

AN ACT

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

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

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

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

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

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

Sec. 401.002. GENERAL DEFINITIONS. In this title:

(1) "Applicable building and performance standards"

means:

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

(B) for homes constructed before the adoption of building and performance standards under Section 430.001, the building and performance standards under any express warranty 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) "Commission" means the Texas Residential
18 Construction Commission.

19 (6) "Home" means the real property and improvements
20 and appurtenances for a single-family house or duplex.

21 (7) "Homeowner" means a person who owns a home or a
22 subrogee or assignee of a person who owns a home.

23 (8) "Limited statutory warranty and building and
24 performance standards" means the limited statutory warranty and
25 building and performance standards adopted by the commission under
26 Section 430.001.

27 (9) "Nonstructural matter" has the meaning assigned by

1 the limited statutory warranty and building and performance
2 standards adopted by the commission under Section 430.001.

3 (10) "Request" means a request submitted under Section
4 428.001.

5 (11) "State inspector" means a person employed by the
6 commission under Section 427.002.

7 (12) "State-sponsored inspection and dispute
8 resolution process" means the process by which the commission
9 resolves a request.

10 (13) "Structural" means the load-bearing portion of a
11 home.

12 (14) "Structural failure" has the meaning assigned by
13 the limited statutory warranty and building and performance
14 standards adopted by the commission under Section 430.001.

15 (15) "Third-party inspector" means a person appointed
16 by the commission under Section 428.003.

17 (16) "Warranty of habitability" means a builder's
18 obligation to construct a home or home improvement that is in
19 compliance with the limited statutory warranties and building and
20 performance standards adopted by the commission under Section
21 430.001 and that is safe, sanitary, and fit for humans to inhabit.

22 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
23 "builder" means any business entity or individual who, for a fixed
24 price, commission, fee, wage, or other compensation, constructs or
25 supervises or manages the construction of:

26 (1) a new home;

27 (2) a material improvement to a home, other than an

1 improvement solely to replace or repair a roof of an existing home;
2 or

3 (3) an improvement to the interior of an existing home
4 when the cost of the work exceeds \$20,000.

5 (b) The term includes:

6 (1) an owner, officer, director, shareholder,
7 partner, affiliate, or employee of the builder;

8 (2) a risk retention group governed by Article 21.54,
9 Insurance Code, that insures all or any part of a builder's
10 liability for the cost to repair a residential construction defect;
11 and

12 (3) a third-party warranty company and its
13 administrator.

14 (c) The term does not include any business entity or
15 individual who has been issued a license by this state or an agency
16 or political subdivision of this state to practice a trade or
17 profession related to or affiliated with residential construction
18 if the work being done by the entity or individual to the home is
19 solely for the purpose for which the license was issued.

20 Sec. 401.004. DEFINITION OF CONSTRUCTION DEFECT. (a) In
21 this title, "construction defect" means:

22 (1) the failure of the design, construction, or repair
23 of a home, an alteration of or a repair, addition, or improvement to
24 an existing home, or an appurtenance to a home to meet the
25 applicable warranty and building and performance standards during
26 the applicable warranty period; and

27 (2) any physical damage to the home, an appurtenance

1 to the home, or real property on which the home or appurtenance is
2 affixed that is proximately caused by that failure.

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

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

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

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

11 (B) take reasonable action to maintain the home;

12 (3) normal wear, tear, or deterioration; or

13 (4) normal shrinkage due to drying or settlement of
14 construction components within the tolerance of building and
15 performance standards.

16 Sec. 401.005. EXEMPTIONS. (a) This title does not apply to
17 a home that is:

18 (1) built by the individual who owns the home, alone or
19 with the assistance of the individual's employees or independent
20 contractors; and

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

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

1 Sec. 401.006. SUNSET PROVISION. The Texas Residential
2 Construction Commission is subject to Chapter 325, Government Code
3 (Texas Sunset Act). Unless continued in existence as provided by
4 that chapter, the commission is abolished and this title expires
5 September 1, 2009.

6 [Chapters 402-405 reserved for expansion]

7 SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

8 CHAPTER 406. COMMISSION

9 Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;
10 MEMBERSHIP. (a) The Texas Residential Construction Commission
11 consists of nine members appointed by the governor with the advice
12 and consent of the senate as follows:

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

15 (2) three members must be representatives of the
16 general public;

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

19 (4) one member must be either a licensed architect who
20 practices in the area of residential construction or a building
21 inspector who meets the requirements set forth in Chapter 427 and
22 practices in the area of residential construction.

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

26 Sec. 406.002. TERMS. (a) Commission members serve
27 staggered six-year terms, with three members' terms expiring

1 February 1 of each odd-numbered year. The terms of three of the
2 builder representatives must expire in different odd-numbered
3 years. The term of one of the representatives of the general public
4 must expire in each odd-numbered year.

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

7 Sec. 406.003. PRESIDING OFFICER. The governor shall
8 designate a member of the commission as the presiding officer of the
9 commission to serve in that capacity at the pleasure of the
10 governor. At a regular meeting in February of each year, the
11 commission shall elect from its membership a vice presiding officer
12 and a secretary.

13 Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
14 In this section, "Texas trade association" means a cooperative and
15 voluntarily joined association of business or professional
16 competitors in this state designed to assist its members and their
17 industry or profession as a whole in dealing with mutual business or
18 professional problems, issues, and circumstances and in promoting
19 the common interest of its members and their industry and
20 profession as a whole.

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

27 (1) the person is an employee or paid consultant of a

1 Texas trade association in the field of residential construction;
2 or

3 (2) the person's spouse is a manager or paid consultant
4 of a Texas trade association in the field of residential
5 construction.

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

11 (d) A person may not be a commission employee described by
12 Subsection (b) if the person is an employee or agent in the field of
13 residential construction. This subsection does not apply to a
14 person appointed to the commission.

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

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

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

21 (3) is ineligible for membership under Section
22 406.004;

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

25 (5) is absent from more than half of the regularly
26 scheduled commission meetings that the member is eligible to attend
27 during a calendar year without an excuse approved by a majority vote

1 of the commission.

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

5 (c) If the executive director has knowledge that a potential
6 ground for removal exists, the executive director shall notify the
7 presiding officer of the potential ground. The presiding officer
8 shall then notify the governor and the attorney general that a
9 potential ground for removal exists. If the potential ground for
10 removal involves the presiding officer, the executive director
11 shall notify the next highest ranking officer of the commission,
12 who shall notify the governor and the attorney general that a
13 potential ground for removal exists.

