

By: Ritter, Edwards, King, Woolley, Seaman,  
et al.

H.B. No. 730

Substitute the following for H.B. No. 730:

By: King

C.S.H.B. No. 730

A BILL TO BE ENTITLED

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

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

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

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

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

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

7 (7) "Home" means:

8 (A) the real property and improvements and  
9 appurtenances for a single-family house, duplex, triplex, or  
10 quadruplex; or

11 (B) a unit in a multiunit residential structure  
12 in which title to the individual units is transferred to the owners.

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

15 (9) "Limited statutory warranty and building and  
16 performance standards" means the limited statutory warranty and  
17 building and performance standards adopted by the commission under  
18 Section 430.001.

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

22 (11) "Request" means a request submitted under Section  
23 428.001.

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

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

3           (14) "State-sponsored inspection and dispute  
4 resolution process" means the process by which the commission  
5 resolves a request.

6           (15) "Structural" means the load-bearing portion of a  
7 home.

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

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

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

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

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

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

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

27           (2) failure of a person other than the builder or an

1 agent, employee, subcontractor, or supplier of the contractor to:

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

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

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

6 (4) normal shrinkage due to drying or settlement of  
7 construction components within the tolerance of building and  
8 performance standards.

9 Sec. 401.004. EXEMPTION: OWNER-CONSTRUCTED HOME. This  
10 title does not apply to a home that is:

11 (1) built by the individual who owns the home, alone or  
12 with the assistance of the individual's employees or independent  
13 contractors; and

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

17 Sec. 401.005. SUNSET PROVISION. The Texas Residential  
18 Construction Commission is subject to Chapter 325, Government Code  
19 (Texas Sunset Act). Unless continued in existence as provided by  
20 that chapter, the commission is abolished and this title expires  
21 September 1, 2015.

22 [Chapters 402-405 reserved for expansion]

23 SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

24 CHAPTER 406. COMMISSION

25 Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;  
26 MEMBERSHIP. (a) The Texas Residential Construction Commission  
27 consists of nine members appointed by the governor with the advice

1 and consent of the senate as follows:

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

4 (2) two members must be representatives of the general  
5 public; and

6 (3) one member must be a licensed professional  
7 engineer.

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

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

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

19 Sec. 406.003. PRESIDING OFFICER. The governor shall  
20 designate a member of the commission as the presiding officer of the  
21 commission to serve in that capacity at the pleasure of the  
22 governor.

23 Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
24 In this section, "Texas trade association" means a cooperative and  
25 voluntarily joined association of business or professional  
26 competitors in this state designed to assist its members and their  
27 industry or profession as a whole in dealing with mutual business or

1 professional problems, issues, and circumstances and in promoting  
2 the common interest of its members and their industry and  
3 profession as a whole.

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

10 (1) the person is an employee or paid consultant of a  
11 Texas trade association in the field of residential construction;  
12 or

13 (2) the person's spouse is a manager or paid consultant  
14 of a Texas trade association in the field of residential  
15 construction.

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

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

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

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

27 (3) is ineligible for membership under Section

1 406.004;

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

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

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

11 (c) If the executive director has knowledge that a potential  
12 ground for removal exists, the executive director shall notify the  
13 presiding officer of the potential ground. The presiding officer  
14 shall then notify the governor and the attorney general that a  
15 potential ground for removal exists. If the potential ground for  
16 removal involves the presiding officer, the executive director  
17 shall notify the next highest ranking officer of the commission,  
18 who shall notify the governor and the attorney general that a  
19 potential ground for removal exists.

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

25 (b) The training program must provide the person with  
26 information regarding:

27 (1) the legislation that created the commission;



- 1           (2) the programs operated by the commission;  
2           (3) the role and functions of the commission;  
3           (4) the rules of the commission, with an emphasis on  
4 the rules that relate to disciplinary and investigatory authority;  
5           (5) the current budget for the commission;  
6           (6) the results of the most recent formal audit of the  
7 commission;  
8           (7) the requirements of:  
9               (A) the open meetings law, Chapter 551,  
10 Government Code;  
11               (B) the public information law, Chapter 552,  
12 Government Code;  
13               (C) the administrative procedure law, Chapter  
14 2001, Government Code; and  
15               (D) other laws relating to public officials,  
16 including conflict-of-interest laws; and  
17           (8) any applicable ethics policies adopted by the  
18 commission or the Texas Ethics Commission.

