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et al.

H.B. No. 730

A BILL TO BE ENTITLED

1 AN ACT

2 relating to residential construction, including certain
3 warranties, building and performance standards, and dispute
4 resolution; providing an administrative penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;

7 STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION; WARRANTIES AND
8 BUILDING AND PERFORMANCE STANDARDS

9 SECTION 1.01. The Property Code is amended by adding Title
10 16 to read as follows:

11 TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

12 SUBTITLE A. GENERAL PROVISIONS

13 CHAPTER 401. GENERAL PROVISIONS

14 Sec. 401.001. SHORT TITLE. This title may be cited as the
15 Texas Residential Construction Commission Act.

16 Sec. 401.002. GENERAL DEFINITIONS. In this title:

17 (1) "Applicable building and performance standards"
18 means:

19 (A) building and performance standards adopted
20 under Section 430.001; or

21 (B) for homes constructed before the adoption of
22 building and performance standards under Section 430.001, the
23 building and performance standards under any express warranty
24 provided in writing by the builder or, if there is no express

1 warranty, the usual and customary residential construction
2 practices in effect at the time of the construction.

3 (2) "Applicable warranty period" means:

4 (A) a warranty period established under Section
5 430.001; or

6 (B) for construction to which the warranty
7 periods adopted under Section 430.001 do not apply, any other
8 construction warranty period that applies to the construction.

9 (3) "Approved architect" means an architect licensed
10 by this state and approved by the commission to provide services to
11 the commission in connection with the state-sponsored inspection
12 and dispute resolution process.

13 (4) "Approved structural engineer" means a licensed
14 professional engineer approved by the commission to provide
15 services to the commission in connection with the state-sponsored
16 inspection and dispute resolution process.

17 (5) "Builder" means any business entity or individual
18 who, for a fixed price, commission, fee, wage, or other
19 compensation, constructs or supervises or manages the construction
20 of a new home or undertakes or offers to undertake the construction
21 of an improvement to or supervise or manage the construction of an
22 improvement to an existing home when the cost of the work exceeds
23 \$5,000. The term includes:

24 (A) an owner, officer, director, shareholder,
25 partner, affiliate, or employee of the builder;

26 (B) a risk retention group registered under
27 Article 21.54, Insurance Code, that insures all or any part of a

1 builder's liability for the cost to repair a residential
2 construction defect; and

3 (C) a third-party warranty company and its
4 administrator.

5 (6) "Commission" means the Texas Residential
6 Construction Commission.

7 (7) "Home" means the real property and improvements
8 and appurtenances for a single-family house, duplex, triplex, or
9 quadruplex.

10 (8) "Homeowner" means a person who owns a home or a
11 subrogee or assignee of a person who owns a home.

12 (9) "Limited statutory warranty and building and
13 performance standards" means the limited statutory warranty and
14 building and performance standards adopted by the commission under
15 Section 430.001.

16 (10) "Nonstructural matter" has the meaning assigned
17 by the limited statutory warranty and building and performance
18 standards adopted by the commission under Section 430.001.

19 (11) "Request" means a request submitted under Section
20 428.001.

21 (12) "Settlement agent" means an escrow officer, an
22 attorney, a mortgage company, or a bank providing closing services
23 for a home or a loan to finance the construction of or improvements
24 to a home.

25 (13) "State inspector" means a person employed by the
26 commission under Section 427.002.

27 (14) "State-sponsored inspection and dispute

1 resolution process" means the process by which the commission
2 resolves a request.

3 (15) "Structural" means the load-bearing portion of a
4 home.

5 (16) "Structural failure" has the meaning assigned by
6 the limited statutory warranty and building and performance
7 standards adopted by the commission under Section 430.001.

8 (17) "Third-party inspector" means a person appointed
9 by the commission under Section 428.003.

10 Sec. 401.003. DEFINITION OF CONSTRUCTION DEFECT. (a) In
11 this title, "construction defect" means:

12 (1) the failure of the design, construction, or repair
13 of a home, an alteration of or a repair, addition, or improvement to
14 an existing home, or an appurtenance to a home to meet the
15 applicable warranty and building and performance standards during
16 the applicable warranty period; and

17 (2) any physical damage to the home, an appurtenance
18 to the home, or real property on which the home or appurtenance is
19 affixed that is proximately caused by that failure.

20 (b) The term does not include a defect that arises or any
21 damages that arise wholly or partly from:

22 (1) the negligence of a person other than the builder
23 or an agent, employee, subcontractor, or supplier of the builder;

24 (2) failure of a person other than the builder or an
25 agent, employee, subcontractor, or supplier of the contractor to:

26 (A) take reasonable action to mitigate any
27 damages that arise from a defect; or

1 (B) take reasonable action to maintain the home;
2 (3) normal wear, tear, or deterioration; or
3 (4) normal shrinkage due to drying or settlement of
4 construction components within the tolerance of building and
5 performance standards.

6 Sec. 401.004. EXEMPTIONS. (a) This title does not apply to
7 a home that is:

8 (1) built by the individual who owns the home, alone or
9 with the assistance of the individual's employees or independent
10 contractors; and

11 (2) used by the individual as the individual's primary
12 residence for at least one year after the completion or substantial
13 completion of construction of the home.

14 (b) This title does not apply to a homeowner or to a
15 homeowner's real estate broker, agent, or property manager who
16 supervises or arranges for the construction of an improvement to a
17 home owned by the homeowner.

18 Sec. 401.005. SUNSET PROVISION. The Texas Residential
19 Construction Commission is subject to Chapter 325, Government Code
20 (Texas Sunset Act). Unless continued in existence as provided by
21 that chapter, the commission is abolished and this title expires
22 September 1, 2007.

23 [Chapters 402-405 reserved for expansion]

24 SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

25 CHAPTER 406. COMMISSION

26 Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;
27 MEMBERSHIP. (a) The Texas Residential Construction Commission

1 consists of nine members appointed by the governor with the advice
2 and consent of the senate as follows:

3 (1) four members must be builders who each hold a
4 certificate of registration under Chapter 416;

5 (2) three members must be representatives of the
6 general public;

7 (3) one member must be a licensed professional
8 engineer who practices in the area of residential construction; and

9 (4) one member must be a licensed architect who
10 practices in the area of residential construction.

11 (b) Appointments to the commission shall be made without
12 regard to the race, color, disability, sex, religion, age, or
13 national origin of the appointees.

14 Sec. 406.002. TERMS. (a) Commission members serve
15 staggered six-year terms, with three members' terms expiring
16 February 1 of each odd-numbered year. The terms of three of the
17 builder representatives must expire in different odd-numbered
18 years. The term of one of the representatives of the general public
19 must expire in each odd-numbered year.

20 (b) A member of the commission may not serve more than two
21 complete terms.

22 Sec. 406.003. PRESIDING OFFICER. The governor shall
23 designate a member of the commission as the presiding officer of the
24 commission to serve in that capacity at the pleasure of the
25 governor. At a regular meeting in February of each year, the
26 commission shall elect from its membership a vice presiding officer
27 and a secretary.

1 Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)

2 In this section, "Texas trade association" means a cooperative and
3 voluntarily joined association of business or professional
4 competitors in this state designed to assist its members and their
5 industry or profession as a whole in dealing with mutual business or
6 professional problems, issues, and circumstances and in promoting
7 the common interest of its members and their industry and
8 profession as a whole.

9 (b) A person may not be a member of the commission and may
10 not be a commission employee employed in a "bona fide executive,
11 administrative, or professional capacity," as that phrase is used
12 for purposes of establishing an exemption to the overtime
13 provisions of the federal Fair Labor Standards Act of 1938 (29
14 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

15 (1) the person is an employee or paid consultant of a
16 Texas trade association in the field of residential construction;
17 or

18 (2) the person's spouse is a manager or paid consultant
19 of a Texas trade association in the field of residential
20 construction.

