

BILL ANALYSIS

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C.S.H.B. 730
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Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

In 1989, the Residential Construction Liability Act (RCLA) became effective and, along with its subsequent amendments, provided remedies applicable to residential construction defect lawsuits. The lack of state performance standards for residential construction in Texas and case law makes it difficult for homeowners and homebuilders to resolve construction issues without costly and time-consuming litigation. Without state regulation, homeowners and homebuilders will have to continue to resort to litigation to resolve disputes. C.S.H.B. 730 creates the Texas Residential Construction Commission Act, adopts performance standards for residential construction and establish a state-sponsored inspection and dispute resolution process that assists consumers in resolving construction issues with homebuilders.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Residential Construction Commission in SECTION 1.01 (Sections 408.001, 416.008, 416.009, 416.011, 417.003, 426.003, 426.004, 428.001, 428.003, 428.004, and 430.001, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION; STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION; WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS.

SECTION 1.01. Amends the Property Code by adding Title 16, as follows:

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Sec. 401.001. SHORT TITLE. Authorizes this title to be cited as the Texas Residential Construction Commission Act.

Sec. 401.002. GENERAL DEFINITIONS. Defines "applicable building and performance standards," "applicable warranty period," "approved architect," "approved structural engineer," "commission," "home," "homeowner," "limited statutory warranty and building and performance standards," "nonstructural matter," "request," "state inspector," "state-sponsored inspection and dispute resolution process," "structural," "structural failure," and "third-party inspector."

Sec. 401.003. DEFINITION OF BUILDER. (a) Defines "builder."

(b) Provides individuals and entities that the term includes.

(c) Provides what the term does not include.

Sec. 401.004. DEFINITION OF CONSTRUCTION DEFECT. Defines "construction defect."

Sec. 401.005. EXEMPTIONS. Provides that this title does not apply to a home that meets certain conditions or to certain persons.

Sec. 401.006. SUNSET PROVISION. Provides that the Texas Residential Construction Commission (commission) is subject to Chapter 325, Government Code (Texas Sunset Act). Sets forth standard Sunset language to continue the commission until September 1, 2009.

[Reserves Chapters 402-405 for expansion.]

SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 406. COMMISSION

Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION; MEMBERSHIP. Sets forth standard Sunset language regarding the membership of the commission.

Sec. 406.002. TERMS. Sets forth standard Sunset language relating to the terms of commission members.

Sec. 406.003. PRESIDING OFFICER. Requires the governor to designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. Requires the commission, at a regular meeting in February of each year, to elect from its membership a vice presiding officer and a secretary.

Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "Texas trade association" for this section. Sets forth standard Sunset language relating to membership and employee restrictions.

Sec. 406.005. GROUNDS FOR REMOVAL. Sets forth standard Sunset language relating to grounds for removal of a commission member.

Sec. 406.006. TRAINING. Applies standard Sunset language prohibiting a person who is appointed to the commission from voting, deliberating or being counted as a member of the commission until the person completes a training program that complies with this section. Sets forth Sunset language relating to the content of the training and reimbursement for training.

Sec. 406.007. MEETINGS. Requires the commission to meet at least quarterly and at other times at the call of the presiding officer.

CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

Sec. 407.001. EXECUTIVE DIRECTOR. Requires the commission to employ an executive director as the executive head of the agency.

Sec. 407.002. OTHER PERSONNEL. Authorizes the commission to employ other personnel as necessary for the administration of this title.

Sec. 407.003. DIVISION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the

commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 407.004. **QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.** Applies standard Sunset language requiring the executive director to provide members of the commission with information on qualifications and standards of conduct.

Sec. 407.005. **CAREER LADDER PROGRAM; PERFORMANCE EVALUATION.** (a) Requires the executive director or the executive director's designee to develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. Requires the program to require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) Requires the executive director or the executive director's designee to develop a system of annual performance evaluations based on measurable job tasks. Requires all merit pay for commission employees to be based on the system established under this subsection.

Sec. 407.006. **EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL REPORT.** Applies standard Sunset language requiring the executive director to develop an equal employment opportunity program.

Sec. 407.007. **INFORMATION AND TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM.** Sets forth standard Sunset language requiring the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

CHAPTER 408. POWERS AND DUTIES

Sec. 408.001. **RULES.** (a) Prohibits the commission from adopting a substantive rule before submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

(b) Requires the commission to adopt rules as necessary for the implementation of this title, including certain rules.