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

19 (b) The training program must provide the person with
20 information regarding:

- 21 (1) the legislation that created the commission;
22 (2) the programs operated by the commission;
23 (3) the role and functions of the commission;
24 (4) the rules of the commission, with an emphasis on
25 the rules that relate to disciplinary and investigatory authority;
26 (5) the current budget for the commission;
27 (6) the results of the most recent formal audit of the

1 commission;

2 (7) the requirements of:

3 (A) the open meetings law, Chapter 551,
4 Government Code;

5 (B) the public information law, Chapter 552,
6 Government Code;

7 (C) the administrative procedure law, Chapter
8 2001, Government Code; and

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

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

13 (c) A person appointed to the commission is entitled to
14 reimbursement, as provided by the General Appropriations Act, for
15 the travel expenses incurred in attending the training program
16 regardless of whether the attendance at the program occurs before
17 or after the person qualifies for office.

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

20 CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

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

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

25 Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission
26 shall develop and implement policies that clearly separate the
27 policy-making responsibilities of the commission and the

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

3 Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT
4 INFORMATION. The executive director or the executive director's
5 designee shall provide to members of the commission and to
6 commission employees, as often as necessary, information regarding
7 the requirements for office or employment under this title,
8 including information regarding a person's responsibilities under
9 applicable laws relating to standards of conduct for state officers
10 or employees.

11 Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE
12 EVALUATION. (a) The executive director or the executive
13 director's designee shall develop an intra-agency career ladder
14 program that addresses opportunities for mobility and advancement
15 for employees within the commission. The program must require
16 intra-agency posting of all nonentry level positions concurrently
17 with any public posting.

18 (b) The executive director or the executive director's
19 designee shall develop a system of annual performance evaluations
20 based on measurable job tasks. All merit pay for commission
21 employees must be based on the system established under this
22 subsection.

23 Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL
24 REPORT. (a) The executive director or the executive director's
25 designee shall prepare and maintain a written policy statement that
26 implements a program of equal employment opportunity to ensure that
27 all personnel decisions are made without regard to race, color,

1 disability, sex, religion, age, or national origin.

2 (b) The policy statement must include:

3 (1) personnel policies, including policies relating
4 to recruitment, evaluation, selection, training, and promotion of
5 personnel, that show the intent of the commission to avoid the
6 unlawful employment practices described by Chapter 21, Labor Code;
7 and

8 (2) an analysis of the extent to which the composition
9 of the commission's personnel is in accordance with state and
10 federal law and a description of reasonable methods to achieve
11 compliance with state and federal law.

12 (c) The policy statement must:

13 (1) be updated annually;

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

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

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

21 Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE
22 INCENTIVE PROGRAM. The executive director or the executive
23 director's designee shall provide to commission employees
24 information and training on the benefits and methods of
25 participation in the state employee incentive program.

26 CHAPTER 408. POWERS AND DUTIES

27 Sec. 408.001. RULES. The commission shall adopt rules as

1 necessary for the implementation of this title, including rules:

2 (1) governing the state-sponsored inspection and
3 dispute resolution process, including building and performance
4 standards, administrative regulations, and the conduct of hearings
5 under Subtitle D;

6 (2) establishing limited statutory warranty and
7 building and performance standards for residential construction;

8 (3) approving third-party warranty companies; and

9 (4) approving third-party inspectors.

10 Sec. 408.002. FEES. The commission shall adopt fees as
11 required by this title in amounts that are reasonable and necessary
12 to provide sufficient revenue to cover the costs of administering
13 this title.

14 Sec. 408.003. ACCESSIBILITY. (a) The commission shall
15 comply with federal and state laws related to program and facility
16 accessibility.

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

21 Sec. 408.004. ANNUAL REPORT. (a) The commission shall file
22 annually with the governor and the presiding officer of each house
23 of the legislature a complete and detailed written report
24 accounting for all funds received and disbursed by the commission
25 during the preceding fiscal year.

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

1 CHAPTER 409. PUBLIC INTEREST INFORMATION

2 AND COMPLAINT PROCEDURES

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

10 (b) The commission shall make the information available to
11 the public and appropriate state agencies and shall post the
12 information on the commission's website.

13 (c) Within 30 days of the receipt by the commission of the
14 registration required by Section 426.003, the commission shall mail
15 a copy of the information of public interest described in
16 Subsection (a) to the owner of the home as described in the
17 registration.

18 Sec. 409.002. PUBLIC PARTICIPATION. The commission shall
19 develop and implement policies that provide the public with a
20 reasonable opportunity to appear before the commission and to speak
21 on any issue under the jurisdiction of the commission.

22 Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission
23 shall maintain a file on each written complaint filed with the
24 commission.

25 (b) The commission shall provide to the person filing the
26 complaint and to each person who is a subject of the complaint a
27 copy of the commission's policies and procedures relating to

1 complaint investigation and resolution.

2 (c) The commission, at least quarterly until final
3 disposition of the complaint, shall notify the person filing the
4 complaint and each person who is a subject of the complaint of the
5 status of the investigation.

6 [Chapters 410-415 reserved for expansion]

7 SUBTITLE C. BUILDER REGISTRATION

8 CHAPTER 416. CERTIFICATE OF REGISTRATION

9 Sec. 416.001. REGISTRATION REQUIRED. A person may not act
10 as a builder unless the person holds a certificate of registration
11 under this chapter.

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

15 (b) Each applicant must disclose in the application whether
16 the applicant has:

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

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

22 (c) Disclosure under Subsection (b) is required regardless
23 of whether an order granting the person community supervision
24 suspended the imposition of the sentence.

25 (d) The commission may, on receipt of an application,
26 conduct a criminal background check of the applicant or any person
27 responsible for the application. The commission may obtain

1 criminal history record information maintained by the Department of
2 Public Safety, the Federal Bureau of Investigation, or any other
3 local, state, or national governmental entity. Unless the
4 information is a public record at the time the commission obtains
5 the information under this subsection, the information is
6 confidential, and the commission may not release or disclose the
7 information to any person except under a court order or with the
8 permission of the applicant.

9 Sec. 416.003. PROVISIONAL REGISTRATION. (a) Pending the
10 receipt of the results of a criminal background check, the
11 commission may issue a provisional registration certificate. On
12 approval of the results of the criminal background check, the
13 commission shall issue a registration certificate. On receipt of
14 unfavorable results of the criminal background check, the
15 commission shall revoke the provisional registration certificate.