19           (c) A person appointed to the commission is entitled to  
20 reimbursement, as provided by the General Appropriations Act, for  
21 the travel expenses incurred in attending the training program  
22 regardless of whether the attendance at the program occurs before  
23 or after the person qualifies for office.

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

26           CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

27           Sec. 407.001. EXECUTIVE DIRECTOR. The commission shall

1 employ an executive director as the executive head of the agency.

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

4 Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission  
5 shall develop and implement policies that clearly separate the  
6 policy-making responsibilities of the commission and the  
7 management responsibilities of the executive director and the staff  
8 of the commission.

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

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

24 (b) The executive director or the executive director's  
25 designee shall develop a system of annual performance evaluations  
26 based on measurable job tasks. All merit pay for commission  
27 employees must be based on the system established under this

1 subsection.

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

8 (b) The policy statement must include:

9 (1) personnel policies, including policies relating  
10 to recruitment, evaluation, selection, training, and promotion of  
11 personnel, that show the intent of the commission to avoid the  
12 unlawful employment practices described by Chapter 21, Labor Code;  
13 and

14 (2) an analysis of the extent to which the composition  
15 of the commission's personnel is in accordance with state and  
16 federal law and a description of reasonable methods to achieve  
17 compliance with state and federal law.

18 (c) The policy statement must:

19 (1) be updated annually;

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

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

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

27 Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE

1 INCENTIVE PROGRAM. The executive director or the executive  
2 director's designee shall provide to commission employees  
3 information and training on the benefits and methods of  
4 participation in the state employee incentive program.

5 CHAPTER 408. POWERS AND DUTIES

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

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

11 (1) governing the state-sponsored inspection and  
12 dispute resolution process, including building and performance  
13 standards, administrative regulations, and the conduct of hearings  
14 under Subtitle D;

15 (2) establishing limited statutory warranty and  
16 building and performance standards for residential construction;

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

18 (4) approving third-party inspectors.

19 Sec. 408.002. FEES. The commission shall adopt fees as  
20 required by this title in amounts that are reasonable and necessary  
21 to provide sufficient revenue to cover the costs of administering  
22 this title.

23 Sec. 408.003. ACCESSIBILITY. (a) The commission shall  
24 comply with federal and state laws related to program and facility  
25 accessibility.

26 (b) The executive director shall prepare and maintain a  
27 written plan that describes how a person who does not speak English

1 can obtain reasonable access to the commission's programs and  
2 services.

3 Sec. 408.004. ANNUAL REPORT. (a) The commission shall file  
4 annually with the governor and the presiding officer of each house  
5 of the legislature a complete and detailed written report  
6 accounting for all funds received and disbursed by the commission  
7 during the preceding fiscal year.

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

10 CHAPTER 409. PUBLIC INTEREST INFORMATION  
11 AND COMPLAINT PROCEDURES

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

19 (b) The commission shall make the information available to  
20 the public and appropriate state agencies.

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

25 Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission  
26 shall maintain a file on each written complaint filed with the  
27 commission.

1       (b) The commission shall provide to the person filing the  
2 complaint and to each person who is a subject of the complaint a  
3 copy of the commission's policies and procedures relating to  
4 complaint investigation and resolution.

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

9               [Chapters 410-415 reserved for expansion]

10                   SUBTITLE C. BUILDER REGISTRATION

11                   CHAPTER 416. CERTIFICATE OF REGISTRATION

12       Sec. 416.001. REGISTRATION REQUIRED. A person may not act  
13 as a builder unless the person holds a certificate of registration  
14 under this chapter.

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

18       (b) Each applicant must disclose in the application whether  
19 the applicant has:

20               (1) entered a plea of guilty or nolo contendere to a  
21 felony charge; or

22               (2) been convicted of a felony for which the time for  
23 appeal has elapsed or which has been affirmed on appeal.

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

27       (d) The commission may, on receipt of an application,

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

11 Sec. 416.003. CONDITIONAL REGISTRATION. (a) Before June  
12 30, 2005, pending the receipt of the results of a criminal  
13 background check, the commission may issue a conditional  
14 registration certificate. On approval of the results of the  
15 criminal background check, the commission shall issue a  
16 registration certificate without conditions. On receipt of  
17 unfavorable results of the criminal background check, the  
18 commission shall revoke the conditional registration certificate.