Sec. 408.002. **FEES.** Requires the commission to adopt fees as required by this title in amounts that are reasonable and necessary to provide sufficient revenue to cover the costs of administering this title.

Sec. 408.003. **ACCESSIBILITY.** (a) Requires the commission to comply with federal and state laws related to program and facility accessibility.

(b) Requires the executive director to prepare and maintain a written plan that describes how a person who does not speak English can obtain reasonable access to the commission's programs and services.

Sec. 408.004. **ANNUAL REPORT.** (a) Requires the commission to file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(b) Requires the report to be in the form and reported in the time provided by the General Appropriations Act.

CHAPTER 409. PUBLIC INTEREST INFORMATION
AND COMPLAINT PROCEDURES

Sec. 409.001. PUBLIC INTEREST INFORMATION. (a) Requires the commission to prepare information of public interest describing the functions of the commission, the provisions of the limited statutory warranty and building and performance standards, the state-sponsored inspection and dispute resolution process, and the procedures by which complaints or requests are filed with and resolved by the commission.

(b) Requires the commission to make the information available to the public and appropriate state agencies and to post this public interest information on the commission's website.

(c) Requires the commission, within 30 days of the receipt by the commission of the registration required by Section 426.003, to mail a copy of the information of public interest described in Subsection (a) to the owner of the home as described in the registration.

Sec. 409.002. PUBLIC PARTICIPATION. Sets forth standard Sunset language requiring the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 409.003. RECORDS OF COMPLAINTS. Applies standard Sunset language requiring the commission to maintain a file on each written complaint filed with the commission.

[Reserves Chapters 410-415 for expansion.]

SUBTITLE C. BUILDER REGISTRATION

CHAPTER 416. CERTIFICATE OF REGISTRATION

Sec. 416.001. REGISTRATION REQUIRED. Prohibits a person from acting as a builder unless the person holds a certificate of registration under this chapter.

Sec. 416.002. APPLICATION FOR CERTIFICATE. (a) Requires an applicant for an original or renewal certificate of registration to submit an application on a form prescribed by the commission.

(b) Requires each applicant to disclose in the application whether the applicant has a certain criminal history.

(c) Provides that disclosure under Subsection (b) is required regardless of whether an order granting the person community supervision suspended the imposition of the sentence.

(d) Authorizes the commission to conduct, on receipt of an application, a criminal background check of the applicant or any person responsible for the application. Authorizes the commission to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other local, state, or national governmental entity. Provides that unless the information is a public record at the time the commission obtains the information under this subsection, the information is confidential, and the commission may not release or disclose the information to any person except under a court order or with the permission of the

applicant.

Sec. 416.003. PROVISIONAL REGISTRATION. (a) Authorizes the commission, pending the receipt of the results of a criminal background check, to issue a provisional registration certificate. Requires the commission, on approval of the results of the criminal background check, to issue a registration certificate. Requires the commission, on receipt of unfavorable results of the criminal background check, to revoke the provisional registration certificate.

(b) Provides that this section expires January 1, 2005.

Sec. 416.004. FEES. (a) Requires the commission to charge and collect certain fees.

(b) Requires the commission to establish a fee schedule that takes into consideration the unit volume or dollar volume of potential applicants.

Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. Prohibits a person from receiving a certificate of registration under this chapter unless certain conditions are met.

Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES. (a) Provides requirements to be eligible for an original or renewal certificate of registration under this chapter.

(b) Provides that a corporation, limited liability company, partnership, limited partnership, or limited liability partnership is not eligible to be registered under this chapter and prohibits them from acting as a builder unless the entity's designated agent is individually registered as a builder.

Sec. 416.007. ISSUANCE OF CERTIFICATE. (a) Requires the commission, not later than the 15th day after the date the commission receives an application from an applicant who meets the requirements of this chapter, to issue a certificate of registration to the applicant.

(b) Provides that the certificate of registration remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

Sec. 416.008. DENIAL OF REGISTRATION. (a) Requires the commission, if the commission denies an application for an original certificate of registration or a renewal application, to give written notice to the applicant not later than the 15th day after the date the commission receives the application.

(b) Authorizes the applicant to appeal the denial of the application if, on or before the 30th day after the date the applicant receives notice under this section, the applicant files a written request for a hearing before the commission.

