owing to any person recruited, solicited, employed, supplied, or hired by the contractor, or the contractor's agent or subcontractor, and will pay all damages arising out of the violation of any provision of this chapter, or false statements or misrepresentations made in the procurement of the contractor's license)) on payment in full of all sums legally due on wage claims of employees under this chapter and RCW 49.52.050 et seq. The aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond.

(2) The amount of the bond may be raised or additional security required by the director, upon his or her own motion or upon petition to the

director by any person, when it is shown that the security or bond is insufficient to satisfy the contractor's potential liability for the licensed period.

(3) No surety insurer may provide any bond, undertaking, recognition, or other obligation for the purpose of securing or guaranteeing any act, duty, or obligation, or the refraining from any act with respect to a contract using the services of a farm labor contractor unless the farm labor contractor has made application for or has a valid license issued under RCW 19.30.030 at the time of issuance of the bond, undertaking, recognition, or other obligation.

(4) ~~((During the period for which a bond is executed, the bond may not be canceled or otherwise terminated, unless alternative security arrangements are approved by the director))~~ The bond is written for a one-year term and may be renewed or extended by continuation certification at the option of the surety.

(5) In lieu of the surety bond required by this section, the contractor may file with the director a deposit consisting of cash or other security acceptable to the director. The deposit shall not be less than five thousand dollars in value. The security deposited with the director in lieu of the surety bond shall be returned to the contractor at the expiration of three years after the farm labor contractor's license has expired or been revoked if no legal action has been instituted against the contractor or on the security deposit at the expiration of the three years.

(6) If a contractor has deposited a bond with the director and has failed to comply with the conditions of the bond as provided by this section, and has departed from this state, service may be made upon the surety as prescribed in RCW 4.28.090.

Sec. 16. Section 8, chapter 280, Laws of 1985 and RCW 19.30.081 are each amended to read as follows:

Farm labor contractors may hold either a one-year license or a two-year license, at the director's discretion.

The one-year license shall run to and include the 31st day of December next following the date thereof unless sooner revoked by the director. A license may be renewed each year upon the payment of the annual license fee, but the director shall require that a new application ~~((and a renewed bond))~~ be submitted and that the contractor have a bond in full force and effect.

The two-year license shall run to and include the 31st day of December of the year following the year of issuance unless sooner revoked by the director. This license may be renewed every two years under the same terms as the one-year license, except that a farm labor contractor possessing a two-year license shall ~~((renew his or her bond each year))~~ have a bond in full force and effect, and file an application on which he or she shall disclose all information required by RCW 19.30.030 (1)(b), (4), and (7).

Sec. 17. Section 15, chapter 280, Laws of 1985 and RCW 19.30.160 are each amended to read as follows:

(1) In addition to any criminal penalty imposed under RCW 19.30.150, the director may assess against any person who violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The person shall be afforded the opportunity for a hearing, upon request to the director made within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.04 RCW.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director shall refer the matter to the state attorney general, who shall recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

~~((4) Without regard to any other remedy otherwise provided in this chapter, the director may bring suit upon the surety bond filed by the farm labor contractor on behalf of any worker whose rights under this chapter have been violated by the contractor. Such action may be commenced in any court of competent jurisdiction. In any such action, the notice and service requirements set forth in RCW 19.30.170(3) shall be complied with.))~~

Sec. 18. Section 16, chapter 280, Laws of 1985 and RCW 19.30.170 are each amended to read as follows:

(1) After filing a notice of a claim with the director, in addition to any other penalty provided by law, any person aggrieved by a violation of this chapter or any rule adopted under this chapter may bring suit in any court of competent jurisdiction of the county in which the claim arose, or in which either the plaintiff or respondent resides, without regard to the amount in controversy and without regard to exhaustion of any alternative administrative remedies provided in this chapter. No such action may be commenced later than three years after the date of the violation giving rise to the right of action. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

(2) In any action under subsection (1) of this section, if the court finds that the respondent has violated this chapter or any rule adopted under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of five hundred dollars per plaintiff per violation, whichever is greater, or other equitable relief.