19 (b) This section expires January 1, 2006.

20 Sec. 416.004. FEES. (a) The commission shall charge and  
21 collect:

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

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

26 (b) The commission shall establish a fee schedule that takes  
27 into consideration the unit volume or dollar volume of potential

1 applicants.

2 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person  
3 may not receive a certificate of registration under this chapter  
4 unless:

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

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

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

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

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

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

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

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

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

27 Sec. 416.007. ISSUANCE OF CERTIFICATE. (a) Not later than



1 the 15th day after the date the commission receives an application  
2 from an applicant who meets the requirements of this chapter, the  
3 commission shall issue a certificate of registration to the  
4 applicant.

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

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. (a) A  
22 builder shall maintain a fixed office location in this state. The  
23 address of the builder's principal place of business must be  
24 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) This section does not require a builder to obtain a  
7 certificate of registration for each sales office.

8 CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

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

11 (1) fraud or deceit in obtaining a certificate of  
12 registration;

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

15 (3) failure to honor, within a reasonable time, a  
16 check issued to the commission after the commission has sent by  
17 certified mail a request for payment to the person's last known  
18 business address, according to commission records;

19 (4) failure to pay an administrative penalty assessed  
20 by the commission under Chapter 418;

21 (5) nonpayment of a final nonappealable judgment  
22 arising from a construction defect or other transaction between the  
23 person and a homeowner; or

24 (6) failure to pay a home registration fee required by  
25 Section 426.003.

26 Sec. 417.002. DISCIPLINARY POWERS OF COMMISSION. On a  
27 determination that a ground for disciplinary action under Section

1 417.001 exists, the commission may:

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

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

5 (3) formally or informally reprimand a certificate  
6 holder.

7 Sec. 417.003. HEARING. (a) If the commission proposes to  
8 take a disciplinary action against a person under Section 417.002,  
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. 417.004. 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 418. ADMINISTRATIVE PENALTY

24 Sec. 418.001. 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 certificate holder who violates this title or a rule adopted or

1 order issued by the commission under this title.

2 Sec. 418.002. AMOUNT OF PENALTY. (a) An administrative  
3 penalty imposed under this chapter may not exceed \$500 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. 418.003. 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. 418.004. 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 certificate holder if  
25 the certificate holder fails to pay the administrative penalty  
26 within the time prescribed.

27 [Chapters 419-425 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 contractor's wrongful abandonment of an  
22 improvement 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 FEE. (a) A registration fee of  
5 not more than \$125, as determined by the commission, shall be paid  
6 by the builder at the closing of the sale of each new home or as  
7 provided by Subsection (c). The commission shall establish  
8 different levels of fees based on the value of the improvements.  
9 The registration fee paid by the builder under this subsection is in  
10 addition to any other fees required to be paid by the builder at the  
11 closing of the sale of each new home.

12 (b) Except as provided by Subsection (c), the settlement  
13 agent shall collect the fee required by this section and remit the  
14 fee to the commission not later than the 15th day of the month after  
15 the month in which the fee is collected.

16 (c) If a sale, a transaction involving new improvements or  
17 additions to a home, or another transaction between a homeowner and  
18 a builder to which this title applies does not involve a settlement  
19 agent, the registration fee shall be remitted to the commission by  
20 the builder not later than the 30th day after the earlier of:

21 (1) the date of the agreement between the homeowner  
22 and the builder; or

23 (2) the commencement of the work on the home.

24 (d) The commission may assess a late payment penalty that  
25 does not exceed \$500 against a builder who fails to pay the required  
26 registration fee.

27 Sec. 426.004. APPLICATION AND INSPECTION FEES. (a) A party

1 who submits a matter to the commission for the state-sponsored  
2 inspection and dispute resolution process shall pay to the  
3 commission:

4 (1) an application fee in an amount determined by the  
5 commission; and

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

8 (b) The commission shall adopt rules permitting a waiver or  
9 reduction of the application fee and inspection expenses for  
10 homeowners demonstrating a financial inability to pay the fees and  
11 expenses.

