

By: Ritter, et al. (Senate Sponsor - Fraser) H.B. No. 730
(In the Senate - Received from the House April 29, 2003;
April 30, 2003, read first time and referred to Committee on
Business and Commerce; May 22, 2003, reported adversely, with
favorable Committee Substitute by the following vote: Yeas 7, Nays
2; May 22, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 730 By: Fraser

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

(2) "Applicable warranty period" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a new home;

(2) a material improvement to a home, including the roof of an existing home; or

(3) an improvement to the interior of an existing home when the cost of the work exceeds \$10,000.

(b) The term includes:

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

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

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

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

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

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

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

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

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

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

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

(B) take reasonable action to maintain the home;

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

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

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

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

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

(b) This title does not apply to a homeowner or to a homeowner's real estate broker, agent, or property manager who

supervises or arranges for the construction of an improvement to a home owned by the homeowner.

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

[Chapters 402-405 reserved for expansion]

SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 406. COMMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 406.005. GROUNDS FOR REMOVAL. (a) It is a ground for

removal from the commission that a member:

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

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

(3) is ineligible for membership under Section 406.004;

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

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

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

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

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

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

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

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

(5) the current budget for the commission;

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

(7) the requirements of:

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

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

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

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

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

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

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

CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

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

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

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

Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT

5-1 INFORMATION. The executive director or the executive director's
 5-2 designee shall provide to members of the commission and to
 5-3 commission employees, as often as necessary, information regarding
 5-4 the requirements for office or employment under this title,
 5-5 including information regarding a person's responsibilities under
 5-6 applicable laws relating to standards of conduct for state officers
 5-7 or employees.

5-8 Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE
 5-9 EVALUATION. (a) The executive director or the executive
 5-10 director's designee shall develop an intra-agency career ladder
 5-11 program that addresses opportunities for mobility and advancement
 5-12 for employees within the commission. The program must require
 5-13 intra-agency posting of all nonentry level positions concurrently
 5-14 with any public posting.

5-15 (b) The executive director or the executive director's
 5-16 designee shall develop a system of annual performance evaluations
 5-17 based on measurable job tasks. All merit pay for commission
 5-18 employees must be based on the system established under this
 5-19 subsection.

5-20 Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL
 5-21 REPORT. (a) The executive director or the executive director's
 5-22 designee shall prepare and maintain a written policy statement that
 5-23 implements a program of equal employment opportunity to ensure that
 5-24 all personnel decisions are made without regard to race, color,
 5-25 disability, sex, religion, age, or national origin.

5-26 (b) The policy statement must include:

5-27 (1) personnel policies, including policies relating
 5-28 to recruitment, evaluation, selection, training, and promotion of
 5-29 personnel, that show the intent of the commission to avoid the
 5-30 unlawful employment practices described by Chapter 21, Labor Code;
 5-31 and

5-32 (2) an analysis of the extent to which the composition
 5-33 of the commission's personnel is in accordance with state and
 5-34 federal law and a description of reasonable methods to achieve
 5-35 compliance with state and federal law.

5-36 (c) The policy statement must:

5-37 (1) be updated annually;

5-38 (2) be reviewed by the state Commission on Human
 5-39 Rights for compliance with Subsection (b)(1); and

5-40 (3) be filed with the governor's office.

5-41 (d) The governor's office shall deliver a biennial report to
 5-42 the legislature based on the information received under Subsection
 5-43 (c)(3). The report may be made separately or as a part of other
 5-44 biennial reports made to the legislature.

5-45 Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE
 5-46 INCENTIVE PROGRAM. The executive director or the executive
 5-47 director's designee shall provide to commission employees
 5-48 information and training on the benefits and methods of
 5-49 participation in the state employee incentive program.

5-50 CHAPTER 408. POWERS AND DUTIES

5-51 Sec. 408.001. RULES. (a) The commission may not adopt a
 5-52 substantive rule before submitting the proposed rule to the
 5-53 attorney general for a ruling on the proposed rule's validity.

5-54 (b) The commission shall adopt rules as necessary for the
 5-55 implementation of this title, including rules:

5-56 (1) governing the state-sponsored inspection and
 5-57 dispute resolution process, including building and performance
 5-58 standards, administrative regulations, and the conduct of hearings
 5-59 under Subtitle D;

5-60 (2) establishing limited statutory warranty and
 5-61 building and performance standards for residential construction;

5-62 (3) approving third-party warranty programs; and

5-63 (4) approving third-party inspectors.

5-64 Sec. 408.002. FEES. The commission shall adopt fees as
 5-65 required by this title in amounts that are reasonable and necessary
 5-66 to provide sufficient revenue to cover the costs of administering
 5-67 this title.

5-68 Sec. 408.003. ACCESSIBILITY. (a) The commission shall
 5-69 comply with federal and state laws related to program and facility

accessibility.