(c) Requires the commission to perform certain tasks.

(d) Authorizes the hearing to be continued from time to time with the consent of the applicant.

(e) Requires the hearing to be before a hearings officer appointed by the commission. Requires the hearings officer, after the hearing, to enter an appropriate order. Provides that the order of the hearings officer under this subsection is a final decision.

(f) Requires the commission to adopt procedural rules under which a decision by a hearings officer under this section is subject to appeal to the commission.

(g) Provides that a hearing under this section is governed by Chapter 2001, Government Code.

Sec. 416.009. EXPIRATION OF CERTIFICATE. (a) Authorizes the commission to issue or renew a certificate of registration for a period that does not exceed 24 months.

(b) Authorizes the commission by rule to adopt a system under which certificates of registration expire on several dates during the year. Requires the commission to adjust the date for payment of renewal fees accordingly.

(c) Requires the renewal fee, in a year in which the expiration date for a certificate of registration is changed, to be prorated on a monthly basis so that the certificate holder pays only that portion of the fee that is allocable to the number of months during which the certificate of registration is valid. Provides that on renewal of the certificate of registration on the new expiration date, the total renewal fee is payable.

Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS. (a) Requires a builder to maintain a fixed office location in this state. Requires the address of the builder's principal place of business to be designated on the certificate of registration.

(b) Requires the builder, not later than the 30th day after the date a builder moves from the address designated on the certificate of registration, to submit an application, accompanied by the appropriate fee, for a certificate of registration that designates the new location of the builder's principal place of business. Requires the commission to issue a certificate of registration that designates the new location if the new location complies with the requirements of this section.

(c) Provides that this section does not require a builder to obtain a certificate of registration for each sales office.

Sec. 416.011. TEXAS STAR BUILDER DESIGNATION. (a) Requires the commission to establish rules and procedures for a program through which a builder can be designated as a "Texas Star Builder." Provides that a builder's participation in the program is voluntary and is not a requirement for the issuance of a certificate of registration required under this chapter.

(b) Provides that a builder who participates in this program will be allowed to represent to the public that the builder is a "Texas Star Builder" and meets all of the requirements and qualifications that are set forth by the commission for this program.

(c) Authorizes a builder to satisfy education requirements by completing education programs offered by a trade association or other organization whose education programs have been approved by the commission, if the commission determines that a builder must meet certain education requirements to participate in the "Texas Star Builder" program.

(d) Requires the certification issued by the commission as a "Texas Star Builder" be for the same period of time as the builder's registration under this chapter.

CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

Sec. 417.001. GROUNDS FOR DISCIPLINARY ACTION. Provides that a person is subject to disciplinary action under this chapter for certain violations.

Sec. 417.002. DISCIPLINARY POWERS OF COMMISSION. Authorizes the

commission, on a determination that a ground for disciplinary action under Section 417.001 exists, to perform certain tasks.

Sec. 417.003. HEARING. (a) Provides that if the commission proposes to take a disciplinary action against a person under Section 417.002, the person is entitled to a hearing before the commission.

(b) Requires the commission to adopt procedural rules by which all decisions to take disciplinary action under this chapter are subject to appeal to the commission.

(c) Requires the commission to prescribe the time and place of the hearing.

(d) Provides that a hearing under this section is governed by Chapter 2001, Government Code.

Sec. 417.004. APPEAL. (a) Provides that a person aggrieved by a ruling, order, or decision of the commission is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) Provides that an appeal under this section is governed by Chapter 2001, Government Code.

CHAPTER 418. ADMINISTRATIVE PENALTY

Sec. 418.001. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the commission, in a contested case involving disciplinary action, as part of the commission's order, to impose an administrative penalty on a certificate holder who violates this title or a rule adopted or order issued by the commission under this title.

Sec. 418.002. AMOUNT OF PENALTY. (a) Provides that an administrative penalty imposed under this chapter may not exceed \$5,000 for each violation.

(b) Provides that in determining the amount of an administrative penalty, the hearings officer or commission must consider certain factors.

Sec. 418.003. PAYMENT OF PENALTY. Requires the commission to specify in an order imposing an administrative penalty under this chapter a date on or before the 30th day after the date the order becomes final and unappealable by which the person against whom the penalty is imposed must pay the penalty.