12 (c) If the transfer of title of the home from the builder to  
13 the initial owner occurred before January 1, 2004, or, if no  
14 transfer of title took place, the contract for improvements or  
15 additions was entered into before January 1, 2004, the party who  
16 submits a matter to the commission for the state-sponsored  
17 inspection and dispute resolution process shall pay, in addition to  
18 the application fee and inspection expenses required under this  
19 section, the registration fee required by Section 426.003.

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

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

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

26 (2) if the recommendation is appealed, not later than  
27 the 90th day after the date the commission issues its ruling on the



1 appeal.

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

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

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

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

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

24 Sec. 426.008. EFFECT OF THIRD-PARTY INSPECTOR'S  
25 RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS. (a) In any  
26 action involving a construction defect brought after a  
27 recommendation by a third-party inspector or ruling by a panel of

1 state inspectors on the existence of the construction defect or its  
2 appropriate repair, the recommendation or ruling is presumed to be  
3 reasonable and dispositive. A party seeking to dispute, vacate, or  
4 overcome that presumption must establish by clear and convincing  
5 evidence that the recommendation or ruling is inconsistent with the  
6 applicable warranty and building and performance standards.

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

11 CHAPTER 427. INSPECTORS

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

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

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

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

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

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

25 (1) be an approved structural engineer or approved  
26 architect; and

27 (2) have a minimum of 10 years' experience in

1 residential construction.

2 (d) Each third-party inspector must:

3 (1) be certified to the International Residential Code  
4 by the International Code Council; and

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

6 (A) initial training regarding the  
7 state-sponsored inspection and dispute resolution process and this  
8 subtitle; and

9 (B) annual continuing education.

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

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

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

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

22 (2) provide consultation to third-party inspectors;  
23 and

24 (3) administer the state-sponsored inspection and  
25 dispute resolution process.

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

1           CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE

2                           RESOLUTION PROCESS

3           Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute  
4 between a homeowner and a builder arises out of an alleged  
5 construction defect, the homeowner or the builder may submit to the  
6 commission a written request for state-sponsored inspection and  
7 dispute resolution.

8           (b) The request must:

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

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

14                   (3) include any evidence that depicts the nature and  
15 cause of each alleged construction defect and the nature and extent  
16 of repairs necessary to remedy the construction defect, including,  
17 if available, expert reports, photographs, and videotapes, if that  
18 evidence would be discoverable under Rule 192, Texas Rules of Civil  
19 Procedure;

20                   (4) be accompanied by the fees required under Section  
21 426.004; and

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

25           (c) Not later than the 30th day before the date a homeowner  
26 submits a request under this section, the homeowner must notify the  
27 builder in writing of each construction defect the homeowner claims

1 to exist. After the notice is provided, the builder must be  
2 provided with a reasonable opportunity to inspect the home or have  
3 the builder's designated consultants inspect the home.

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

8 (e) The commission by rule shall establish methods by which  
9 homeowners may be notified of the name, mailing address, and  
10 telephone number of the commission for the purpose of directing a  
11 request to the commission.

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

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

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

23 Sec. 428.002. BUILDER'S RIGHT OF INSPECTION. (a) In  
24 addition to the right of inspection provided by Section 428.001(c),  
25 at any time before the conclusion of the state-sponsored inspection  
26 and dispute resolution process and on the builder's written  
27 request, the builder shall be given reasonable opportunity to

1 inspect the home that is the subject of the request or have the home  
2 inspected to determine the nature and cause of the construction  
3 defect and the nature and extent of repairs necessary to remedy the  
4 construction defect.

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

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

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

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

20 Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) If the  
21 dispute involves workmanship and materials in the home of a  
22 nonstructural matter, the third-party inspector shall issue a  
23 recommendation not later than the 15th day after the date the  
24 third-party inspector receives the appointment from the  
25 commission.

26 (b) If the dispute involves a structural matter in the home,  
27 the commission shall appoint an approved engineer to be the

1 third-party inspector. The third-party inspector shall inspect the  
2 home not later than the 30th day after the date the request is  
3 submitted and issue a recommendation not later than the 60th day  
4 after the date the third-party inspector receives the assignment  
5 from the commission, unless additional time is requested by the  
6 third-party inspector or a party to the dispute. The commission  
7 shall adopt rules governing the extension of time under this  
8 subsection.