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

17 Sec. 416.004. FEES. (a) The commission shall charge and
18 collect:

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

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

23 (b) The commission shall establish a fee schedule that takes
24 into consideration the unit volume or dollar volume of potential
25 applicants.

26 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
27 may not receive a certificate of registration under this chapter

1 unless:

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

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

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

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

9 Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR
10 BUSINESS ENTITIES. (a) To be eligible for an original or renewal
11 certificate of registration under this chapter:

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

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

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

19 (b) A corporation, limited liability company, partnership,
20 limited partnership, or limited liability partnership is not
21 eligible to be registered under this chapter and may not act as a
22 builder unless the entity's designated agent is individually
23 registered as a builder.

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

1 applicant.

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

5 (c) The commission shall issue one certificate of
6 registration for each business entity registered under this
7 chapter.

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

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

17 (c) The commission shall:

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

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

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

25 (e) The hearing shall be before a hearings officer appointed
26 by the commission. After the hearing, the hearings officer shall
27 enter an appropriate order. The order of the hearings officer under

1 this subsection is a final decision.

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

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

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

10 (b) The commission by rule may adopt a system under which
11 certificates of registration expire on several dates during the
12 year. The commission shall adjust the date for payment of renewal
13 fees accordingly.

14 (c) In a year in which the expiration date for a certificate
15 of registration is changed, the renewal fee payable shall be
16 prorated on a monthly basis so that the certificate holder pays only
17 that portion of the fee that is allocable to the number of months
18 during which the certificate of registration is valid. On renewal
19 of the certificate of registration on the new expiration date, the
20 total renewal fee is payable.

21 Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS; ASSUMED
22 NAMES. (a) A builder shall maintain a fixed office location in
23 this state. The address of the builder's principal place of
24 business must be designated on the certificate of registration.

25 (b) Not later than the 30th day after the date a builder
26 moves from the address designated on the certificate of
27 registration, the builder shall submit an application, accompanied

1 by the appropriate fee, for a certificate of registration that
2 designates the new location of the builder's principal place of
3 business. The commission shall issue a certificate of registration
4 that designates the new location if the new location complies with
5 the requirements of this section.

6 (c) If a builder operates under any name other than the name
7 that is set forth on the builder's certificate of registration, the
8 builder shall, within 45 days of operating under this other name,
9 disclose this other name to the commission.

10 (d) This section does not require a builder to obtain a
11 certificate of registration for each sales office.

12 Sec. 416.011. TEXAS STAR BUILDER DESIGNATION. (a) The
13 commission shall establish rules and procedures for a program
14 through which a builder can be designated as a "Texas Star Builder."
15 A builder's participation in the program is voluntary and is not a
16 requirement for the issuance of a certificate of registration
17 required under this chapter.

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

22 (c) If the commission determines that a builder must meet
23 certain education requirements to participate in the "Texas Star
24 Builder" program, a builder may satisfy those requirements by
25 completing education programs offered by a trade association or
26 other organization whose education programs have been approved by
27 the commission.

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

4 CHAPTER 417. CERTIFICATION OF RESIDENTIAL CONSTRUCTION

5 ARBITRATORS

6 Sec. 417.001. CERTIFICATION. (a) The commission by rule
7 shall establish eligibility requirements and procedures for a
8 person to be certified by the commission as a residential
9 construction arbitrator.

10 (b) The requirements established under this section must,
11 at a minimum, require a certified arbitrator to:

12 (1) have at least five years' experience in conducting
13 arbitrations between homeowners and builders involving
14 construction defects;

15 (2) be familiar with the statutory warranties and
16 building and performance standards established under Chapter 430
17 and with the provisions of Chapter 27; and

18 (3) meet continuing education requirements
19 established by the commission.

20 (c) Nothing in the chapter prohibits an arbitrator who does
21 not hold a certificate under this chapter from conducting an
22 arbitration involving a residential construction defect.

23 Sec. 417.002. APPLICATION FOR CERTIFICATION. An applicant
24 for certification under this chapter or for renewal of that
25 certification must submit an application on a form prescribed by
26 the commission and include the fee required by Section 417.003.

27 Sec. 417.003. FEES. The commission shall charge and

1 collect:

2 (1) a filing fee for an application for certification
3 under this chapter that does not exceed \$100; and

4 (2) a fee for renewal of a certification under this
5 chapter that does not exceed \$50.

6 Sec. 417.004. PUBLICATION AND COMMENT PERIOD;
7 CERTIFICATION. (a) The commission shall publish notice of each
8 applicant's original application for certification under this
9 chapter in the Texas Register and allow public comment on the
10 application during the 21 days after the date the notice is
11 published. During that period, any person may contest the
12 application in writing submitted to the commission.

13 (b) If the commission finds that certification of the
14 applicant is in the public interest, the commission shall certify
15 the applicant under this chapter.

16 Sec. 417.005. DENIAL OF CERTIFICATION. The commission
17 shall establish procedures under which a denial of a certification
18 under this chapter may be contested by the applicant.

19 Sec. 417.006. EXPIRATION OF CERTIFICATION. The commission
20 may issue or renew a certification under this chapter for a period
21 that does not exceed 24 months.

22 Sec. 417.007. LIST OF CERTIFIED ARBITRATORS. The
23 commission shall maintain an updated list of residential
24 construction arbitrators certified under this chapter and make the
25 list available to the public.

26 CHAPTER 418. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

27 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person is

1 subject to disciplinary action under this chapter for:

2 (1) fraud or deceit in obtaining a registration or
3 certification under this subtitle;

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

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

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

10 (5) publishing a false or misleading advertisement;

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

15 (7) failure to pay an administrative penalty assessed
16 by the commission under Chapter 419;

17 (8) nonpayment of a final nonappealable judgment
18 arising from a construction defect or other transaction between the
19 person and a homeowner;

20 (9) failure to register a home as required by Section
21 426.003;

22 (10) failure to remit the fee for registration of a
23 home under Section 426.003; or

24 (11) failure to reimburse a homeowner the amount
25 ordered by the commission as provided in Section 428.004(d).

26 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. On a
27 determination that a ground for disciplinary action under Section

1 418.001 exists, the commission may:

2 (1) revoke or suspend a registration or certification;

3 (2) probate the suspension of a registration or
4 certification; or

5 (3) formally or informally reprimand a registered or
6 certified person.