21 (c) A person may not be a member of the commission or act as
22 the general counsel to the commission if the person is required to
23 register as a lobbyist under Chapter 305, Government Code, because
24 of the person's activities for compensation on behalf of a
25 profession related to the operation of the commission.

26 (d) A person may not be a commission employee described by
27 Subsection (b) if the person is an employee or agent in the field of

1 residential construction. This subsection does not apply to a
2 person appointed to the commission.

3 Sec. 406.005. GROUNDS FOR REMOVAL. (a) It is a ground for
4 removal from the commission that a member:

5 (1) does not have at the time of taking office the
6 qualifications required by Section 406.001;

7 (2) does not maintain during service on the commission
8 the qualifications required by Section 406.001;

9 (3) is ineligible for membership under Section
10 406.004;

11 (4) cannot because of illness or disability discharge
12 the member's duties for a substantial part of the member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled commission meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority vote
16 of the commission.

17 (b) The validity of an action of the commission is not
18 affected by the fact that it is taken when a ground for removal of a
19 commission member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the potential ground. The presiding officer
23 shall then notify the governor and the attorney general that a
24 potential ground for removal exists. If the potential ground for
25 removal involves the presiding officer, the executive director
26 shall notify the next highest ranking officer of the commission,
27 who shall notify the governor and the attorney general that a

1 potential ground for removal exists.

2 Sec. 406.006. TRAINING. (a) A person who is appointed to
3 and qualifies for office as a member of the commission may not vote,
4 deliberate, or be counted as a member in attendance at a meeting of
5 the commission until the person completes a training program that
6 complies with this section.

7 (b) The training program must provide the person with
8 information regarding:

9 (1) the legislation that created the commission;

10 (2) the programs operated by the commission;

11 (3) the role and functions of the commission;

12 (4) the rules of the commission, with an emphasis on
13 the rules that relate to disciplinary and investigatory authority;

14 (5) the current budget for the commission;

15 (6) the results of the most recent formal audit of the
16 commission;

17 (7) the requirements of:

18 (A) the open meetings law, Chapter 551,
19 Government Code;

20 (B) the public information law, Chapter 552,
21 Government Code;

22 (C) the administrative procedure law, Chapter
23 2001, Government Code; and

24 (D) other laws relating to public officials,
25 including conflict-of-interest laws; and

26 (8) any applicable ethics policies adopted by the
27 commission or the Texas Ethics Commission.

1 (c) A person appointed to the commission is entitled to
2 reimbursement, as provided by the General Appropriations Act, for
3 the travel expenses incurred in attending the training program
4 regardless of whether the attendance at the program occurs before
5 or after the person qualifies for office.

6 Sec. 406.007. MEETINGS. The commission shall meet at least
7 quarterly and at other times at the call of the presiding officer.

8 CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

9 Sec. 407.001. EXECUTIVE DIRECTOR. The commission shall
10 employ an executive director as the executive head of the agency.

11 Sec. 407.002. OTHER PERSONNEL. The commission may employ
12 other personnel as necessary for the administration of this title.

13 Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission
14 shall develop and implement policies that clearly separate the
15 policy-making responsibilities of the commission and the
16 management responsibilities of the executive director and the staff
17 of the commission.

18 Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT
19 INFORMATION. The executive director or the executive director's
20 designee shall provide to members of the commission and to
21 commission employees, as often as necessary, information regarding
22 the requirements for office or employment under this title,
23 including information regarding a person's responsibilities under
24 applicable laws relating to standards of conduct for state officers
25 or employees.

26 Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE
27 EVALUATION. (a) The executive director or the executive

1 director's designee shall develop an intra-agency career ladder
2 program that addresses opportunities for mobility and advancement
3 for employees within the commission. The program must require
4 intra-agency posting of all nonentry level positions concurrently
5 with any public posting.

6 (b) The executive director or the executive director's
7 designee shall develop a system of annual performance evaluations
8 based on measurable job tasks. All merit pay for commission
9 employees must be based on the system established under this
10 subsection.

11 Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL
12 REPORT. (a) The executive director or the executive director's
13 designee shall prepare and maintain a written policy statement that
14 implements a program of equal employment opportunity to ensure that
15 all personnel decisions are made without regard to race, color,
16 disability, sex, religion, age, or national origin.

17 (b) The policy statement must include:

18 (1) personnel policies, including policies relating
19 to recruitment, evaluation, selection, training, and promotion of
20 personnel, that show the intent of the commission to avoid the
21 unlawful employment practices described by Chapter 21, Labor Code;
22 and

23 (2) an analysis of the extent to which the composition
24 of the commission's personnel is in accordance with state and
25 federal law and a description of reasonable methods to achieve
26 compliance with state and federal law.

27 (c) The policy statement must:

1 (1) be updated annually;

2 (2) be reviewed by the state Commission on Human
3 Rights for compliance with Subsection (b)(1); and

4 (3) be filed with the governor's office.

5 (d) The governor's office shall deliver a biennial report to
6 the legislature based on the information received under Subsection
7 (c)(3). The report may be made separately or as a part of other
8 biennial reports made to the legislature.

9 Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE
10 INCENTIVE PROGRAM. The executive director or the executive
11 director's designee shall provide to commission employees
12 information and training on the benefits and methods of
13 participation in the state employee incentive program.

14 CHAPTER 408. POWERS AND DUTIES

15 Sec. 408.001. RULES. (a) The commission may not adopt a
16 substantive rule before submitting the proposed rule to the
17 attorney general for a ruling on the proposed rule's validity.

18 (b) The commission shall adopt rules as necessary for the
19 implementation of this title, including rules:

20 (1) governing the state-sponsored inspection and
21 dispute resolution process, including building and performance
22 standards, administrative regulations, and the conduct of hearings
23 under Subtitle D;

24 (2) establishing limited statutory warranty and
25 building and performance standards for residential construction;

26 (3) approving third-party warranty programs; and

27 (4) approving third-party inspectors.

1 Sec. 408.002. FEES. The commission shall adopt fees as
2 required by this title in amounts that are reasonable and necessary
3 to provide sufficient revenue to cover the costs of administering
4 this title.

5 Sec. 408.003. ACCESSIBILITY. (a) The commission shall
6 comply with federal and state laws related to program and facility
7 accessibility.

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

12 Sec. 408.004. ANNUAL REPORT. (a) The commission shall file
13 annually with the governor and the presiding officer of each house
14 of the legislature a complete and detailed written report
15 accounting for all funds received and disbursed by the commission
16 during the preceding fiscal year.

17 (b) The report must be in the form and reported in the time
18 provided by the General Appropriations Act.

19 CHAPTER 409. PUBLIC INTEREST INFORMATION
20 AND COMPLAINT PROCEDURES

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

1 (b) The commission shall make the information available to
2 the public and appropriate state agencies and will post this public
3 interest information on the commission's website.

4 (c) Within 30 days of the receipt by the commission of the
5 registration required by Section 426.003, the commission shall mail
6 a copy of the information of public interest described in
7 Subsection (a) to the owner of the home as described in the
8 registration.

9 Sec. 409.002. PUBLIC PARTICIPATION. The commission shall
10 develop and implement policies that provide the public with a
11 reasonable opportunity to appear before the commission and to speak
12 on any issue under the jurisdiction of the commission.

13 Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission
14 shall maintain a file on each written complaint filed with the
15 commission.

16 (b) The commission shall provide to the person filing the
17 complaint and to each person who is a subject of the complaint a
18 copy of the commission's policies and procedures relating to
19 complaint investigation and resolution.

20 (c) The commission, at least quarterly until final
21 disposition of the complaint, shall notify the person filing the
22 complaint and each person who is a subject of the complaint of the
23 status of the investigation.

24 [Chapters 410-415 reserved for expansion]

25 SUBTITLE C. BUILDER REGISTRATION

26 CHAPTER 416. CERTIFICATE OF REGISTRATION

27 Sec. 416.001. REGISTRATION REQUIRED. A person may not act

1 as a builder unless the person holds a certificate of registration
2 under this chapter.