Sec. 418.004. ENFORCEMENT OF PENALTY. Authorizes the commission, if a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, to perform certain tasks.

[Reserves Chapters 419-425 for expansion.]

SUBTITLE D. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS; STATUTORY WARRANTY AND BUILDING AND PERFORMANCE STANDARDS

CHAPTER 426. GENERAL PROVISIONS

Sec. 426.001. APPLICABILITY OF SUBTITLE. (a) Provides that this subtitle applies to a dispute between a builder and a homeowner if certain conditions are met.

(b) Provides that this subtitle does not apply to a dispute arising out of certain violations.

(c) Provides that for the purposes of this section, "damage to goods" does not include damage to a home.

Sec. 426.002. CONFLICT WITH CERTAIN OTHER LAW. Provides that to the extent of any conflict between this subtitle and any other law, including Chapter 27 and the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), this subtitle prevails.

Sec. 426.003. REGISTRATION OF HOME. (a) Requires a builder to register a new home with the Texas Residential Construction Commission (commission) on or before the 15th day of the month following the month in which the transfer of title from the builder to the homeowner occurs. Requires the registration to include the information required by the commission by rule and be accompanied by the fee required by Subsection (c).

(b) Requires a builder that enters into a transaction governed by this title, other than the transfer of title of a new home from the builder to the seller, to register the home involved in the transaction with the commission. Requires the registration to be performed in a certain manner.

(c) Requires a builder to remit to the commission a registration fee for each home registered with the commission in an amount determined by the commission. Prohibits the fee from exceeding \$125.

(d) Authorizes the commission to assess a late payment penalty that does not exceed \$500 against a builder who fails to pay a required registration fee in the time prescribed by this section.

Sec. 426.004. APPLICATION AND INSPECTION FEES. (a) Requires a party who submits a matter to the commission for the state-sponsored inspection and dispute resolution process to pay to the commission certain fees.

(b) Requires the commission to adopt rules permitting a waiver or reduction of the application fee and inspection expenses for homeowners demonstrating a financial inability to pay the fees and expenses.

(c) Requires a person to pay a registration fee, in addition to certain other fees, when submitting a request involving a home where the transfer of title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions was entered into before that date.

Sec. 426.005. PREREQUISITE TO ACTION. (a) Requires a homeowner to comply with this subtitle before initiating an action for damages or other relief arising from an alleged construction defect.

(b) Requires an action described by Subsection (a) to be filed according to certain dates.

(c) Requires any claim for personal injuries, damages to personal goods, or consequential damages or other relief arising out of an alleged construction defect to be included in any action concerning the construction defect.

(d) Provides that this section does not apply to an action that is initiated by a person

subrogated to the rights of a claimant if payment was made pursuant to a claim made under an insurance policy.

Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE RESOLUTION. Requires the state-sponsored inspection and dispute resolution process to be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 30th day after the date the applicable warranty period expires.

Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. Requires a person who submits a request for state-sponsored inspection and dispute resolution to disclose in the request the name of any person who, before the request is submitted, inspected the home on behalf of the requestor in connection with the construction defect alleged in the request. Prohibits the requestor, if a person's name is known to the requestor at the time of the request and is not disclosed as required by this section, from designating the person as an expert or using materials prepared by that person in the state-sponsored inspection and dispute resolution process arising out of the request or any action arising out of the construction defect that is the subject of the request.

Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD-PARTY INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS. (a) Provides that in any action involving a construction defect brought after a recommendation by a third-party inspector or ruling by a panel of state inspectors on the existence of the construction defect or its appropriate repair, the recommendation or ruling must constitute a rebuttable presumption. Requires a party seeking to dispute, vacate, or overcome that presumption to establish by clear and convincing evidence that the recommendation or ruling is inconsistent with the applicable warranty and building and performance standards.

(b) Provides that the presumption established by this section applies only to an action between the homeowner and the builder. Provides that a recommendation or ruling under this subtitle is not admissible in an action between any other parties.

CHAPTER 427. INSPECTORS

Sec. 427.001. QUALIFICATIONS OF THIRD PARTY INSPECTORS. (a) Requires a third-party inspector approved by the commission to meet certain qualifications and submit an application.

(b) Requires a third-party inspector who inspects an issue involving workmanship and materials to have a certain level of experience.

(c) Requires a third-party inspector who inspects an issue involving a structural matter to meet certain standards.