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

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

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

13 (d) Except as provided by this subsection, the third-party  
14 inspector's recommendation may not include payment of any monetary  
15 consideration. If the inspector finds for the party who submitted  
16 the request, the commission may order the other party to reimburse  
17 all or part of the fees and inspection expenses paid by the  
18 requestor under Section 426.004.

19 Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who  
20 receives written notice of a request relating to a construction  
21 defect that creates an imminent threat to the health or safety of  
22 the inhabitants of the residence shall take reasonable steps to  
23 cure the defect as soon as practicable. If the builder fails to  
24 cure the defect in a reasonable time, the homeowner may have the  
25 defect cured and recover from the builder the reasonable cost of the  
26 cure plus reasonable attorney's fees and expenses associated with  
27 curing the defect in addition to any other damages not inconsistent

1 with this subtitle.

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

3 Sec. 429.001. APPEAL. (a) A homeowner or builder may  
4 appeal a third-party inspector's recommendation on or before the  
5 15th day after the date the recommendation is issued.

6 (b) If a homeowner or builder appeals a third-party  
7 inspector's recommendation, the executive director shall appoint  
8 three state inspectors to a panel to review the recommendation. If  
9 the recommendation involves a dispute regarding a structural  
10 failure, one of the state inspectors on the panel must be a licensed  
11 professional engineer.

12 (c) The panel shall:

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

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

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

21 CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

22 Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND  
23 PERFORMANCE STANDARDS. (a) The commission by rule shall adopt  
24 limited statutory warranties and building and performance  
25 standards for residential construction that comply with this  
26 section.

27 (b) The warranty periods shall be:



1           (1) one year for workmanship and materials;

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

4           (3) 10 years for major structural components of the  
5 home.

6           (c) The limited statutory warranties and building and  
7 performance standards must:

8           (1) require substantial compliance with the  
9 nonelectrical standards contained in the version of the  
10 International Residential Code for One- and Two-Family Dwellings  
11 published by the International Code Council that is applicable  
12 under Subsection (d) and the electrical standards contained in the  
13 version of the National Electrical Code that is applicable under  
14 Subsection (e);

15           (2) include recommended management practices for  
16 limiting moisture intrusion in a home; and

17           (3) establish standards for performance for interior  
18 and exterior components of a home, including foundations, floors,  
19 ceilings, walls, roofs, drainage, landscaping, irrigation,  
20 heating, cooling, and electrical and plumbing components.

21           (d) The International Residential Code for One- and  
22 Two-Family Dwellings that applies to nonelectrical aspects of  
23 residential construction for the purposes of the limited statutory  
24 warranties and building and performance standards adopted under  
25 this section is:

26           (1) for residential construction located in a  
27 municipality or the extraterritorial jurisdiction of a

1 municipality, the version of the International Residential Code  
2 applicable to nonelectrical aspects of residential construction in  
3 the municipality under Section 214.212, Local Government Code;

4 (2) for residential construction located in an  
5 unincorporated area not in the extraterritorial jurisdiction of a  
6 municipality, the version of the International Residential Code  
7 applicable to nonelectrical aspects of residential construction in  
8 the municipality that is the county seat of the county in which the  
9 construction is located; and

10 (3) for residential construction located in an  
11 unincorporated area in a county that does not contain an  
12 incorporated area, the version of the International Residential  
13 Code that existed on May 1, 2001.

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

17 (1) for residential construction located in a  
18 municipality or the extraterritorial jurisdiction of a  
19 municipality, the version of the National Electrical Code  
20 applicable to electrical aspects of residential construction in the  
21 municipality under Section 214.214, Local Government Code;

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

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

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

8                   (1) occupancy; or

9                   (2) transfer of title from the builder to the initial  
10 homeowner.

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

14           Sec. 430.002. STATUTORY WARRANTIES EXCLUSIVE. The  
15 warranties established under this chapter supersede all implied  
16 warranties. The only warranties that exist for residential  
17 construction or residential improvements are warranties created by  
18 this chapter or by other statutes expressly referring to  
19 residential construction or residential improvements, or any  
20 express, written warranty acknowledged by the homeowner and the  
21 builder. A court may not discern or declare any other implied  
22 warranty.

23           Sec. 430.003. APPROVAL OF THIRD-PARTY WARRANTY COMPANY.

24           (a) The commission may approve as a third-party warranty company  
25 for the purposes of Section 430.004:

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

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

4           (3) an insurance company that insures the warranty  
5 obligations of a builder under the statutory warranty and building  
6 and performance standards.