3 Sec. 416.002. APPLICATION FOR CERTIFICATE. (a) An
4 applicant for an original or renewal certificate of registration
5 must submit an application on a form prescribed by the commission.

6 (b) Each applicant must disclose in the application whether
7 the applicant has:

8 (1) entered a plea of guilty or nolo contendere to a
9 felony charge or a misdemeanor involving moral turpitude; or

10 (2) been convicted of a felony or a misdemeanor
11 involving moral turpitude and the time for appeal has elapsed or the
12 conviction has been affirmed on appeal.

13 (c) Disclosure under Subsection (b) is required regardless
14 of whether an order granting the person community supervision
15 suspended the imposition of the sentence.

16 (d) The commission may, on receipt of an application,
17 conduct a criminal background check of the applicant or any person
18 responsible for the application. The commission may obtain
19 criminal history record information maintained by the Department of
20 Public Safety, the Federal Bureau of Investigation, or any other
21 local, state, or national governmental entity. Unless the
22 information is a public record at the time the commission obtains
23 the information under this subsection, the information is
24 confidential, and the commission may not release or disclose the
25 information to any person except under a court order or with the
26 permission of the applicant.

27 Sec. 416.003. PROVISIONAL REGISTRATION. (a) Pending the

1 receipt of the results of a criminal background check, the
2 commission may issue a provisional registration certificate. On
3 approval of the results of the criminal background check, the
4 commission shall issue a registration certificate. On receipt of
5 unfavorable results of the criminal background check, the
6 commission shall revoke the provisional registration certificate.

7 (b) This section expires January 1, 2005.

8 Sec. 416.004. FEES. (a) The commission shall charge and
9 collect:

10 (1) a filing fee for an application for an original
11 certificate of registration that does not exceed \$500; and

12 (2) a fee for renewal of a certificate of registration
13 that does not exceed \$300.

14 (b) The commission shall establish a fee schedule that takes
15 into consideration the unit volume or dollar volume of potential
16 applicants.

17 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
18 may not receive a certificate of registration under this chapter
19 unless:

20 (1) the person, at the time of the application:

21 (A) is at least 18 years of age; and

22 (B) is a citizen of the United States or a
23 lawfully admitted alien; and

24 (2) the commission is satisfied with the person's
25 honesty, trustworthiness, and integrity based on information
26 supplied or discovered in connection with the person's application.

27 Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR

1 BUSINESS ENTITIES. (a) To be eligible for an original or renewal
2 certificate of registration under this chapter:

3 (1) a corporation must designate one of its officers
4 as its agent for the purposes of this chapter;

5 (2) a limited liability company must designate one of
6 its managers as its agent for the purposes of this chapter; and

7 (3) a partnership, limited partnership, or limited
8 liability partnership must designate one of its managing partners
9 as its agent for the purposes of this chapter.

10 (b) A corporation, limited liability company, partnership,
11 limited partnership, or limited liability partnership is not
12 eligible to be registered under this chapter and may not act as a
13 builder unless the entity's designated agent is individually
14 registered as a builder.

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

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

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

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

5 (c) The commission shall:

6 (1) set a time and place for the hearing not later than
7 the 30th day after the date the commission receives the notice of
8 the appeal; and

9 (2) give notice of the hearing to the applicant before
10 the 15th day before the date of the hearing.

11 (d) The hearing may be continued from time to time with the
12 consent of the applicant.

13 (e) The hearing shall be before a hearings officer appointed
14 by the commission. After the hearing, the hearings officer shall
15 enter an appropriate order. The order of the hearings officer under
16 this subsection is a final decision.

17 (f) The commission shall adopt procedural rules under which
18 a decision by a hearings officer under this section is subject to
19 appeal to the commission.

20 (g) A hearing under this section is governed by Chapter
21 2001, Government Code.

22 Sec. 416.009. EXPIRATION OF CERTIFICATE. (a) The
23 commission may issue or renew a certificate of registration for a
24 period that does not exceed 24 months.

25 (b) The commission by rule may adopt a system under which
26 certificates of registration expire on several dates during the
27 year. The commission shall adjust the date for payment of renewal

1 fees accordingly.

2 (c) In a year in which the expiration date for a certificate
3 of registration is changed, the renewal fee payable shall be
4 prorated on a monthly basis so that the certificate holder pays only
5 that portion of the fee that is allocable to the number of months
6 during which the certificate of registration is valid. On renewal
7 of the certificate of registration on the new expiration date, the
8 total renewal fee is payable.

9 Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS. (a) A
10 builder shall maintain a fixed office location in this state. The
11 address of the builder's principal place of business must be
12 designated on the certificate of registration.

13 (b) Not later than the 30th day after the date a builder
14 moves from the address designated on the certificate of
15 registration, the builder shall submit an application, accompanied
16 by the appropriate fee, for a certificate of registration that
17 designates the new location of the builder's principal place of
18 business. The commission shall issue a certificate of registration
19 that designates the new location if the new location complies with
20 the requirements of this section.

21 (c) This section does not require a builder to obtain a
22 certificate of registration for each sales office.

23 CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

24 Sec. 417.001. GROUNDS FOR DISCIPLINARY ACTION. A person is
25 subject to disciplinary action under this chapter for:

26 (1) fraud or deceit in obtaining a certificate of
27 registration;

1 (2) misappropriation of trust funds in the practice of
2 residential construction;

3 (3) naming false consideration in a contract to sell a
4 new home or in a construction contract;

5 (4) discriminating on the basis of race, color,
6 religion, sex, national origin, or ancestry;

7 (5) publishing a false or misleading advertisement;

8 (6) failure to honor, within a reasonable time, a
9 check issued to the commission after the commission has sent by
10 certified mail a request for payment to the person's last known
11 business address, according to commission records;

12 (7) failure to pay an administrative penalty assessed
13 by the commission under Chapter 418; or

14 (8) nonpayment of a final nonappealable judgment
15 arising from a construction defect or other transaction between the
16 person and a homeowner.

17 Sec. 417.002. DISCIPLINARY POWERS OF COMMISSION. On a
18 determination that a ground for disciplinary action under Section
19 417.001 exists, the commission may:

20 (1) revoke or suspend a certificate of registration;

21 (2) probate the suspension of a certificate of
22 registration; or

23 (3) formally or informally reprimand a certificate
24 holder.

25 Sec. 417.003. HEARING. (a) If the commission proposes to
26 take a disciplinary action against a person under Section 417.002,
27 the person is entitled to a hearing before the commission.

1 (b) The commission shall adopt procedural rules by which all
2 decisions to take disciplinary action under this chapter are
3 subject to appeal to the commission.

4 (c) The commission shall prescribe the time and place of the
5 hearing.

6 (d) A hearing under this section is governed by Chapter
7 2001, Government Code.

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

12 (b) An appeal under this section is governed by Chapter
13 2001, Government Code.

14 CHAPTER 418. ADMINISTRATIVE PENALTY

15 Sec. 418.001. IMPOSITION OF ADMINISTRATIVE PENALTY. In a
16 contested case involving disciplinary action, the commission may,
17 as part of the commission's order, impose an administrative penalty
18 on a certificate holder who violates this title or a rule adopted or
19 order issued by the commission under this title.

20 Sec. 418.002. AMOUNT OF PENALTY. (a) An administrative
21 penalty imposed under this chapter may not exceed \$5,000 for each
22 violation.

23 (b) In determining the amount of an administrative penalty,
24 the hearings officer or commission shall consider:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the prohibited acts;

27 (2) the history of previous violations;

- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter justice may require.

Sec. 418.003. PAYMENT OF PENALTY. The commission shall 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. If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

(1) refer the matter to the attorney general for collection of the penalty; or

(2) enforce any part of the order that specifies disciplinary action to be taken against the certificate holder if the certificate holder fails to pay the administrative penalty within the time prescribed.