(d) Requires each third-party inspector to receive certain training.

(e) Prohibits a third-party inspector from receiving more than 10 percent of the inspector's gross income in a federal income tax year from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action.

(f) Requires the commission to recognize any continuing education requirements established for engineers and architects, in adopting rules under Subsection (d).

Sec. 427.002. STATE INSPECTORS. (a) Requires the commission to employ state

inspectors to perform certain tasks.

- (b) Requires a state inspector to be certified as a residential combination inspector by the International Code Council.

CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS

Sec. 428.001. REQUEST FOR RESOLUTION. (a) Authorizes the homeowner or the builder to submit to the commission a written request for state-sponsored inspection and dispute resolution, if a dispute between a homeowner and a builder arises out of an alleged construction defect.

- (b) Requires the request to contain certain items.
- (c) Requires the homeowner to notify the builder in writing of each construction defect the homeowner claims to exist, not later than the 30th day before the date a homeowner submits a request under this section. Requires the builder to be provided with a reasonable opportunity to inspect the home or have the builder's designated consultants inspect the home, after the notice is provided.
- (d) Requires a person who submits a request under this section to send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute.
- (e) Requires the commission by rule to establish methods by which homeowners may be notified of the name, mailing address, and telephone number of the commission for the purpose of directing a request to the commission.
- (f) Requires the commission to provide a person who files a request with a copy of the commission's policies and procedures relating to investigation and resolution of a request.
- (g) Requires the commission by rule to establish a standard form for submitting a request under this section and provide a means to submit a request electronically.
- (h) Provides that the filing of a request under this section tolls the limitations period in an action between the homeowner and the builder arising out of the subject of the request until the 45th day after the date a final, nonappealable recommendation is issued under this title in response to the request.

Sec. 428.002. BUILDER'S RIGHT OF INSPECTION. (a) Requires that the builder be given reasonable opportunity to inspect the home that is the subject of the request or have the home inspected to determine the nature and cause of the construction defect and the nature and extent of repairs necessary to remedy the construction defect, in addition to the right of inspection provided by Section 428.001(c), at any time before the conclusion of the state-sponsored inspection and dispute resolution process and on the builder's written request.

- (b) Authorizes the builder to take reasonable steps to document the construction defect and the condition of the home.
- (c) Requires any period for subsequent action to be taken by the builder or the third-party inspector to be extended one day for each day the inspection is delayed after the fifth day, if the homeowner delays the inspection for more than five days after the date of receiving the builder's written request.

Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a) Requires the commission to appoint a third-party inspector to inspect the home and meet with the homeowner and the builder, on or before the 15th day after the date the commission receives a request.

(b) Requires the commission to establish rules and regulations that allow the homeowner and the builder to each have the right to strike the appointment of a third-party inspector one time for each request submitted.

Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) Requires the third-party inspector to issue a recommendation not later than the 15th day after the date the third-party inspector receives the appointment from the commission, if the dispute involves workmanship and materials in the home of a nonstructural matter.

(b) Requires the commission to appoint an approved engineer to be the third-party inspector, if the dispute involves a structural matter in the home. Requires the third-party inspector to inspect the home not later than the 30th day after the date the request is submitted and issue a recommendation not later than the 60th day after the date the third-party inspector receives the assignment from the commission, unless additional time is requested by the third-party inspector or a party to the dispute. Requires the commission to adopt rules governing the extension of time under this subsection.

(c) Requires the third-party inspector's recommendation to (1) address only the construction defect, based on the applicable warranty and building and performance standards; and

(2) designate a method or manner of repair, if any.

(d) Prohibits the third-party inspector's recommendation from including payment of any monetary consideration, except as provided by this subsection. Authorizes the commission to order the other party to reimburse all or part of the fees and inspection expenses paid by the requestor under Section 426.004, if the inspector finds for the party who submitted the request.

Sec. 428.005. THREAT TO HEALTH OR SAFETY. Requires a builder who receives written notice of a request relating to a construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence to take reasonable steps to cure the defect as soon as practicable. Authorizes the homeowner to have the defect cured and recover from the builder the reasonable cost of the cure plus reasonable attorney's fees and expenses associated with curing the defect in addition to any other damages not inconsistent with this subtitle, if the builder fails to cure the defect in a reasonable time.