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

11           Sec. 430.004. THIRD-PARTY WARRANTY COMPANY. (a) If a  
12 builder chooses to provide a third-party warranty company approved  
13 by the commission, the builder may limit liability to a homeowner  
14 under the terms of that warranty.

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

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

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

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

25           (d) The third-party warranty company may not assume  
26 liability for personal injuries or damage to personal property. A  
27 builder does not avoid liability for personal injuries or damage to

1 personal property for which the builder would otherwise be liable  
2 under law by providing a written warranty from a third-party  
3 warranty company.

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

7 Sec. 430.005. MINIMUM STANDARDS FOR DETERMINATION OF  
8 DEFECT. A third-party warranty company shall use defect inspection  
9 procedures substantially similar to the procedures adopted by the  
10 commission under this subtitle. A warranty company may adopt  
11 warranty standards in addition to the standards adopted by the  
12 commission, but it may not reduce the limited statutory warranty  
13 and building and performance standards.

14 Sec. 430.006. EFFECT OF SUBTITLE ON OTHER RIGHTS AND  
15 OBLIGATIONS. (a) This subtitle provides the sole rights and  
16 obligations between a homeowner and a builder unless additional  
17 rights and obligations are provided in an express, written contract  
18 between the homeowner and the builder. Except as permitted by this  
19 subtitle, an express, written contract between a homeowner and a  
20 builder may not limit the obligations of a builder under this title.

21 (b) After the issuance of written findings of fact and a  
22 ruling on an appeal under Chapter 429, a homeowner may bring a cause  
23 of action against a builder or third-party warranty company for  
24 breach of a limited statutory warranty adopted by the commission  
25 under this subtitle. In an action brought under this subsection,  
26 the homeowner may recover only those damages provided by Section  
27 27.004(g).

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

4       SECTION 1.02. (a) On or before December 1, 2003, the  
5 governor shall appoint the members of the Texas Residential  
6 Construction Commission in accordance with Title 16, Property Code,  
7 as added by this article. In making the initial appointments, the  
8 governor shall designate three members for terms expiring February  
9 1, 2005, three members for terms expiring February 1, 2007, and  
10 three members for terms expiring February 1, 2009.

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

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

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

1 to the construction before that date.

2 SECTION 1.04. On or before March 1, 2004, the Texas  
3 Residential Construction Commission shall begin requiring  
4 registration under Subtitle C, Title 16, Property Code, as added by  
5 this article.

6 ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

7 SECTION 2.01. Section 27.001, Property Code, is amended to  
8 read as follows:

9 Sec. 27.001. DEFINITIONS. In this chapter:

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

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

15 (3) [~~2~~] "Construction defect" has the meaning  
16 assigned by Section 401.003 for an action to which Subtitle D, Title  
17 16, applies and for any other action means a matter concerning the  
18 design, construction, or repair of a new residence, of an  
19 alteration of or repair or addition to an existing residence, or of  
20 an appurtenance to a residence, on which a person has a complaint  
21 against a contractor. The term may include any physical damage to  
22 the residence, any appurtenance, or the real property on which the  
23 residence and appurtenance are affixed proximately caused by a  
24 construction defect.

25 (4) [~~3~~] "Contractor" means a builder, as defined by  
26 Section 401.002, and any person contracting with an owner for the  
27 construction or sale of a new residence constructed by that person

1 or of an alteration of or addition to an existing residence, repair  
2 of a new or existing residence, or construction, sale, alteration,  
3 addition, or repair of an appurtenance to a new or existing  
4 residence. The term includes:

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

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

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

16 (6) [~~4~~] "Residence" means the real property and  
17 improvements for a single-family house, duplex, triplex, or  
18 quadruplex or a unit in a multiunit residential structure in which  
19 title to the individual units is transferred to the owners under a  
20 condominium or cooperative system.

21 (7) [~~5~~] "Structural failure" has the meaning  
22 assigned by Section 401.002 for an action to which Subtitle D, Title  
23 16, applies and for any other action means actual physical damage to  
24 the load-bearing portion of a residence caused by a failure of the  
25 load-bearing portion.