[Chapters 419-425 reserved 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) This subtitle applies to a dispute between a builder and a homeowner if:

(1) the dispute arises out of an alleged construction defect, other than a claim solely for:

(A) personal injury, survival, or wrongful death; or

1 (B) damage to goods; and

2 (2) a request is submitted to the commission on or
3 before the 10th anniversary of the date of the initial transfer of
4 title from the builder to the initial owner of the home or the
5 improvement that is the subject of the dispute or, if there is not a
6 closing, the date on which the contract for construction of the
7 improvement was entered into.

8 (b) This subtitle does not apply to a dispute arising out
9 of:

10 (1) an alleged violation of Section 27.01, Business &
11 Commerce Code;

12 (2) a builder's wrongful abandonment of an improvement
13 project before completion; or

14 (3) a violation of Chapter 162.

15 (c) For the purposes of this section, "damage to goods" does
16 not include damage to a home.

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

22 Sec. 426.003. APPLICATION AND INSPECTION FEES. (a) A party
23 who submits a matter to the commission for the state-sponsored
24 inspection and dispute resolution process shall pay to the
25 commission:

26 (1) an application fee in an amount determined by the
27 commission; and

1 (2) any additional amount required by the commission
2 to cover the expense of the third-party inspector.

3 (b) The commission shall adopt rules permitting a waiver or
4 reduction of the application fee and inspection expenses for
5 homeowners demonstrating a financial inability to pay the fees and
6 expenses.

7 Sec. 426.004. PREREQUISITE TO ACTION. (a) A homeowner must
8 comply with this subtitle before initiating an action for damages
9 or other relief arising from an alleged construction defect.

10 (b) An action described by Subsection (a) must be filed:

11 (1) on or before the 90th day after the date the
12 third-party inspector issues the inspector's recommendation; or

13 (2) if the recommendation is appealed, not later than
14 the 90th day after the date the commission issues its ruling on the
15 appeal.

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

20 Sec. 426.005. TIME FOR REQUESTING INSPECTION AND DISPUTE
21 RESOLUTION. The state-sponsored inspection and dispute resolution
22 process must be requested on or before the second anniversary of the
23 date of discovery of the conditions claimed to be evidence of the
24 construction defect but not later than the 30th day after the date
25 the applicable warranty period expires.

26 Sec. 426.006. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
27 who submits a request for state-sponsored inspection and dispute

1 resolution must disclose in the request the name of any person who,
2 before the request is submitted, inspected the home on behalf of the
3 requestor in connection with the construction defect alleged in the
4 request. If a person's name is known to the requestor at the time of
5 the request and is not disclosed as required by this section, the
6 requestor may not designate the person as an expert or use materials
7 prepared by that person in:

8 (1) the state-sponsored inspection and dispute
9 resolution process arising out of the request; or

10 (2) any action arising out of the construction defect
11 that is the subject of the request.

12 Sec. 426.007. REBUTTABLE PRESUMPTION OF THIRD-PARTY
13 INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS.

14 (a) In any action involving a construction defect brought after a
15 recommendation by a third-party inspector or ruling by a panel of
16 state inspectors on the existence of the construction defect or its
17 appropriate repair, the recommendation or ruling shall constitute a
18 rebuttable presumption. A party seeking to dispute, vacate, or
19 overcome that presumption must establish by clear and convincing
20 evidence that the recommendation or ruling is inconsistent with the
21 applicable warranty and building and performance standards.

22 (b) The presumption established by this section applies
23 only to an action between the homeowner and the builder. A
24 recommendation or ruling under this subtitle is not admissible in
25 an action between any other parties.

26 CHAPTER 427. INSPECTORS

27 Sec. 427.001. QUALIFICATIONS OF THIRD-PARTY INSPECTORS.

1 (a) A third-party inspector approved by the commission must:

2 (1) meet the minimum qualifications prescribed by this
3 section and any other qualifications prescribed by the commission
4 by rule; and

5 (2) submit an application to the commission annually
6 with an application fee in the amount required by the commission by
7 rule.

8 (b) A third-party inspector who inspects an issue involving
9 workmanship and materials must have a minimum of five years'
10 experience in the residential construction industry.

11 (c) A third-party inspector who inspects an issue involving
12 a structural matter must:

13 (1) be an approved structural engineer or approved
14 architect; and

15 (2) have a minimum of 10 years' experience in
16 residential construction.

17 (d) Each third-party inspector must:

18 (1) be certified to the International Residential Code
19 by the International Code Council; and

20 (2) receive, in accordance with commission rules:

21 (A) initial training regarding the
22 state-sponsored inspection and dispute resolution process and this
23 subtitle; and

24 (B) annual continuing education.

25 (e) A third-party inspector may not receive more than 10
26 percent of the inspector's gross income in a federal income tax year
27 from providing expert witness services, including retention for the

1 purpose of providing testimony, evidence, or consultation in
2 connection with a pending or threatened legal action.

3 (f) In adopting rules under Subsection (d), the commission
4 shall recognize any continuing education requirements established
5 for engineers and architects.

6 Sec. 427.002. STATE INSPECTORS. (a) The commission shall
7 employ state inspectors to:

8 (1) review on an appeals panel the recommendations of
9 third-party inspectors;

10 (2) provide consultation to third-party inspectors;
11 and

12 (3) administer the state-sponsored inspection and
13 dispute resolution process.

14 (b) A state inspector must be certified to the International
15 Residential Code by the International Code Council.

16 CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE

17 RESOLUTION PROCESS

18 Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute
19 between a homeowner and a builder arises out of an alleged
20 construction defect, the homeowner or the builder may submit to the
21 commission a written request for state-sponsored inspection and
22 dispute resolution.

23 (b) The request must:

24 (1) specify in reasonable detail each alleged
25 construction defect that is a subject of the request;

26 (2) state the amount of any known out-of-pocket
27 expenses and engineering or consulting fees incurred by the

1 homeowner in connection with each alleged construction defect;

2 (3) include any evidence that depicts the nature and
3 cause of each alleged construction defect and the nature and extent
4 of repairs necessary to remedy the construction defect, including,
5 if available, expert reports, photographs, and videotapes, if that
6 evidence would be discoverable under Rule 192, Texas Rules of Civil
7 Procedure;

8 (4) be accompanied by the fees required under Section
9 426.003; and

10 (5) state the name of any person who has, on behalf of
11 the requestor, inspected the home in connection with an alleged
12 construction defect.

13 (c) Not later than the 30th day before the date a homeowner
14 submits a request under this section, the homeowner must notify the
15 builder in writing of each construction defect the homeowner claims
16 to exist. After the notice is provided, the builder must be
17 provided with a reasonable opportunity to inspect the home or have
18 the builder's designated consultants inspect the home.

19 (d) A person who submits a request under this section must
20 send by certified mail, return receipt requested, a copy of the
21 request, including evidence submitted with the request, to each
22 other party involved in the dispute.

23 (e) The commission by rule shall establish methods by which
24 homeowners may be notified of the name, mailing address, and
25 telephone number of the commission for the purpose of directing a
26 request to the commission.

27 (f) The commission shall provide a person who files a

1 request with a copy of the commission's policies and procedures
2 relating to investigation and resolution of a request.

3 (g) The commission by rule shall establish a standard form
4 for submitting a request under this section and provide a means to
5 submit a request electronically.

6 (h) The filing of a request under this section tolls the
7 limitations period in an action between the homeowner and the
8 builder arising out of the subject of the request until the 45th day
9 after the date a final, nonappealable recommendation is issued
10 under this title in response to the request.

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

20 (b) The builder may take reasonable steps to document the
21 construction defect and the condition of the home.

22 (c) If the homeowner delays the inspection for more than
23 five days after the date of receiving the builder's written
24 request, any period for subsequent action to be taken by the builder
25 or the third-party inspector shall be extended one day for each day
26 the inspection is delayed after the fifth day.

27 Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a) On

1 or before the 15th day after the date the commission receives a
2 request, the commission shall appoint a third-party inspector to
3 inspect the home and meet with the homeowner and the builder.