7 Sec. 418.003. HEARING. (a) If the commission proposes to
8 take a disciplinary action against a person under Section 418.002,
9 the person is entitled to a hearing before the commission.

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

13 (c) The commission shall prescribe the time and place of the
14 hearing.

15 (d) A hearing under this section is governed by Chapter
16 2001, Government Code.

17 Sec. 418.004. APPEAL. (a) A person aggrieved by a ruling,
18 order, or decision of the commission is entitled to appeal to a
19 district court in the county in which the administrative hearing
20 was held.

21 (b) An appeal under this section is governed by Chapter
22 2001, Government Code.

23 CHAPTER 419. ADMINISTRATIVE PENALTY

24 Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. In a
25 contested case involving disciplinary action, the commission may,
26 as part of the commission's order, impose an administrative penalty
27 on a registered or certified person who violates this title or a

1 rule adopted or order issued by the commission under this title.

2 Sec. 419.002. AMOUNT OF PENALTY. (a) An administrative
3 penalty imposed under this chapter may not exceed \$5,000 for each
4 violation.

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

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

9 (2) the history of previous violations;

10 (3) the amount necessary to deter a future violation;

11 (4) efforts to correct the violation; and

12 (5) any other matter justice may require.

13 Sec. 419.003. PAYMENT OF PENALTY. The commission shall
14 specify in an order imposing an administrative penalty under this
15 chapter a date on or before the 30th day after the date the order
16 becomes final and unappealable by which the person against whom the
17 penalty is imposed must pay the penalty.

18 Sec. 419.004. ENFORCEMENT OF PENALTY. If a person does not
19 pay an administrative penalty imposed under this chapter and
20 enforcement of the penalty is not stayed, the commission may:

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

23 (2) enforce any part of the order that specifies
24 disciplinary action to be taken against the registered or certified
25 person if the registered or certified person fails to pay the
26 administrative penalty within the time prescribed.

27 [Chapters 420-425 reserved for expansion]

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

3 CHAPTER 426. GENERAL PROVISIONS

4 Sec. 426.001. APPLICABILITY OF SUBTITLE. (a) This
5 subtitle applies to a dispute between a builder and a homeowner if:

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

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

10 (B) damage to goods; and

11 (2) a request is submitted to the commission on or
12 before the 10th anniversary of the date of the initial transfer of
13 title from the builder to the initial owner of the home or the
14 improvement that is the subject of the dispute or, if there is not a
15 closing, the date on which the contract for construction of the
16 improvement was entered into.

17 (b) This subtitle does not apply to a dispute arising out
18 of:

19 (1) an alleged violation of Section 27.01, Business &
20 Commerce Code;

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

23 (3) a violation of Chapter 162.

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

26 Sec. 426.002. CONFLICT WITH CERTAIN OTHER LAW. To the
27 extent of any conflict between this subtitle and any other law,

1 including Chapter 27 and the Deceptive Trade Practices-Consumer
2 Protection Act (Subchapter E, Chapter 17, Business & Commerce
3 Code), this subtitle prevails.

4 Sec. 426.003. REGISTRATION OF HOME. (a) A builder shall
5 register a new home with the commission on or before the 15th day of
6 the month following the month in which the transfer of title from
7 the builder to the homeowner occurs. The registration must include
8 the information required by the commission by rule and be
9 accompanied by the fee required by Subsection (c).

10 (b) A builder who enters into a transaction governed by this
11 title, other than the transfer of title of a new home from the
12 builder to the seller, shall register the home involved in the
13 transaction with the commission. The registration must:

14 (1) include the information required by the commission
15 by rule;

16 (2) be accompanied by the fee required by Subsection
17 (c); and

18 (3) be delivered to the commission not later than the
19 15th day after the earlier of:

20 (A) the date of the agreement that describes the
21 transaction between the homeowner and the builder; or

22 (B) the commencement of the work on the home.

23 (c) A builder must remit to the commission a registration
24 fee for each home registered with the commission in an amount
25 determined by the commission. The fee set by the commission under
26 this subsection may not exceed \$125.

27 (d) The commission may assess a late payment penalty that

1 does not exceed \$500 against a builder who fails to pay a required
2 registration fee in the time prescribed by this section.

3 Sec. 426.004. FEES. (a) A party who submits a request
4 under this subtitle shall pay any amount required by the commission
5 to cover the expense of the third-party inspector.

6 (b) The commission shall adopt rules permitting a waiver or
7 reduction of the inspection expenses for homeowners demonstrating a
8 financial inability to pay the expenses.

9 (c) If the transfer of the title of the home from the builder
10 to the initial homeowner occurred before January 1, 2004, or if the
11 contract for improvements or additions between the builder and
12 homeowner was entered into before January 1, 2004, the person who
13 submits a request involving the home shall pay, in addition to the
14 inspection expenses required by this section, the registration fee
15 required by Section 426.003.

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

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

20 (1) on or before the expiration of any applicable
21 statute of limitations or by the 45th day after the date the
22 third-party inspector issues the inspector's recommendation,
23 whichever is later; or

24 (2) if the recommendation is appealed, on or before
25 the expiration of any applicable statute of limitations or by the
26 45th day after the date the commission issues its ruling on the
27 appeal, whichever is later.

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

5 (d) This section does not apply to an action that is
6 initiated by a person subrogated to the rights of a claimant if
7 payment was made pursuant to a claim made under an insurance policy.

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

14 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
15 who submits a request for state-sponsored inspection and dispute
16 resolution must disclose in the request the name of any person who,
17 before the request is submitted, inspected the home on behalf of the
18 requestor in connection with the construction defect alleged in the
19 request. If a person's name is known to the requestor at the time of
20 the request and is not disclosed as required by this section, the
21 requestor may not designate the person as an expert or use materials
22 prepared by that person in:

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

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

27 Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD-PARTY

INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS.

(a) 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 shall constitute a rebuttable presumption of the existence or nonexistence of a construction defect or the reasonable manner of repair of the construction defect. A party seeking to dispute, vacate, or overcome that presumption must establish by a preponderance of the evidence that the recommendation or ruling is inconsistent with the applicable warranty and building and performance standards.

(b) The presumption established by this section applies only to an action between the homeowner and the builder. 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) A third-party inspector approved by the commission must:

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

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

(b) A third-party inspector who inspects an issue involving workmanship and materials must:

(1) have a minimum of five years' experience in the

1 residential construction industry; and

2 (2) be certified as a residential combination
3 inspector by the International Code Council.