26 SECTION 2.02. Section 27.002, Property Code, is amended by  
27 amending Subsections (a) and (b) and adding Subsection (d) to read



1 as follows:

2 (a) This chapter applies to:

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

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

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

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

15 (1) a violation of Section 27.01, Business & Commerce  
16 Code;

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

19 (3) a violation of Chapter 162.

20 SECTION 2.03. Section 27.003, Property Code, is amended to  
21 read as follows:

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

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

27 (A) negligence of a person other than the

1 contractor or an agent, employee, or subcontractor of the  
2 contractor;

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

5 (i) take reasonable action to mitigate the  
6 damages; or

7 (ii) take reasonable action to maintain the  
8 residence;

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

10 (D) normal shrinkage due to drying or settlement  
11 of construction components within the tolerance of building  
12 standards; or

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

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

1 defect at the request of an assignee of the claimant or a person  
2 subrogated to the rights of a claimant by a person other than the  
3 contractor or an agent, employee, or subcontractor of the  
4 contractor.

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

10 SECTION 2.04. Section 27.004, Property Code, is amended to  
11 read as follows:

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

1 inspect and have inspected the property that is the subject of the  
2 complaint to determine the nature and cause of the defect and the  
3 nature and extent of repairs necessary to remedy the defect. The  
4 contractor may take reasonable steps to document the defect. In a  
5 claim subject to Subtitle D, Title 16, a contractor is entitled to  
6 make an offer of repair in accordance with Subsection (b). A  
7 claimant is not required to give written notice to a contractor  
8 under this subsection in a claim subject to Subtitle D, Title 16.

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

1 unreasonable:

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

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

10 ~~[For the purposes of this section, "independent contractor" means a~~  
11 ~~person who is independent of the contractor and did not perform any~~  
12 ~~of the work complained of in the claimant's notice. The claimant~~  
13 ~~and the contractor may agree in writing to extend the periods~~  
14 ~~described by this subsection.]~~

15 (c) If compliance with Subtitle D, Title 16, or the giving  
16 of the notice under Subsections (a) and (b) within the period  
17 prescribed by those subsections is impracticable because of the  
18 necessity of initiating an action ~~[filing suit]~~ at an earlier date  
19 to prevent expiration of the statute of limitations or if the  
20 complaint is asserted as a counterclaim, compliance with Subtitle  
21 D, Title 16, or the ~~[that]~~ notice is not required. However, the  
22 action ~~[suit]~~ or counterclaim shall specify in reasonable detail  
23 each construction defect that is the subject of the complaint. If  
24 Subtitle D, Title 16, applies to the complaint, simultaneously with  
25 the filing of an action by a claimant, the claimant must submit a  
26 request under Section 428.001. If Subtitle D, Title 16, does not  
27 apply, ~~[and]~~ the inspection provided for by Subsection (a) may be

1 made not later than the 75th day after [~~during the 60-day period~~  
2 ~~following~~] the date of service of the suit, request for  
3 arbitration, or counterclaim on the contractor, and the offer  
4 provided for by Subsection (b) may be made not later than the 15th  
5 day after the date the state-sponsored inspection and dispute  
6 resolution process is completed, if Subtitle D, Title 16, applies,  
7 or not later than the 60th day after [~~within the 60-day period~~  
8 ~~following~~] the date of service, if Subtitle D, Title 16, does not  
9 apply. If, while an action [~~a suit~~] subject to this chapter is  
10 pending, the statute of limitations for the cause of action would  
11 have expired and it is determined that the provisions of Subsection  
12 (a) were not properly followed, the action [~~suit~~] shall be abated  
13 [~~for up to 75 days in order~~] to allow compliance with Subsections  
14 (a) and (b).

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

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

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

11 (e) [~~An abatement under Subsection (d) continues until the~~  
12 ~~60th day after the date that written notice is served in compliance~~  
13 ~~with Subsection (a).~~

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

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

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

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

26 (2) may recover only the amount of reasonable and  
27 necessary costs and attorney's fees as prescribed by Rule 1.04,

1 Texas Disciplinary Rules of Professional Conduct, [~~and costs~~]  
2 incurred before the offer was rejected or considered rejected.