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

8 Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) If the
9 dispute involves workmanship and materials in the home of a
10 nonstructural matter, the third-party inspector shall issue a
11 recommendation not later than the 15th day after the date the
12 third-party inspector receives the appointment from the
13 commission.

14 (b) If the dispute involves a structural matter in the home,
15 the commission shall appoint an approved engineer to be the
16 third-party inspector. The third-party inspector shall inspect the
17 home not later than the 30th day after the date the request is
18 submitted and issue a recommendation not later than the 60th day
19 after the date the third-party inspector receives the assignment
20 from the commission, unless additional time is requested by the
21 third-party inspector or a party to the dispute. The commission
22 shall adopt rules governing the extension of time under this
23 subsection.

24 (c) The third-party inspector's recommendation must:

25 (1) address only the construction defect, based on the
26 applicable warranty and building and performance standards; and

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

1 (d) Except as provided by this subsection, the third-party
2 inspector's recommendation may not include payment of any monetary
3 consideration. If the inspector finds for the party who submitted
4 the request, the commission may order the other party to reimburse
5 all or part of the fees and inspection expenses paid by the
6 requestor under Section 426.003.

7 Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who
8 receives written notice of a request relating to a construction
9 defect that creates an imminent threat to the health or safety of
10 the inhabitants of the residence shall take reasonable steps to
11 cure the defect as soon as practicable. If the builder fails to
12 cure the defect in a reasonable time, the homeowner may have the
13 defect cured and recover from the builder the reasonable cost of the
14 cure plus reasonable attorney's fees and expenses associated with
15 curing the defect in addition to any other damages not inconsistent
16 with this subtitle.

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

18 Sec. 429.001. APPEAL. (a) A homeowner or builder may
19 appeal a third-party inspector's recommendation on or before the
20 15th day after the date the recommendation is issued.

21 (b) If a homeowner or builder appeals a third-party
22 inspector's recommendation, the executive director shall appoint
23 three state inspectors to a panel to review the recommendation. If
24 the recommendation involves a dispute regarding a structural
25 failure, one of the state inspectors on the panel must be a licensed
26 professional engineer.

27 (c) The panel shall:

1 (1) review the recommendation without a hearing unless
2 a hearing is otherwise required by rules adopted by the commission;

3 (2) approve, reject, or modify the recommendation of
4 the third-party inspector or remand the dispute for further action
5 by the third-party inspector; and

6 (3) issue written findings of fact and a ruling on the
7 appeal not later than the 30th day after the date the notice of
8 appeal is filed with the commission.

9 CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

10 Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND
11 PERFORMANCE STANDARDS. (a) The commission by rule shall adopt
12 limited statutory warranties and building and performance
13 standards for residential construction that comply with this
14 section.

15 (b) The warranty periods shall be:

16 (1) one year for workmanship and materials;

17 (2) two years for plumbing, electrical, heating, and
18 air-conditioning delivery systems; and

19 (3) 10 years for major structural components of the
20 home.

21 (c) The limited statutory warranties and building and
22 performance standards must:

23 (1) require substantial compliance with the
24 nonelectrical standards contained in the version of the
25 International Residential Code for One- and Two-Family Dwellings
26 published by the International Code Council that is applicable
27 under Subsection (d) and the electrical standards contained in the

1 version of the National Electrical Code that is applicable under
2 Subsection (e);

3 (2) include standards for mold reduction and
4 remediation that comply with Section 430.002; and

5 (3) establish standards for performance for interior
6 and exterior components of a home, including foundations, floors,
7 ceilings, walls, roofs, drainage, landscaping, irrigation,
8 heating, cooling, and electrical and plumbing components.

9 (d) The International Residential Code for One- and
10 Two-Family Dwellings that applies to nonelectrical aspects of
11 residential construction for the purposes of the limited statutory
12 warranties and building and performance standards adopted under
13 this section is:

14 (1) for residential construction located in a
15 municipality or the extraterritorial jurisdiction of a
16 municipality, the version of the International Residential Code
17 applicable to nonelectrical aspects of residential construction in
18 the municipality under Section 214.212, Local Government Code;

19 (2) for residential construction located in an
20 unincorporated area not in the extraterritorial jurisdiction of a
21 municipality, the version of the International Residential Code
22 applicable to nonelectrical aspects of residential construction in
23 the municipality that is the county seat of the county in which the
24 construction is located; and

25 (3) for residential construction located in an
26 unincorporated area in a county that does not contain an
27 incorporated area, the version of the International Residential

1 Code that existed on May 1, 2001.

2 (e) The National Electrical Code for One- and Two-Family
3 Dwellings that applies to electrical aspects of residential
4 construction for the purposes of this section is:

5 (1) for residential construction located in a
6 municipality or the extraterritorial jurisdiction of a
7 municipality, the version of the National Electrical Code
8 applicable to electrical aspects of residential construction in the
9 municipality under Section 214.214, Local Government Code;

10 (2) for residential construction located in an
11 unincorporated area not in the extraterritorial jurisdiction of a
12 municipality, the version of the National Electrical Code
13 applicable to electrical aspects of residential construction in the
14 municipality that is the county seat of the county in which the
15 construction is located; and

16 (3) for residential construction located in an
17 unincorporated area in a county that does not contain an
18 incorporated area, the version of the National Electrical Code that
19 existed on May 1, 2001.

20 (f) Except as provided by a written agreement between the
21 builder and the initial homeowner, a warranty period adopted under
22 this section for a new home begins on the earlier of the date of:

23 (1) occupancy; or

24 (2) transfer of title from the builder to the initial
25 homeowner.

26 (g) A warranty period adopted under this section for an
27 improvement other than a new home begins on the date the improvement

1 is substantially completed.

2 Sec. 430.002. MOLD REDUCTION AND REMEDIATION; TASK FORCE.

3 (a) The building and performance standards adopted under Section
4 430.001 must include measures that are designed to reduce the
5 general population's exposure to mold often formed in water-damaged
6 building materials and that include:

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

9 (2) recommended management practices for:

10 (A) limiting moisture intrusion in a home; and

11 (B) mold remediation.

12 (b) The commission shall appoint a task force to advise the
13 commission with regard to adoption of standards under this section.
14 The task force must include representatives of public health
15 officers of this state, health and medical experts, mold abatement
16 experts, and representatives of affected consumers and industries.
17 The commission and the task force shall consider the feasibility of
18 adopting permissible limits for exposure to mold in indoor
19 environments.

20 Sec. 430.003. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY
21 COMMITTEE. The commission shall appoint a task force to develop
22 design recommendations for residential construction that encourage
23 rain harvesting and water recycling.

24 Sec. 430.004. STATUTORY WARRANTIES EXCLUSIVE. The
25 warranties established under this chapter supersede all implied
26 warranties. The only warranties that exist for residential
27 construction or residential improvements are warranties created by

1 this chapter or by other statutes expressly referring to
2 residential construction or residential improvements, or any
3 express, written warranty acknowledged by the homeowner and the
4 builder. A court may not discern or declare any other implied
5 warranty.

6 Sec. 430.005. WAIVER BY CONTRACT PROHIBITED. A contract
7 between a builder and a homeowner may not waive the limited
8 statutory warranties and building and performance standards
9 adopted under this chapter. This section does not prohibit a
10 builder and a homeowner from contracting for more stringent
11 warranties and building standards than are provided under this
12 chapter.

13 Sec. 430.006. APPROVAL OF THIRD-PARTY WARRANTY COMPANY.

14 (a) The commission may approve as a third-party warranty company
15 for the purposes of Section 430.007:

16 (1) an entity that has operated warranty programs in
17 this state for at least five years;

18 (2) a company whose performance is insured by an
19 insurance company authorized to engage in the business of insurance
20 in this state; or

21 (3) an insurance company that insures the warranty
22 obligations of a builder under the statutory warranty and building
23 and performance standards.

24 (b) A third-party warranty company must submit to the
25 commission an annual application and fee in the form and in the
26 amount required by the commission by rule before the company may be
27 approved under this section.