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

6 (1) be an approved structural engineer or approved
7 architect; and

8 (2) have a minimum of 10 years' experience in
9 residential construction.

10 (d) Each third-party inspector who inspects an issue
11 involving a structural matter must receive, in accordance with
12 commission rules:

13 (1) initial training regarding the state-sponsored
14 inspection and dispute resolution process and this subtitle; and

15 (2) annual continuing education in the inspector's
16 area of practice.

17 (e) A third-party inspector may not receive more than 10
18 percent of the inspector's gross income in a federal income tax year
19 from providing expert witness services, including retention for the
20 purpose of providing testimony, evidence, or consultation in
21 connection with a pending or threatened legal action.

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

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

27 (1) review on an appeals panel the recommendations of

1 third-party inspectors;

2 (2) provide consultation to third-party inspectors;

3 and

4 (3) administer the state-sponsored inspection and
5 dispute resolution process.

6 (b) A state inspector must be certified as a residential
7 combination inspector by the International Code Council.

8 CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE

9 RESOLUTION PROCESS

10 Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute
11 between a homeowner and a builder arises out of an alleged
12 construction defect, the homeowner or the builder may submit to the
13 commission a written request for state-sponsored inspection and
14 dispute resolution.

15 (b) The request must:

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

18 (2) state the amount of any known out-of-pocket
19 expenses and engineering or consulting fees incurred by the
20 homeowner in connection with each alleged construction defect;

21 (3) include any evidence that depicts the nature and
22 cause of each alleged construction defect and the nature and extent
23 of repairs necessary to remedy the construction defect, including,
24 if available, expert reports, photographs, and videotapes, if that
25 evidence would be discoverable under Rule 192, Texas Rules of Civil
26 Procedure;

27 (4) be accompanied by the fees required under Section

1 426.004; and

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

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

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

15 (e) The commission by rule shall establish methods by which
16 homeowners may be notified of the name, mailing address, and
17 telephone number of the commission for the purpose of directing a
18 request to the commission.

19 (f) The commission shall provide a person who files a
20 request with a copy of the commission's policies and procedures
21 relating to investigation and resolution of a request.

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

25 (h) The filing of a request under this section tolls the
26 limitations period in any action between the homeowner and the
27 builder arising out of the subject of the request until the 45th day

1 after the date a final, nonappealable recommendation is issued
2 under this title in response to the request.

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

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

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

19 Sec. 428.003. INSPECTION BY THIRD-PARTY
20 INSPECTOR. (a) On or before the 15th day after the date the
21 commission receives a request, the commission shall appoint the
22 next available third-party inspector from the applicable lists of
23 third-party inspectors maintained by the commission under
24 Subsection (c).

25 (b) The commission shall establish rules and regulations
26 that allow the homeowner and the builder to each have the right to
27 strike the appointment of a third-party inspector one time for each

1 request submitted.

2 (c) The commission shall adopt rules that allow for the
3 commission to maintain a list of available third-party inspectors
4 for the various regions of the state, as required to satisfy the
5 provisions of this title.

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

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

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

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

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

26 (d) Except as provided by this subsection, the third-party
27 inspector's recommendation may not include payment of any monetary

1 consideration. If the inspector finds for the party who submitted
2 the request, the commission may order the other party to reimburse
3 all or part of the fees and inspection expenses paid by the
4 requestor under Section 426.004.

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

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

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

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

25 (c) The panel shall:

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

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

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

7 CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

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

13 (b) The warranty periods shall be:

14 (1) one year for workmanship and materials;

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

17 (3) 10 years for major structural components of the
18 home.

19 (c) The limited statutory warranties and building and
20 performance standards must:

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

1 (2) include standards for mold reduction and
2 remediation that comply with Section 430.003;

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

7 (4) contain standards that are not less stringent than
8 the standards required by the United States Department of Housing
9 and Urban Development for FHA programs as set forth in 24 C.F.R.
10 Sections 203.202 through 203.206.

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

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

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

27 (3) for residential construction located in an

1 unincorporated area in a county that does not contain an
2 incorporated area, the version of the International Residential
3 Code that existed on May 1, 2001.

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

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

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

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

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

25 (1) occupancy; or

26 (2) transfer of title from the builder to the initial
27 homeowner.

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

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

11 Sec. 430.002. WARRANTY OF HABITABILITY. (a) The
12 construction of each new home or home improvement shall include the
13 warranty of habitability.

14 (b) For a construction defect to be actionable as a breach
15 of the warranty of habitability, the defect must have a direct
16 adverse effect on the habitable areas of the home and must not have
17 been discoverable by a reasonable prudent inspection or examination
18 of the home or home improvement within the applicable warranty
19 periods adopted by the commission under Section 430.001.

20 Sec. 430.003. MOLD REDUCTION AND REMEDIATION; TASK FORCE.

21 (a) The building and performance standards adopted under Section
22 430.001 must include measures that are designed to reduce the
23 general population's exposure to mold often formed in water-damaged
24 building materials and that include:

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

27 (2) recommended management practices for:

1 (A) limiting moisture intrusion in a home, which
2 may include the use of a water leak detection system listed by
3 Underwriters Laboratories that is capable of shutting off a valve
4 on the main water line coming into the structure immediately upon
5 detecting a water leak in the structure; and

6 (B) mold remediation.

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

15 Sec. 430.004. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY
16 COMMITTEE. The commission shall appoint a task force to develop
17 design recommendations for residential construction that encourage
18 rain harvesting and water recycling.

19 Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN
20 CONSTRUCTION. For the purpose of this title, the only statutory
21 warranty and building and performance standards that apply to
22 residential construction in unincorporated areas of counties that
23 are considered economically distressed areas as defined by Section
24 15.001(11) of the Water Code and located within 50 miles of an
25 international border are the standards established for colonia
26 housing programs administered by the Texas Department of Housing
27 and Community Affairs, unless a county commissioners court has

1 adopted other building and performance standards authorized by
2 statute.

3 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The
4 warranties established under this chapter supersede all implied
5 warranties. The only warranties that exist for residential
6 construction or residential improvements are warranties created by
7 this chapter or by other statutes expressly referring to
8 residential construction or residential improvements, or any
9 express, written warranty acknowledged by the homeowner and the
10 builder.