CHAPTER 429. APPEAL OF THIRD-PARTY INSPECTOR'S RECOMMENDATION

Sec. 429.001. APPEAL. (a) Authorizes a homeowner or builder to appeal a third-party inspector's recommendation on or before the 15th day after the date the recommendation is issued.

(b) Requires the executive director to appoint three state inspectors to a panel to review the recommendation, if a homeowner or builder appeals a third-party inspector's recommendation. Requires one of the state inspectors on the panel to be a licensed professional engineer, if the recommendation involves a dispute regarding a structural failure.

(c) Requires the panel to perform certain functions.

CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS. (a) Requires the commission by rule to adopt limited statutory warranties and building and performance standards for residential construction that comply with this section.

(b) Requires the warranty periods to be of certain duration.

(c) Requires the limited statutory warranties and building and performance standards to follow certain guidelines.

(d) Provides that the International Residential Code for One- and Two-Family Dwellings that applies to nonelectrical aspects of residential construction for the purposes of the limited statutory warranties and building and performance standards adopted under this section is for certain residential construction.

(e) Provides that the National Electrical Code for One- and Two-Family Dwellings that applies to electrical aspects of residential construction for the purposes of this section is for certain residential construction.

(f) Provides that, except as provided by a written agreement between the builder and the initial homeowner, a warranty period adopted under this section for a new home begins on a certain date.

(g) Provides that a warranty period adopted under this section for an improvement other than a new home begins on the date the improvement is substantially completed.

(h) Authorizes the building and performance standards adopted by the commission under this section to be adopted in phases and amended or supplemented by the commission from time to time as the commission receives additional evidence or information from task forces or other forces regarding any improvements or developments in the areas of residential homebuilding practices, procedures, or technology.

Sec. 430.002. MOLD REDUCTION AND REMEDIATION; TASK FORCE. (a) Requires the building and performance standards adopted under Section 430.001 to include measures that are designed to reduce the general population's exposure to mold often formed in water-damaged building materials and that include:

(1) methods by which mold, water damage, and microbial volatile compounds in indoor environments may be recognized; and

(2) recommended management practices for:

(A) limiting moisture intrusion in a home, including the use of a water leak detection system; and

(B) mold remediation.

(b) Requires the commission to appoint a task force to advise the commission with regard to adoption of standards under this section. Requires the task force to include representatives of public health officers of this state, health and medical experts, mold abatement experts, and representatives of affected consumers and industries. Requires the commission and the task force to consider the feasibility of adopting permissible limits for exposure to mold in indoor environments.

Sec. 430.003. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY

COMMITTEE. Requires the commission to appoint a task force to develop design recommendations for residential construction that encourage rain harvesting and water recycling.

Sec. 430.004. **STATUTORY WARRANTIES EXCLUSIVE.** Provides that the warranties established under this chapter supersede all implied warranties. Provides that the only warranties that exist for residential construction or residential improvements are warranties created by this chapter or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder. Prohibits a court from discerning or declaring any other implied warranty.

Sec. 430.005. **WAIVER BY CONTRACT PROHIBITED.** Prohibits a contract between a builder and a homeowner from waiving the limited statutory warranties and building and performance standards adopted under this chapter. Provides that this section does not prohibit a builder and a homeowner from contracting for more stringent warranties and building standards than are provided under this chapter.

Sec. 430.006. **APPROVAL OF THIRD-PARTY WARRANTY COMPANY.** (a) Authorizes the commission to approve certain entities as a third-party warranty company for the purposes of Section 430.007.

(b) Requires a third-party warranty company to submit to the commission an annual application and fee in the form and in the amount required by the commission by rule before the company may be approved under this section.

Sec. 430.007. **THIRD-PARTY WARRANTY COMPANY.** (a) Authorizes the builder to limit liability to a homeowner under the terms of that warranty, if a builder chooses to provide a third-party warranty company approved by the commission.

(b) Provides that a limitation of liability under this section is not effective unless the company providing the warranty agrees to perform the builder's warranty obligations under this chapter and actually pays for or corrects any construction defect covered by the warranty.

(c) Provides that a third-party warranty company approved by the commission has all of the obligations and rights of a builder under this subtitle regarding performance of repairs to remedy construction defects or payment of money instead of repair.