1 Sec. 430.007. THIRD-PARTY WARRANTY COMPANY. (a) If a
2 builder chooses to provide a third-party warranty company approved
3 by the commission, the builder may limit liability to a homeowner
4 under the terms of that warranty.

5 (b) A limitation of liability under this section is not
6 effective unless the company providing the warranty:

7 (1) agrees to perform the builder's warranty
8 obligations under this chapter; and

9 (2) actually pays for or corrects any construction
10 defect covered by the warranty.

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

15 (d) The third-party warranty company may not assume
16 liability for personal injuries or damage to personal property. A
17 builder does not avoid liability for personal injuries or damage to
18 personal property for which the builder would otherwise be liable
19 under law by providing a written warranty from a third-party
20 warranty company.

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

24 Sec. 430.008. MINIMUM STANDARDS FOR DETERMINATION OF
25 DEFECT. A third-party warranty company shall use defect inspection
26 procedures substantially similar to the procedures adopted by the
27 commission under this subtitle. A warranty company may adopt

1 warranty standards in addition to the standards adopted by the
2 commission, but it may not reduce the limited statutory warranty
3 and building and performance standards.

4 Sec. 430.009. EFFECT OF SUBTITLE ON OTHER RIGHTS AND
5 OBLIGATIONS. (a) This subtitle provides the sole rights and
6 obligations between a homeowner and a builder unless additional
7 rights and obligations are provided in an express, written contract
8 between the homeowner and the builder. Except as permitted by this
9 subtitle, an express, written contract between a homeowner and a
10 builder may not limit the obligations of a builder under this title.

11 (b) After the issuance of written findings of fact and a
12 ruling on an appeal under Chapter 429, a homeowner may bring a cause
13 of action against a builder or third-party warranty company for
14 breach of a limited statutory warranty adopted by the commission
15 under this subtitle. In an action brought under this subsection,
16 the homeowner may recover only those damages provided by Section
17 27.004(g).

18 (c) This subtitle creates the only cognizable cause of
19 action available against a builder or third-party warranty company
20 with regard to construction defects.

21 SECTION 1.02. (a) On or before December 1, 2003, the
22 governor shall appoint the members of the Texas Residential
23 Construction Commission in accordance with Title 16, Property Code,
24 as added by this article. In making the initial appointments, the
25 governor shall designate three members for terms expiring February
26 1, 2005, three members for terms expiring February 1, 2007, and
27 three members for terms expiring February 1, 2009.

1 (b) The governor shall designate a person to perform the
2 ministerial acts necessary for posting notice of and holding the
3 first meeting of the commission.

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

7 SECTION 1.03. As soon as possible after appointment of its
8 members, the Texas Residential Construction Commission shall adopt
9 limited statutory warranties and building and performance
10 standards under Section 430.001, Property Code, as added by this
11 article. The warranties and building and performance standards
12 adopted by the commission apply only to residential construction
13 that begins on or after the effective date of those warranties and
14 building and performance standards as determined by the commission.
15 Residential construction that begins before the effective date of
16 those warranties and building and performance standards is governed
17 by the warranties and building and performance standards applicable
18 to the construction before that date.

19 SECTION 1.04. On or before March 1, 2004, the Texas
20 Residential Construction Commission shall begin requiring
21 registration under Subtitle C, Title 16, Property Code, as added by
22 this article.

23 ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

24 SECTION 2.01. Section 27.001, Property Code, is amended to
25 read as follows:

26 Sec. 27.001. DEFINITIONS. In this chapter:

27 (1) "Action" means a court or judicial proceeding or

1 an arbitration.

2 (2) "Appurtenance" means any structure or
3 recreational facility that is appurtenant to a residence but is not
4 a part of the dwelling unit.

5 (3) [~~(2)~~] "Construction defect" has the meaning
6 assigned by Section 401.003 for an action to which Subtitle D, Title
7 16, applies and for any other action means a matter concerning the
8 design, construction, or repair of a new residence, of an
9 alteration of or repair or addition to an existing residence, or of
10 an appurtenance to a residence, on which a person has a complaint
11 against a contractor. The term may include any physical damage to
12 the residence, any appurtenance, or the real property on which the
13 residence and appurtenance are affixed proximately caused by a
14 construction defect.

15 (4) [~~(3)~~] "Contractor" means a builder, as defined by
16 Section 401.002, and any person contracting with an owner for the
17 construction or sale of a new residence constructed by that person
18 or of an alteration of or addition to an existing residence, repair
19 of a new or existing residence, or construction, sale, alteration,
20 addition, or repair of an appurtenance to a new or existing
21 residence. The term includes:

22 (A) an owner, officer, director, shareholder,
23 partner, or employee of the contractor; and

24 (B) a risk retention group registered under
25 Article 21.54, Insurance Code, that insures all or any part of a
26 contractor's liability for the cost to repair a residential
27 construction defect.

1 (5) "Economic damages" means compensatory damages for
2 pecuniary loss proximately caused by a construction defect. The
3 term does not include exemplary damages or damages for physical
4 pain and mental anguish, loss of consortium, disfigurement,
5 physical impairment, or loss of companionship and society.

6 (6) [~~(4)~~] "Residence" means the real property and
7 improvements for a single-family house, duplex, triplex, or
8 quadruplex or a unit in a multiunit residential structure in which
9 title to the individual units is transferred to the owners under a
10 condominium or cooperative system.

11 (7) [~~(5)~~] "Structural failure" has the meaning
12 assigned by Section 401.002 for an action to which Subtitle D, Title
13 16, applies and for any other action means actual physical damage to
14 the load-bearing portion of a residence caused by a failure of the
15 load-bearing portion.

16 SECTION 2.02. Section 27.002, Property Code, is amended by
17 amending Subsections (a) and (b) and adding Subsection (d) to read
18 as follows:

19 (a) This chapter applies to:

20 (1) any action to recover damages or other relief
21 arising [~~resulting~~] from a construction defect, except a claim for
22 personal injury, survival, or wrongful death or for damage to
23 goods; and

24 (2) any subsequent purchaser of a residence who files
25 a claim against a contractor.

26 (b) To the extent of conflict between this chapter and any
27 other law, including the Deceptive Trade Practices-Consumer

1 Protection Act (Subchapter E, Chapter 17, Business & Commerce Code)
2 or a common-law cause of action, this chapter prevails.

3 (d) This chapter does not apply to an action to recover
4 damages that arise from:

5 (1) a violation of Section 27.01, Business & Commerce
6 Code;

7 (2) a contractor's wrongful abandonment of an
8 improvement project before completion; or

9 (3) a violation of Chapter 162.

10 SECTION 2.03. Section 27.003, Property Code, is amended to
11 read as follows:

12 Sec. 27.003. LIABILITY. (a) In an action to recover
13 damages or other relief arising [~~resulting~~] from a construction
14 defect:

15 (1) a contractor is not liable for any percentage of
16 damages caused by:

17 (A) negligence of a person other than the
18 contractor or an agent, employee, or subcontractor of the
19 contractor;

20 (B) failure of a person other than the contractor
21 or an agent, employee, or subcontractor of the contractor to:

22 (i) take reasonable action to mitigate the
23 damages; or

24 (ii) take reasonable action to maintain the
25 residence;

26 (C) normal wear, tear, or deterioration;

27 (D) normal shrinkage due to drying or settlement

1 of construction components within the tolerance of building
2 standards; or

3 (E) the contractor's reliance on written
4 information relating to the residence, appurtenance, or real
5 property on which the residence and appurtenance are affixed that
6 was obtained from official government records, if the written
7 information was false or inaccurate and the contractor did not know
8 and could not reasonably have known of the falsity or inaccuracy of
9 the information; and

10 (2) if an assignee of the claimant or a person
11 subrogated to the rights of a claimant fails to provide the
12 contractor with the written notice and opportunity to inspect and
13 offer to repair [~~to the contractor~~] required by Section 27.004 or
14 fails to request state-sponsored inspection and dispute resolution
15 under Chapter 428, if applicable, [~~27.004(a)~~] before performing
16 repairs, the contractor is not liable for the cost of any repairs or
17 any percentage of damages caused by repairs made to a construction
18 defect at the request of an assignee of the claimant or a person
19 subrogated to the rights of a claimant by a person other than the
20 contractor or an agent, employee, or subcontractor of the
21 contractor.