11 Sec. 430.007. WAIVER BY CONTRACT PROHIBITED. A contract
12 between a builder and a homeowner may not waive the limited
13 statutory warranties and building and performance standards
14 adopted under this chapter or the warranty of habitability. This
15 section does not prohibit a builder and a homeowner from
16 contracting for more stringent warranties and building standards
17 than are provided under this chapter.

18 Sec. 430.008. APPROVAL OF THIRD-PARTY WARRANTY COMPANY.

19 (a) The commission may approve as a third-party warranty company
20 for the purposes of Section 430.009:

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

23 (2) a company whose performance is insured by an
24 insurance company authorized to engage in the business of insurance
25 in this state; or

26 (3) an insurance company that insures the warranty
27 obligations of a builder under the statutory warranty and building

1 and performance standards.

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

6 Sec. 430.009. THIRD-PARTY WARRANTY COMPANY. (a) A builder
7 may elect to provide a warranty through a third-party warranty
8 company approved by the commission.

9 (b) A transfer of liability under this section is not
10 effective unless the company providing the warranty:

11 (1) agrees to perform the builder's warranty
12 obligations under this chapter that are covered by the warranty
13 provided through the third-party warranty company; and

14 (2) actually pays for or corrects any construction
15 defect covered by the warranty provided through the third-party
16 warranty company.

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

21 (d) The third-party warranty company may not assume
22 liability for personal injuries or damage to personal property. A
23 builder does not avoid liability for personal injuries or damage to
24 personal property for which the builder would otherwise be liable
25 under law by providing a written warranty from a third-party
26 warranty company.

27 (e) A company that administers a warranty for a third-party

1 warranty company is not liable for any damages resulting from a
2 construction defect or from repairs covered under the warranty.

3 Sec. 430.010. MINIMUM STANDARDS FOR DETERMINATION OF
4 DEFECT. A third-party warranty company shall use defect inspection
5 procedures substantially similar to the procedures adopted by the
6 commission under this subtitle. A warranty company may adopt
7 warranty standards in addition to the standards adopted by the
8 commission. A third-party warranty company may not reduce the
9 limited statutory warranty and building and performance standards,
10 except that a third-party warranty company shall not be required to
11 provide a warranty of habitability.

12 Sec. 430.011. EFFECT OF SUBTITLE ON OTHER RIGHTS AND
13 OBLIGATIONS. (a) Except as permitted by this subtitle, an express,
14 written contract between a homeowner and a builder may not limit the
15 obligations of a builder under this title.

16 (b) After the issuance of written findings of fact and a
17 ruling on an appeal under Chapter 429, a homeowner may bring a cause
18 of action against a builder or third-party warranty company for
19 breach of a limited statutory warranty adopted by the commission
20 under this subtitle. In an action brought under this subtitle, the
21 homeowner may recover only those damages provided by Section
22 27.004.

23 (c) Breach of a limited statutory warranty adopted by the
24 commission or breach of the statutory warranty of habitability
25 shall not, by itself, constitute a violation of the Deceptive Trade
26 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
27 Business & Commerce Code).

1 [Chapters 431-435 reserved for expansion]

2 SUBTITLE E. RESIDENTIAL CONSTRUCTION ARBITRATION

3 CHAPTER 436. GENERAL PROVISIONS

4 Sec. 436.001. DEFINITIONS. In this subtitle:

5 (1) "Arbitration" means the procedure for dispute
6 resolution described by Section 154.027, Civil Practice and
7 Remedies Code.

8 (2) "Arbitration services provider" means a person
9 that holds itself out as:

10 (A) managing, coordinating, or administering
11 arbitrations;

12 (B) providing the services of arbitrators;

13 (C) making referrals or appointments to
14 arbitrators; or

15 (D) providing lists of arbitrators.

16 (3) "Arbitrator" means a neutral individual who hears
17 the claims of the parties to a dispute and renders a decision and
18 who is:

19 (A) chosen by the parties to the dispute;

20 (B) appointed by a court; or

21 (C) selected by an arbitration services provider
22 under an agreement of the parties or applicable rules.

23 Sec. 436.002. APPLICABILITY. (a) This subtitle applies
24 only to an arbitration of a dispute between a homeowner and a
25 builder that involves an alleged construction defect.

26 (b) The requirements of this subtitle supplement Chapter
27 171, Civil Practice and Remedies Code, and the Federal Arbitration

1 Act (9 U.S.C. Sections 1-16), as amended.

2 Sec. 436.003. VENUE. (a) An arbitration of a dispute
3 involving a construction defect shall be conducted in the county in
4 which the home alleged to contain the defect is located.

5 (b) The requirements of this section may not be waived by
6 contract.

7 Sec. 436.004. RESIDENTIAL CONSTRUCTION ARBITRATION TASK
8 FORCE. (a) The commission shall appoint a task force to study
9 residential arbitrators and arbitration and advise the commission
10 with respect to residential arbitrators and arbitration.

11 (b) The task force established under this section shall
12 report to the 79th and 80th legislatures on the task force's
13 recommendations and the effect of the implementation of those
14 recommendations and of the provisions relating to arbitrators and
15 arbitration in this subtitle. This subsection expires September 1,
16 2007.

17 CHAPTER 437. REPORTING REQUIREMENTS

18 Sec. 437.001. AWARD FILING. (a) If an arbitration award is
19 filed in a court of competent jurisdiction in this state, the filer
20 shall also, not later than the 30th day after the date an award is
21 made in a residential construction arbitration, file with the
22 commission a summary of the arbitration award that includes:

23 (1) the names of the parties to the dispute;
24 (2) the name of each party's attorney, if any;
25 (3) the name of the arbitrator who conducted the
26 arbitration;

27 (4) the name of the arbitration services provider who

1 administered the arbitration, if any;

2 (5) the fee charged to conduct the arbitration;

3 (6) a general statement of each issue in dispute;

4 (7) the arbitrator's determination, including the
5 party that prevailed in each issue in dispute and the amount of any
6 monetary award; and

7 (8) the date of the arbitrator's award.

8 (b) The commission shall establish rules to permit the
9 voluntary filing of the information listed in Subsection (a) by any
10 interested party. Any agreement prohibiting the disclosure of the
11 information listed in Subsection (a) is unenforceable.

12 Sec. 437.002. ENFORCEMENT. (a) The commission by rule
13 shall establish a fee not to exceed \$100 for the late filing of an
14 arbitration award and procedures for the collection of that fee.