(d) Prohibits the third-party warranty company from assuming liability for personal injuries or damage to personal property. Provides that a builder does not avoid liability for personal injuries or damage to personal property for which the builder would otherwise be liable under law by providing a written warranty from a third-party warranty company.

(e) Provides that a company that administers a warranty for a third-party warranty company is not liable for any damages resulting from a construction defect or from repairs covered under the warranty.

Sec. 430.008. **MINIMUM STANDARDS FOR DETERMINATION OF DEFECT.** Requires a third-party warranty company to use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. Authorizes a warranty company to adopt warranty standards in addition to the standards adopted by the commission, but prohibits reducing the limited statutory warranty and building and performance standards.

Sec. 430.009. **EFFECT OF SUBTITLE ON OTHER RIGHTS AND OBLIGATIONS.** (a)

Provides that this subtitle provides the sole rights and obligations between a homeowner and a builder unless additional rights and obligations are provided in an express, written contract between the homeowner and the builder. Prohibits, except as permitted by this subtitle, an express, written contract between a homeowner and a builder from limiting the obligations of a builder under this title.

(b) Authorizes a homeowner to bring a cause of action against a builder or third-party warranty company for breach of a limited statutory warranty adopted by the commission under this subtitle, after the issuance of written findings of fact and a ruling on an appeal under Chapter 429. Authorizes the homeowner to recover only those damages provided by Section 27.004(g), in an action brought under this subsection.

(c) Provides that this subtitle creates the only cognizable cause of action available against a builder or third-party warranty company with regard to construction defects.

SECTION 1.02. (a) Requires, on or before December 1, 2003, the governor to appoint the members of the Texas Residential Construction Commission in accordance with Title 16, Property Code, as added by this article. Requires, in making the initial appointments, the governor to designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(b) Requires the governor to designate a person to perform the ministerial acts necessary for posting notice of and holding the first meeting of the commission.

(c) Provides that Section 406.006, Property Code, as added by this article, does not apply to a member of the Texas Residential Construction Commission until March 1, 2004.

SECTION 1.03. Requires the Texas Residential Construction Commission to adopt limited statutory warranties and building and performance standards under Section 430.001, Property Code, as added by this article, as soon as possible after appointment of its members. Provides that the warranties and building and performance standards adopted by the commission as they apply to residential construction are prospective.

SECTION 1.04. Requires, on or before March 1, 2004, the Texas Residential Construction Commission to begin requiring registration under Subtitle C, Title 16, Property Code, as added by this article.

SECTION 1.05. Requires the commission to begin collecting, and builders to remit, the registration fee required by Section 426.003, Property Code, as added by this Act, on January 1, 2004.

ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

SECTION 2.01. Amends Section 27.001, Property Code, as follows:

Sec. 27.001. DEFINITIONS. Defines "action," "appurtenance," "commission," "construction defect," "economic damages," "contractor," "residence," "structural failure," and "third-party inspector."

SECTION 2.02. Amends Section 27.002, Property Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Replaces the term "resulting" with "or other relief arising" in relation to an action to recover from a construction defect.

(b) Provides that to the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business &

Commerce Code) or a common-law cause of action, this chapter prevails.

(d) Provides that this chapter does not apply to an action to recover damages that arise from certain violations.

SECTION 2.03. Amends Section 27.003, Property Code, as follows:

Sec. 27.003. LIABILITY. (a) Provides that in an action to recover damages or other relief arising from a construction defect if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section 27.004 or fails to request state-sponsored inspection and dispute resolution under Chapter 428, if applicable, before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor. Makes conforming changes.

(b) Makes a conforming change.

SECTION 2.04. Amends Section 27.004, Property Code, as follows:

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) Requires the claimant to give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint, in a claim not subject to Subtitle D, Title 16, before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, rather than files suit. Provides that in a claim subject to Subtitle D, Title 16, a contractor is entitled to make an offer of repair in accordance with Subsection (b). Provides that a claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.

(b) Authorizes the contractor to make a written offer of settlement to the claimant, not later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th day, rather than within the 45-day period, after the date the contractor receives the notice under this section, if Subtitle D, Title 16, does not apply. Requires the offer to be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. Authorizes the offer to include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and requires it to describe in reasonable detail the kind of repairs which will be made. Requires the repairs to be made not later than the 45th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. Provides that certain actions be taken if a contractor makes a written offer of settlement that the claimant considers to be unreasonable.