22 (b) Except as provided by this chapter [~~herein~~], this
23 chapter does not limit or bar any other defense or defensive matter
24 or other defensive cause of action applicable to an action to
25 recover damages or other relief arising [~~resulting~~] from a
26 construction defect.

27 SECTION 2.04. Section 27.004, Property Code, is amended to

1 read as follows:

2 Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) In a
3 claim not subject to Subtitle D, Title 16, before [~~Before~~] the 60th
4 day preceding the date a claimant seeking from a contractor damages
5 or other relief arising from a construction defect initiates an
6 action [~~files suit~~], the claimant shall give written notice by
7 certified mail, return receipt requested, to the contractor, at the
8 contractor's last known address, specifying in reasonable detail
9 the construction defects that are the subject of the complaint. On
10 the request of the contractor, the claimant shall provide to the
11 contractor any evidence that depicts the nature and cause of the
12 defect and the nature and extent of repairs necessary to remedy the
13 defect, including expert reports, photographs, and videotapes, if
14 that evidence would be discoverable under Rule 192, Texas Rules of
15 Civil Procedure. During the 35-day period after the date the
16 contractor receives the notice, and on the contractor's written
17 request, the contractor shall be given a reasonable opportunity to
18 inspect and have inspected the property that is the subject of the
19 complaint to determine the nature and cause of the defect and the
20 nature and extent of repairs necessary to remedy the defect. The
21 contractor may take reasonable steps to document the defect. In a
22 claim subject to Subtitle D, Title 16, a contractor is entitled to
23 make an offer of repair in accordance with Subsection (b). A
24 claimant is not required to give written notice to a contractor
25 under this subsection in a claim subject to Subtitle D, Title 16.

26 (b) Not later than the 15th day after the date of a final,
27 unappealable determination of a dispute under Subtitle D, Title 16,

1 if applicable, or not later than the 45th day [~~Within the 45-day~~
2 ~~period~~] after the date the contractor receives the notice under
3 this section, if Subtitle D, Title 16, does not apply, the
4 contractor may make a written offer of settlement to the claimant.
5 The offer must be sent to the claimant at the claimant's last known
6 address or to the claimant's attorney by certified mail, return
7 receipt requested. The offer may include either an agreement by the
8 contractor to repair or to have repaired by an independent
9 contractor partially or totally at the contractor's expense or at a
10 reduced rate to the claimant any construction defect described in
11 the notice and shall describe in reasonable detail the kind of
12 repairs which will be made. The repairs shall be made not later
13 than the 45th day [~~within the 45-day period~~] after the date the
14 contractor receives written notice of acceptance of the settlement
15 offer, unless completion is delayed by the claimant or by other
16 events beyond the control of the contractor. If a contractor makes
17 a written offer of settlement that the claimant considers to be
18 unreasonable:

19 (1) on or before the 25th day after the date the
20 claimant receives the offer, the claimant shall advise the
21 contractor in writing and in reasonable detail of the reasons why
22 the claimant considers the offer unreasonable; and

23 (2) not later than the 10th day after the date the
24 contractor receives notice under Subdivision (1), the contractor
25 may make a supplemental written offer of settlement to the claimant
26 by sending the offer to the claimant or the claimant's attorney.

27 [~~For the purposes of this section, "independent contractor" means a~~

1 ~~person who is independent of the contractor and did not perform any~~
2 ~~of the work complained of in the claimant's notice. The claimant~~
3 ~~and the contractor may agree in writing to extend the periods~~
4 ~~described by this subsection.]~~

5 (c) If compliance with Subtitle D, Title 16, or the giving
6 of the notice under Subsections (a) and (b) within the period
7 prescribed by those subsections is impracticable because of the
8 necessity of initiating an action [~~filing suit~~] at an earlier date
9 to prevent expiration of the statute of limitations or if the
10 complaint is asserted as a counterclaim, compliance with Subtitle
11 D, Title 16, or the [~~that~~] notice is not required. However, the
12 action [~~suit~~] or counterclaim shall specify in reasonable detail
13 each construction defect that is the subject of the complaint. If
14 Subtitle D, Title 16, applies to the complaint, simultaneously with
15 the filing of an action by a claimant, the claimant must submit a
16 request under Section 428.001. If Subtitle D, Title 16, does not
17 apply, [~~and~~] the inspection provided for by Subsection (a) may be
18 made not later than the 75th day after [~~during the 60-day period~~
19 ~~following~~] the date of service of the suit, request for
20 arbitration, or counterclaim on the contractor, and the offer
21 provided for by Subsection (b) may be made not later than the 15th
22 day after the date the state-sponsored inspection and dispute
23 resolution process is completed, if Subtitle D, Title 16, applies,
24 or not later than the 60th day after [~~within the 60-day period~~
25 ~~following~~] the date of service, if Subtitle D, Title 16, does not
26 apply. If, while an action [~~a suit~~] subject to this chapter is
27 pending, the statute of limitations for the cause of action would

1 have expired and it is determined that the provisions of Subsection
2 (a) were not properly followed, the action [~~suit~~] shall be abated
3 [~~for up to 75 days in order~~] to allow compliance with Subsections
4 (a) and (b).

5 (d) The court or arbitration tribunal shall dismiss an
6 action [~~abate a suit~~] governed by this chapter if Subsection (c)
7 does not apply and the court or tribunal, after a hearing, finds
8 that the contractor is entitled to dismissal [~~an abatement~~] because
9 the claimant failed to comply with the requirements of Subtitle D,
10 Title 16, if applicable, failed to provide the notice or failed to
11 give the contractor a reasonable opportunity to inspect the
12 property as required by Subsection (a), or failed to follow the
13 procedures specified by Subsection (b). An action [~~A suit~~] is
14 automatically dismissed [~~abated~~] without the order of the court or
15 tribunal beginning on the 11th day after the date a motion to
16 dismiss [~~plea in abatement~~] is filed if the motion [~~plea in~~
17 ~~abatement~~]:

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

25 (2) is not controverted by an affidavit filed by the
26 claimant before the 11th day after the date on which the motion to
27 dismiss [~~plea in abatement~~] is filed.

1 (e) ~~[An abatement under Subsection (d) continues until the~~
2 ~~60th day after the date that written notice is served in compliance~~
3 ~~with Subsection (a)].~~

4 ~~[(f)]~~ If a claimant ~~[unreasonably]~~ rejects a reasonable
5 ~~[an]~~ offer made under Subsection (b) ~~[as provided by this section]~~
6 or does not permit the contractor or independent contractor a
7 reasonable opportunity to inspect or repair the defect pursuant to
8 an accepted offer of settlement, the claimant:

9 (1) may not recover an amount in excess of:

10 (A) the fair market value of the contractor's
11 last offer of settlement under Subsection (b) ~~[reasonable cost of~~
12 ~~the offered repairs which are necessary to cure the construction~~
13 ~~defect and which are the responsibility of the contractor]; or~~

14 (B) the amount of a reasonable monetary
15 settlement or purchase offer made under Subsection (m) ~~[(n)]~~; and

16 (2) may recover only the amount of reasonable and
17 necessary costs and attorney's fees as prescribed by Rule 1.04,
18 Texas Disciplinary Rules of Professional Conduct, ~~[and costs]~~
19 incurred before the offer was rejected or considered rejected.

20 (f) ~~[(g)]~~ If a contractor fails to make a reasonable offer
21 under Subsection (b) ~~[this section]~~, or fails to make a reasonable
22 attempt to fully perform under ~~[complete the repairs specified in]~~
23 an accepted offer made under this section, or fails to complete, in
24 a good and workmanlike manner, the repairs specified in an accepted
25 offer made under this section, the limitations on damages ~~[and~~
26 ~~defenses to liability]~~ provided for in Subsection (e) ~~[this~~
27 ~~section]~~ shall not apply.