15 (b) A party to an arbitration, or an attorney for a party,
16 may report an overdue filing of an arbitration award to the
17 commission.

18 CHAPTER 438. ENFORCEABILITY OF RESIDENTIAL CONSTRUCTION

19 ARBITRATION AWARDS

20 Sec. 438.001. GROUNDS FOR VACATING AWARD. In addition to
21 grounds for vacating an arbitration award under Section 171.088,
22 Civil Practice and Remedies Code, on application of a party, a court
23 shall vacate an award in a residential construction arbitration
24 upon a showing of manifest disregard for Texas law.

25 SECTION 1.02. (a) On or before December 1, 2003, the
26 governor shall appoint the members of the Texas Residential
27 Construction Commission in accordance with Title 16, Property Code,

1 as added by this article. In making the initial appointments, the
2 governor shall designate three members for terms expiring February
3 1, 2005, three members for terms expiring February 1, 2007, and
4 three members for terms expiring February 1, 2009.

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

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

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

23 SECTION 1.04. On or before March 1, 2004, the Texas
24 Residential Construction Commission shall begin requiring
25 registration under Subtitle C, Title 16, Property Code, as added by
26 this article.

27 SECTION 1.05. On January 1, 2004, the Texas Residential

1 Construction Commission shall begin collecting, and builders are
2 required to remit, the registration fee required by Section
3 426.003, Property Code, as added by this Act.

4 SECTION 1.06. On or before March 1, 2004, the Texas
5 Residential Construction Commission shall begin certifying
6 arbitrators under Chapter 417, Property Code, as added by this
7 article.

8 SECTION 1.07. (a) Section 436.003, Property Code, as added
9 by this article, governs the venue of an arbitration initiated on or
10 after the effective date of this Act under a residential
11 construction contract entered into before, on, or after the
12 effective date of this Act, unless otherwise provided by a contract
13 entered into before the effective date of this Act.

14 (b) Chapter 437, Property Code, as added by this article,
15 applies only to an arbitration initiated on or after January 1,
16 2004. An arbitration initiated before that date is governed by the
17 law in effect immediately before the effective date of this Act, and
18 that law is continued in effect for that purpose.

19 (c) Chapter 438, Property Code, as added by this article,
20 applies only to an arbitration initiated on or after the effective
21 date of this Act. An arbitration initiated before that date is
22 governed by the law in effect immediately before that date, and that
23 law is continued in effect for that purpose.

24 ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

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

27 Sec. 27.001. DEFINITIONS. In this chapter:

1 (1) "Action" means a court or judicial proceeding or
2 an arbitration.

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

6 (3) "Commission" means the Texas Residential
7 Construction Commission.

8 (4) [~~(2)~~] "Construction defect" has the meaning
9 assigned by Section 401.004 for an action to which Subtitle D, Title
10 16, applies and for any other action means a matter concerning the
11 design, construction, or repair of a new residence, of an
12 alteration of or repair or addition to an existing residence, or of
13 an appurtenance to a residence, on which a person has a complaint
14 against a contractor. The term may include any physical damage to
15 the residence, any appurtenance, or the real property on which the
16 residence and appurtenance are affixed proximately caused by a
17 construction defect.

18 (5) [~~(3)~~] "Contractor" means a builder, as defined by
19 Section 401.003, and any person contracting with an owner for the
20 construction or sale of a new residence constructed by that person
21 or of an alteration of or addition to an existing residence, repair
22 of a new or existing residence, or construction, sale, alteration,
23 addition, or repair of an appurtenance to a new or existing
24 residence. The term includes:

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

27 (B) a risk retention group registered under

1 Article 21.54, Insurance Code, that insures all or any part of a
2 contractor's liability for the cost to repair a residential
3 construction defect.

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

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

14 (8) [~~(5)~~] "Structural failure" has the meaning
15 assigned by Section 401.002 for an action to which Subtitle D, Title
16 16, applies and for any other action means actual physical damage to
17 the load-bearing portion of a residence caused by a failure of the
18 load-bearing portion.

19 (9) "Third-party inspector" has the meaning assigned
20 by Section 401.002.

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

24 (a) This chapter applies to:

25 (1) any action to recover damages or other relief
26 arising [~~resulting~~] from a construction defect, except a claim for
27 personal injury, survival, or wrongful death or for damage to

1 goods; and

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

4 (b) To the extent of conflict between this chapter and any
5 other law, including the Deceptive Trade Practices-Consumer
6 Protection Act (Subchapter E, Chapter 17, Business & Commerce Code)
7 or a common law cause of action, this chapter prevails.

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

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

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

14 (3) a violation of Chapter 162.

15 SECTION 2.03. Section 27.003, Property Code, is amended to
16 read as follows:

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

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

22 (A) negligence of a person other than the
23 contractor or an agent, employee, or subcontractor of the
24 contractor;

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

27 (i) take reasonable action to mitigate the

1 damages; or

2 (ii) take reasonable action to maintain the
3 residence;

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

5 (D) normal shrinkage due to drying or settlement
6 of construction components within the tolerance of building
7 standards; or

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

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

27 (b) Except as provided by this chapter [~~herein~~], this

1 chapter does not limit or bar any other defense or defensive matter
2 or other defensive cause of action applicable to an action to
3 recover damages or other relief arising [~~resulting~~] from a
4 construction defect.

5 SECTION 2.04. Section 27.004, Property Code, is amended to
6 read as follows:

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

1 make an offer of repair in accordance with Subsection (b). A
2 claimant is not required to give written notice to a contractor
3 under this subsection in a claim subject to Subtitle D, Title 16.

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

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

1 (2) not later than the 10th day after the date the
2 contractor receives notice under Subdivision (1), the contractor
3 may make a supplemental written offer of settlement to the claimant
4 by sending the offer to the claimant or the claimant's attorney.
5 ~~[For the purposes of this section, "independent contractor" means a~~
6 ~~person who is independent of the contractor and did not perform any~~
7 ~~of the work complained of in the claimant's notice. The claimant~~
8 ~~and the contractor may agree in writing to extend the periods~~
9 ~~described by this subsection.]~~

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

1 resolution process is completed, if Subtitle D, Title 16, applies,
 2 or not later than the 60th day after [~~within the 60-day period~~
 3 ~~following~~] the date of service, if Subtitle D, Title 16, does not
 4 apply. If, while an action [~~a suit~~] subject to this chapter is
 5 pending, the statute of limitations for the cause of action would
 6 have expired and it is determined that the provisions of Subsection
 7 (a) were not properly followed, the action [~~suit~~] shall be abated
 8 [~~for up to 75 days in order~~] to allow compliance with Subsections
 9 (a) and (b).