(c) Provides that if compliance with Subtitle D, Title 16, or the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, compliance with Subtitle D, Title 16, or the notice is not required. Requires that if Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, the claimant submit a request under Section 428.001. Authorizes the inspection provided for by Subsection (a) to be made not later than the 75th day after,

rather than during the 60-day period following, the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) to be made not later than the 15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after the date of service, if Subtitle D, Title 16, does not apply. Requires that if, while an action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action be abated to allow compliance with Subsections (a) and (b). Makes conforming changes.

(d) Requires the court or arbitration tribunal to dismiss an action, rather than abate a suit, governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to dismissal because the claimant failed to comply with the requirements of Subtitle D, Title 16, if applicable, failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). Provides that an action is automatically dismissed without the order of the court or tribunal beginning on the 11th day after the date a motion to dismiss, rather than plea in abatement, is filed if the motion :

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b) or Subtitle D, Title 16; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to dismiss is filed. Makes conforming changes.

(e) Deletes existing Subsection (e) and redesignates (f) as (e). Provides that if a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant may recover only a certain amount. Makes conforming changes.

(f) Redesignated from existing Subsection (g) to require the limitations on damages, but not defenses to liability, provided for in Subsection (e) to be inapplicable if a contractor fails to make a reasonable offer under Subsection (b) or fails to make a reasonable attempt to fully perform under an accepted offer made under this section, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer made under this section. Makes conforming changes.

(g) Redesignated from existing Subsection (h) to authorize, except as provided by Subsection (e), in an action subject to this chapter the claimant to recover only certain economic damages proximately caused by a construction defect. Makes conforming changes.

(h) Authorizes a homeowner and a contractor to agree in writing to extend any time period described in this chapter. Deletes language relating to the total damages awarded.

(i) Redesignated from existing Subsection (j).

(j) Redesignated from existing Subsection (k) to authorize an affidavit certifying

rejection of a settlement offer under this section to be filed with the court or arbitration tribunal. Requires the trier of fact to determine the reasonableness of a final offer of settlement made under this section. Redesignates Subsection (l) as (k).

(l) Requires the contractor, on completion of the repairs and at the contractor's expense, to engage the third-party inspector who provided the recommendation regarding the construction defect involved in the claim to inspect the repairs and determine if they are in compliance. Provides that the contractor is entitled to a reasonable period to address minor cosmetic items. Provides that the determination of the inspector regarding compliance establishes a rebuttable presumption on that issue. Requires a party seeking to dispute, vacate, or overcome that presumption to establish by clear and convincing evidence that the determination is inconsistent with the applicable limited statutory warranty and building performance standards.

(m) No changes.

(n) Provides that this section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) Requires a notice and response letter prescribed by this chapter to be sent by certified mail, return receipt requested, to the last known address of the recipient. Requires that if previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter to be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure. Deletes text relating to inspection and repair provisions.

(p) No changes.

SECTION 2.05. Amends Chapter 27, Property Code, by adding Section 27.0042, as follows:

Sec. 27.0042. **CONDITIONAL SALE TO BUILDER.** (a) Authorizes a written agreement between a contractor and a homeowner to provide that, except as provided by Subsection (b), if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of the current fair market value of the residence, as determined without reference to the construction defects, then, in an action subject to this chapter, the contractor is authorized to elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) Prohibits a contractor from electing to purchase the residence under Subsection (a) if the residence is more than five years old at the time an action is initiated.

(c) Provides that if a contractor elects to purchase the residence under Subsection (a), certain conditions must be met.

(d) Provides that an offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

SECTION 2.06. Amends Section 27.007(a), Property Code, to require a written contract subject to this chapter to contain next to the signature lines in the contract a notice printed or typed in 10-point boldface type or the computer equivalent certain text.

SECTION 2.07. (a) Provides that the changes in law made by this article to Sections 27.002, 27.003, and 27.004, Property Code, apply only to a cause of action that accrues on or after the effective date of this Act. Provides that a cause of action that accrues before the effective date of this

Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Provides that Section 27.0042, Property Code, as added by this article and the changes in law made by this article to Section 27.007(a), Property Code, apply only with respect to a contract between a contractor and a homeowner that is entered into on or after the effective date of this Act. Provides that with respect to a contract that is entered into before the effective date of this Act, the law in effect immediately before the effective date applies, and that law is continued in effect for that purpose.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2003.