~~((3) Without regard to any other remedy otherwise provided in this chapter, any person having a claim against the farm labor contractor for any violation of this chapter may bring suit upon the surety bond or security~~



~~deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides. An action upon the bond or security deposit shall be commenced by serving and filing the complaint within three years from the date of expiration or cancellation of the bond, or in the case of a security deposit, within three years of the date of the expiration or revocation of the license. A copy of the complaint in any such action shall be served upon the director at the time of commencement of the action and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the farm labor contractor and the surety for suit upon the bond and the director shall transmit the complaint or a copy thereof to the contractor at the address listed in his or her application and to the surety within forty-eight hours after it has been received. The surety upon the bond may, upon notice to the director and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated. A claimant against the bond or security deposit shall be entitled to damages under subsection (2) of this section. If the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, the claims shall be satisfied from the bond in the following order:~~

- ~~(a) Wages, including employee benefits;~~
- ~~(b) Damages imposed under subsection (2) of this section;~~
- ~~(c) Any costs and attorney's fees claimant may be entitled to recover.~~

~~If any final judgment impairs the liability of the surety upon the bond so furnished so that there is not in effect a bond undertaking in the full amount prescribed by the director, the director shall suspend the license of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims has been furnished. If such bond becomes fully impaired, a new bond must be furnished.~~

~~If the farm labor contractor has filed other security with the director in lieu of a surety bond, any person having an unsatisfied final judgment against the contractor for any violation of this chapter may execute upon the security deposit held by the director by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director. Upon the receipt of service of such certified copy, the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit:))~~

NEW SECTION. Sec. 19. A new section is added to chapter 19.30 RCW to read as follows:

(1) Any person, having a claim for wages pursuant to this act or RCW 49.52.050 et seq. may bring suit upon the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides: PROVIDED, That the right of action shall not be included in any suit or action against the farm labor contractor but must be exercised independently after first procuring a judgment, decree or other form of adequate proof of liability established after notice and hearing under RCW 19.30.160. The filing of such an action against the farm labor contractor tolls the three-year statute of limitations referred to in RCW 19.30.170.

(2) The right of action is assignable in the name of the director or any other person, and must be included with an assignment of a wage claim, any other appropriate claim, or of a judgment thereon.

(3) An action upon the bond or security deposit shall be commenced by serving and filing the complaint within three years from the date of expiration or cancellation of the bond, or in the case of a security deposit, within three years of the date of expiration or revocation of the license.

(4) A copy of the complaint in any such action shall be served upon the director at the time of commencement of the action and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the farm labor contractor and the surety for suit upon the bond and the director shall transmit the complaint or a copy thereof to the contractor at the address listed in his or her application and to the surety within forty-eight hours after it has been received.

(5) The surety upon the bond may, upon notice to the director and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated.

(6) If the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, the claims shall be satisfied from the bond in the order that judgment was rendered.

(7) If any final judgment impairs the liability of the surety upon the bond so furnished so that there is not in effect a bond undertaking in the full amount prescribed by the director, the director shall suspend the license of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims has been furnished. If such bond becomes fully impaired, a new bond must be furnished.

(8) If the farm labor contractor has filed other security with the director in lieu of a surety bond, any person having an unsatisfied final judgment against the contractor for any violation of this chapter may execute upon the security deposit held by the director by serving a certified copy of the

unsatisfied final judgment by registered or certified mail upon the director. Upon the receipt of service of such certified copy, the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit.

NEW SECTION. Sec. 20. There is appropriated from the general fund to the department of labor and industries for the biennium ending June 30, 1987, the sum of forty-five thousand dollars, or so much thereof as may be necessary, to carry out the purposes of sections 1 through 14 of this act.

NEW SECTION. Sec. 21. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 9, 1986.

Passed the House March 1, 1986.

Approved by the Governor April 1, 1986.

Filed in Office of Secretary of State April 1, 1986.

## CHAPTER 198

[Substitute Senate Bill No. 4741]

### COMMERCIAL FISHING LICENSES—LANDING REQUIREMENTS, FOREIGN GOVERNMENT INTERVENTION—SALMON LICENSE REVERSION— WHITING FISHERY—GEAR AND LICENSING DISTRICTS

AN ACT Relating to commercial fishing licenses; amending RCW 75.30.050 and 75.28-.014; and adding new sections to chapter 75.30 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 75.30 RCW to read as follows:

The director of the department of fisheries shall waive the landing and other permit requirements under RCW 75.30.120 if such requirements were not fulfilled by the license holder due to procedures initiated by a foreign government.

This section shall expire on December 31, 1986.

NEW SECTION. Sec. 2. A new section is added to chapter 75.30 RCW to read as follows:

Any commercial salmon fishing license issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 shall revert to the department when any government confiscates and sells the vessel to which the license or permit was issued. Upon application of the person named on