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

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

15 (1) the lesser of:

16 (A) the reasonable cost of repairs necessary to  
17 cure any construction defect; or

18 (B) the difference in the value of the residence  
19 as constructed and the value of the residence had it been  
20 constructed without the defect [~~including any reasonable and~~  
21 ~~necessary engineering or consulting fees required to evaluate and~~  
22 ~~cure the construction defect, that the contractor is responsible~~  
23 ~~for repairing under this chapter~~];

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

26 (3) reasonable and necessary engineering and  
27 consulting fees;



1           (4) the reasonable expenses of temporary housing  
2 reasonably necessary during the repair period;

3           (5) [~~(3)~~] the reduction in current market value, if  
4 any, to the extent the reduction is due to structural failure; and

5           (6) [~~(4)~~] reasonable and necessary attorney's fees.

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

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

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

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

22           (l) [~~(m)~~] Notwithstanding Subsections (a), (b), and (c), a  
23 contractor who receives written notice of a construction defect  
24 resulting from work performed by the contractor or an agent,  
25 employee, or subcontractor of the contractor and creating an  
26 imminent threat to the health or safety of the inhabitants of the  
27 residence shall take reasonable steps to cure the defect as soon as

1 practicable. If the contractor fails to cure the defect in a  
2 reasonable time, the owner of the residence may have the defect  
3 cured and may recover from the contractor the reasonable cost of the  
4 repairs plus attorney's fees and costs in addition to any other  
5 damages recoverable under any law not inconsistent with the  
6 provisions of this chapter.

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

10 (n) A notice and response letter prescribed by this chapter  
11 must be sent by certified mail, return receipt requested, to the  
12 last known address of the recipient. If previously disclosed in  
13 writing that the recipient of a notice or response letter is  
14 represented by an attorney, the letter shall be sent to the  
15 recipient's attorney in accordance with Rule 21a, Texas Rules of  
16 Civil Procedure [~~(o) The inspection and repair provisions of this~~  
17 ~~chapter are in addition to any rights of inspection and settlement~~  
18 ~~provided by common law or by another statute, including Section~~  
19 ~~17.505, Business & Commerce Code].~~

20 (o) [~~(p)~~] If the contractor provides written notice of a  
21 claim for damages arising from a construction defect to a  
22 subcontractor, the contractor retains all rights of contribution  
23 from the subcontractor if the contractor settles the claim with the  
24 claimant.

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

27 Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written

1 agreement between a contractor and a homeowner may provide that,  
2 except as provided by Subsection (b), if the reasonable cost of  
3 repairs necessary to repair a construction defect that is the  
4 responsibility of the contractor exceeds an agreed percentage of  
5 the current fair market value of the residence, as determined  
6 without reference to the construction defects, then, in an action  
7 subject to this chapter, the contractor may elect as an alternative  
8 to the damages specified in Section 27.004(g) that the contractor  
9 who sold the residence to the homeowner purchase it.

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

13 (c) If a contractor elects to purchase the residence under  
14 Subsection (a):

15 (1) the contractor shall pay the original purchase  
16 price of the residence and closing costs incurred by the homeowner  
17 and the cost of transferring title to the contractor under the  
18 election;

19 (2) the homeowner may recover reasonable and necessary  
20 attorney's and expert fees as identified in Section 27.004(g); and

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

26 (d) An offer to purchase a claimant's home that complies  
27 with this section is considered reasonable absent clear and

1 convincing evidence to the contrary.

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

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

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

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

1 that date, and that law is continued in effect for that purpose.

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

10 ARTICLE 3. DAMAGES IN CERTAIN ACTIONS INVOLVING  
11 RESIDENTIAL PROPERTY

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

14 CHAPTER 42. DAMAGES IN CERTAIN ACTIONS INVOLVING RESIDENTIAL  
15 CONSTRUCTION DEFECT

16 Sec. 42.001. DEFINITION. In this chapter, "residential  
17 construction defect" has the meaning assigned to "construction  
18 defect" by Section 27.001, Property Code.

19 Sec. 42.002. DAMAGES FOR MENTAL ANGUISH NOT RECOVERABLE.  
20 In an action or arbitration, a person seeking damages arising from a  
21 residential construction defect may not recover damages for mental  
22 anguish.

23 SECTION 3.02. The changes in law made by this article apply  
24 only to a cause of action that accrues on or after the effective  
25 date of this Act. A cause of action that accrues before the  
26 effective date of this Act is governed by the law in effect  
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 ARTICLE 4. EFFECTIVE DATE

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