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

23 (1) is verified and alleges that the person against
 24 whom the action [~~suit~~] is pending did not receive the written notice
 25 required by Subsection (a), the person against whom the action is
 26 pending [~~or~~] was not given a reasonable opportunity to inspect the
 27 property as required by Subsection (a), or the claimant failed to

1 follow the procedures specified by Subsection (b) or Subtitle D,
2 Title 16; and

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

6 (e) [~~An abatement under Subsection (d) continues until the~~
7 ~~60th day after the date that written notice is served in compliance~~
8 ~~with Subsection (a).~~

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

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

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

19 (B) the amount of a reasonable monetary
20 settlement or purchase offer made under Subsection (n); and

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

25 (f) If a contractor fails to make a reasonable offer under
26 Subsection (b), the limitations on damages provided for in
27 Subsection (e) shall not apply.

1 ~~[(g) If a contractor fails to make a reasonable offer under~~
2 ~~this section, or fails to make a reasonable attempt to complete the~~
3 ~~repairs specified in an accepted offer made under this section, or~~
4 ~~fails to complete, in a good and workmanlike manner, the repairs~~
5 ~~specified in an accepted offer made under this section, the~~
6 ~~limitations on damages and defenses to liability provided for in~~
7 ~~this section shall not apply.]~~

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

12 (1) the reasonable cost of repairs necessary to cure
13 any construction defect~~[, including any reasonable and necessary~~
14 ~~engineering or consulting fees required to evaluate and cure the~~
15 ~~construction defect, that the contractor is responsible for~~
16 ~~repairing under this chapter];~~

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

19 (3) reasonable and necessary engineering and
20 consulting fees;

21 (4) the reasonable expenses of temporary housing
22 reasonably necessary during the repair period;

23 (5) ~~[(3)]~~ the reduction in current market value, if
24 any, after the construction defect is repaired if the construction
25 defect is a ~~[to the extent the reduction is due to]~~ structural
26 failure; and

27 (6) ~~[(4)]~~ reasonable and necessary attorney's fees.

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

7 (i) [~~(j)~~] An offer of settlement made under this section
8 that is not accepted before the 25th day after the date the offer is
9 received by the claimant is considered rejected.

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

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

17 (l) If Subtitle D, Title 16, applies to the claim and the
18 contractor's offer of repair is accepted by the claimant, the
19 contractor, on completion of the repairs and at the contractor's
20 expense, shall engage the third-party inspector who provided the
21 recommendation regarding the construction defect involved in the
22 claim to inspect the repairs and determine whether the residence,
23 as repaired, complies with the applicable limited statutory
24 warranty and building and performance standards adopted by the
25 commission. The contractor is entitled to a reasonable period not
26 to exceed 15 days to address minor cosmetic items that are necessary
27 to fully complete the repairs. The determination of the

1 third-party inspector of whether the repairs comply with the
2 applicable limited statutory warranty and building and performance
3 standards adopted by the commission establishes a rebuttable
4 presumption on that issue. A party seeking to dispute, vacate, or
5 overcome that presumption must establish by clear and convincing
6 evidence that the determination is inconsistent with the applicable
7 limited statutory warranty and building and performance standards.

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

20 (n) This section does not preclude a contractor from making
21 a monetary settlement offer or an offer to purchase the residence.

22 (o) A notice and response letter prescribed by this chapter
23 must be sent by certified mail, return receipt requested, to the
24 last known address of the recipient. If previously disclosed in
25 writing that the recipient of a notice or response letter is
26 represented by an attorney, the letter shall be sent to the
27 recipient's attorney in accordance with Rule 21a, Texas Rules of

1 Civil Procedure [~~The inspection and repair provisions of this~~
2 ~~chapter are in addition to any rights of inspection and settlement~~
3 ~~provided by common law or by another statute, including Section~~
4 ~~17.505, Business & Commerce Code].~~

5 (p) If the contractor provides written notice of a claim for
6 damages arising from a construction defect to a subcontractor, the
7 contractor retains all rights of contribution from the
8 subcontractor if the contractor settles the claim with the
9 claimant.

10 (q) If a contractor refuses to initiate repairs under an
11 accepted offer made under this section, the limitations on damages
12 provided for in this section shall not apply.

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:

27 (1) the residence is more than five years old at the

1 time an action is initiated; or

2 (2) the contractor makes such an election later than
3 the 15th day after the date of a final, unappealable determination
4 of a dispute under Subtitle D, Title 16, if applicable.

5 (c) If a contractor elects to purchase the residence under
6 Subsection (a):

7 (1) the contractor shall pay the original purchase
8 price of the residence and closing costs incurred by the homeowner
9 and the cost of transferring title to the contractor under the
10 election;

11 (2) the homeowner may recover:

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

14 (B) reimbursement for permanent improvements the
15 owner made to the residence after the date the owner purchased the
16 residence from the builder; and

17 (C) reasonable costs to move from the residence;
18 and

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

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

27 SECTION 2.06. Section 27.007(a), Property Code, is amended

1 to read as follows:

2 (a) A written contract subject to this chapter must contain
3 next to the signature lines in the contract a notice printed or
4 typed in 10-point boldface type or the computer equivalent that
5 reads substantially similar to the following:

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

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

27 (b) Section 27.0042, Property Code, as added by this article

1 and the changes in law made by this article to Section 27.007(a),
2 Property Code, apply only with respect to a contract between a
3 contractor and a homeowner that is entered into on or after the
4 effective date of this Act. With respect to a contract that is
5 entered into before the effective date of this Act, the law in
6 effect immediately before the effective date applies, and that law
7 is continued in effect for that purpose.

8 ARTICLE 3. EFFECTIVE DATE

9 SECTION 3.01. This Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I certify that H.B. No. 730 was passed by the House on April 28, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 730 on May 29, 2003, by a non-record vote; and that the House adopted H.C.R. No. 283 authorizing certain corrections in H.B. No. 730 on June 2, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 730 was passed by the Senate, with amendments, on May 27, 2003, by a viva-voce vote; and that the Senate adopted H.C.R. No. 283 authorizing certain corrections in H.B. No. 730 on June 2, 2003.

Secretary of the Senate

APPROVED: _____

Date

Governor