1 (g) [~~(h)~~] Except as provided by Subsection (e) [~~(f)~~], in an
2 action [~~a suit~~] subject to this chapter the claimant may recover
3 only the following economic damages proximately caused by a
4 construction defect:

5 (1) the reasonable cost of repairs necessary to cure
6 any construction defect [~~including any reasonable and necessary~~
7 ~~engineering or consulting fees required to evaluate and cure the~~
8 ~~construction defect, that the contractor is responsible for~~
9 ~~repairing under this chapter~~];

10 (2) the reasonable and necessary cost for the
11 replacement or repair of any damaged goods in the residence;

12 (3) reasonable and necessary engineering and
13 consulting fees;

14 (4) the reasonable expenses of temporary housing
15 reasonably necessary during the repair period;

16 (5) [~~(3)~~] the reduction in current market value, if
17 any, after the construction defect is repaired if the construction
18 defect is a [~~to the extent the reduction is due to~~] structural
19 failure; and

20 (6) [~~(4)~~] reasonable and necessary attorney's fees.

21 (h) A homeowner and a contractor may agree in writing to
22 extend any time period described in this chapter [~~(i) The total~~
23 ~~damages awarded in a suit subject to this chapter may not exceed the~~
24 ~~greater of the claimant's purchase price for the residence or the~~
25 ~~current fair market value of the residence without the construction~~
26 ~~defect~~].

27 (i) [~~(j)~~] An offer of settlement made under this section

1 that is not accepted before the 25th day after the date the offer is
2 received by the claimant is considered rejected.

3 (j) [~~(k)~~] An affidavit certifying rejection of a settlement
4 offer under this section may be filed with the court or arbitration
5 tribunal. The trier of fact shall determine the reasonableness of a
6 final [~~an~~] offer of settlement made under this section.

7 (k) [~~(l)~~] A contractor who makes or provides for repairs
8 under this section is entitled to take reasonable steps to document
9 the repair and to have it inspected.

10 (l) [~~(m)~~] Notwithstanding Subsections (a), (b), and (c), a
11 contractor who receives written notice of a construction defect
12 resulting from work performed by the contractor or an agent,
13 employee, or subcontractor of the contractor and creating an
14 imminent threat to the health or safety of the inhabitants of the
15 residence shall take reasonable steps to cure the defect as soon as
16 practicable. If the contractor fails to cure the defect in a
17 reasonable time, the owner of the residence may have the defect
18 cured and may recover from the contractor the reasonable cost of the
19 repairs plus attorney's fees and costs in addition to any other
20 damages recoverable under any law not inconsistent with the
21 provisions of this chapter.

22 (m) [~~(n)~~] This section does not preclude a contractor from
23 making a monetary settlement offer or an offer to purchase the
24 residence.

25 (n) A notice and response letter prescribed by this chapter
26 must be sent by certified mail, return receipt requested, to the
27 last known address of the recipient. If previously disclosed in

1 writing that the recipient of a notice or response letter is
2 represented by an attorney, the letter shall be sent to the
3 recipient's attorney in accordance with Rule 21a, Texas Rules of
4 Civil Procedure [~~(e) The inspection and repair provisions of this~~
5 ~~chapter are in addition to any rights of inspection and settlement~~
6 ~~provided by common law or by another statute, including Section~~
7 ~~17.505, Business & Commerce Code].~~

8 (o) [~~(p)~~] If the contractor provides written notice of a
9 claim for damages arising from a construction defect to a
10 subcontractor, the contractor retains all rights of contribution
11 from the subcontractor if the contractor settles the claim with the
12 claimant.

13 SECTION 2.05. Chapter 27, Property Code, is amended by
14 adding Section 27.0042 to read as follows:

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

25 (b) A contractor may not elect to purchase the residence
26 under Subsection (a) if the residence is more than five years old at
27 the time an action is initiated.

1 (c) If a contractor elects to purchase the residence under
2 Subsection (a):

3 (1) the contractor shall pay the original purchase
4 price of the residence and closing costs incurred by the homeowner
5 and the cost of transferring title to the contractor under the
6 election;

7 (2) the homeowner may recover:

8 (A) reasonable and necessary attorney's and
9 expert fees as identified in Section 27.004(g);

10 (B) reimbursement for improvements the owner
11 made to the residence after the date the owner purchased the
12 residence from the builder; and

13 (C) reasonable costs to move from the residence;
14 and

15 (3) conditioned on the payment of the purchase price,
16 the homeowner shall tender a special warranty deed to the
17 contractor, free of all liens and claims to liens as of the date the
18 title is transferred to the contractor, and without damage caused
19 by the homeowner.

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

23 SECTION 2.06. Section 27.007(a), Property Code, is amended
24 to read as follows:

25 (a) A written contract subject to this chapter must contain
26 next to the signature lines in the contract a notice printed or
27 typed in 10-point boldface type or the computer equivalent that

1 reads substantially similar to the following:

2 "This contract is subject to Chapter 27 of the Texas[7]
3 Property Code. The provisions of that chapter may affect your right
4 to recover damages arising from the performance of this contract.
5 If you have a complaint concerning a construction defect arising
6 from the performance of this contract and that defect has not been
7 corrected through normal warranty service, you must provide the
8 notice required by Chapter 27 of the Texas Property Code [~~regarding~~
9 ~~the defect~~] to the contractor by certified mail, return receipt
10 requested, not later than the 60th day before the date you file suit
11 to recover damages in a court of law or initiate arbitration. The
12 notice must refer to Chapter 27 of the Texas[7] Property Code[7] and
13 must describe the construction defect. If requested by the
14 contractor, you must provide the contractor an opportunity to
15 inspect and cure the defect as provided by Section 27.004 of the
16 Texas[7] Property Code."

17 SECTION 2.07. (a) The changes in law made by this article
18 to Sections 27.002, 27.003, and 27.004, Property Code, apply only
19 to a cause of action that accrues on or after the effective date of
20 this Act. A cause of action that accrues before the effective date
21 of this Act is governed by the law in effect immediately before
22 that date, and that law is continued in effect for that purpose.

23 (b) Section 27.0042, Property Code, as added by this article
24 and the changes in law made by this article to Section 27.007(a),
25 Property Code, apply only with respect to a contract between a
26 contractor and a homeowner that is entered into on or after the
27 effective date of this Act. With respect to a contract that is

1 entered into before the effective date of this Act, the law in
2 effect immediately before the effective date applies, and that law
3 is continued in effect for that purpose.

4 ARTICLE 3. DAMAGES IN CERTAIN ACTIONS INVOLVING
5 RESIDENTIAL PROPERTY

6 SECTION 3.01. Subtitle C, Title 2, Civil Practice and
7 Remedies Code, is amended by adding Chapter 42 to read as follows:

8 CHAPTER 42. DAMAGES IN CERTAIN ACTIONS INVOLVING RESIDENTIAL
9 CONSTRUCTION DEFECT

10 Sec. 42.001. DEFINITION. In this chapter, "residential
11 construction defect" has the meaning assigned to "construction
12 defect" by Section 27.001, Property Code.

13 Sec. 42.002. DAMAGES FOR MENTAL ANGUISH NOT RECOVERABLE.
14 In an action or arbitration, a person seeking damages arising from a
15 residential construction defect may not recover damages for mental
16 anguish.

17 SECTION 3.02. The changes in law made by this article apply
18 only to a cause of action that accrues on or after the effective
19 date of this Act. A cause of action that accrues before the
20 effective date of this Act is governed by the law in effect
21 immediately before the effective date of this Act, and that law is
22 continued in effect for that purpose.

23 ARTICLE 4. EFFECTIVE DATE

24 SECTION 4.01. This Act takes effect September 1, 2003.