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

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

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

CHAPTER 409. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

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

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

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

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

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

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

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

[Chapters 410-415 reserved for expansion]

SUBTITLE C. BUILDER REGISTRATION

CHAPTER 416. CERTIFICATE OF REGISTRATION

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

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

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

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

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

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

(d) The commission may, on receipt of an application, conduct a criminal background check of the applicant or any person responsible for the application. The commission may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other local, state, or national governmental entity. Unless the

information is a public record at the time the commission obtains the information under this subsection, the information is confidential, and the commission may not release or disclose the information to any person except under a court order or with the permission of the applicant.

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

(b) This section expires January 1, 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The commission shall:

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

(2) give notice of the hearing to the applicant before

the 15th day before the date of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

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

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

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

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

(4) discriminating on the basis of race, color,

religion, sex, national origin, or ancestry;

(5) publishing a false or misleading advertisement;

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

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

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

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

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

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

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

(1) revoke or suspend a certificate of registration;

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

(3) formally or informally reprimand a certificate holder.

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

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

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

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

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

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

CHAPTER 418. ADMINISTRATIVE PENALTY

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

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

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

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

(2) the history of previous violations;

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

(4) efforts to correct the violation; and

(5) any other matter justice may require.

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

Sec. 418.004. ENFORCEMENT OF PENALTY. If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

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

(2) enforce any part of the order that specifies

disciplinary action to be taken against the certificate holder if the certificate holder fails to pay the administrative penalty within the time prescribed.

[Chapters 419-425 reserved for expansion]

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

CHAPTER 426. GENERAL PROVISIONS

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

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

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

(B) damage to goods; and

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

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

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

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

(3) a violation of Chapter 162.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The commission shall adopt rules permitting a waiver or

reduction of the application fee and inspection expenses for homeowners demonstrating a financial inability to pay the fees and expenses.

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

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

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

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

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

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

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

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

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

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

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

Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD-PARTY INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS.

(a) 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. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing 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 residential construction industry; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS

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

(b) The request must:

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

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

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

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

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

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

(d) A person who submits a request under this section must send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each

other party involved in the dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who receives written notice of a request relating to a construction defect that creates an imminent threat to the health or safety of

the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the builder fails to cure the defect in a reasonable time, the homeowner may have the defect cured and recover from the builder the reasonable cost of the cure plus reasonable attorney's fees and expenses associated with curing the defect in addition to any other damages not inconsistent with this subtitle.

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

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

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

(c) The panel shall:

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

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

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

CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

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

(b) The warranty periods shall be:

(1) one year for workmanship and materials;

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

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

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

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

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

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

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

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

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

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a

municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

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

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

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

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

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

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

(1) occupancy; or
(2) transfer of title from the builder to the initial homeowner.

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

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

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

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

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

(2) recommended management practices for:
(A) limiting moisture intrusion in a home, including the use of a water leak detection system listed by Underwriters Laboratories that is capable of shutting off a valve on the main water line coming into the structure immediately upon detecting a water leak in the structure; and

(B) mold remediation.

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

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

Sec. 430.004. STATUTORY WARRANTIES EXCLUSIVE. The

warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are warranties created by this chapter or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder. A court may not discern or declare any other implied warranty.

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

Sec. 430.006. APPROVAL OF THIRD-PARTY WARRANTY COMPANY. (a) The commission may approve as a third-party warranty company for the purposes of Section 430.007:

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

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

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

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

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

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

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

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

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

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

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

Sec. 430.008. MINIMUM STANDARDS FOR DETERMINATION OF DEFECT. A third-party warranty company shall use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. A warranty company may adopt warranty standards in addition to the standards adopted by the commission, but it may not reduce the limited statutory warranty and building and performance standards.

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

(b) After the issuance of written findings of fact and a ruling on an appeal under Chapter 429, a homeowner may bring a cause

of action against a builder or third-party warranty company for breach of a limited statutory warranty adopted by the commission under this subtitle. In an action brought under this subsection, the homeowner may recover only those damages provided by Section 27.004(g).

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

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

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

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

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

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

SECTION 1.05. On January 1, 2004, the Texas Residential Construction Commission shall begin collecting, and builders are required to remit, the registration fee required by Section 426.003, Property Code, as added by this Act.

ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

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

Sec. 27.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

(a) This chapter applies to:

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

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

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

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

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

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

(3) a violation of Chapter 162.

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

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

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

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

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

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

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

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

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know

and could not reasonably have known of the falsity or inaccuracy of the information; and

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

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

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

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

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

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

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

(c) If compliance with Subtitle D, Title 16, or the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action ~~[filing suit]~~ at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, compliance with Subtitle D, Title 16, or the ~~[that]~~ notice is not required. However, the action ~~[suit]~~ or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. If Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, the claimant must submit a request under Section 428.001. If Subtitle D, Title 16, does not apply, ~~[and]~~ the inspection provided for by Subsection (a) may be made not later than the 75th day after ~~[during the 60-day period following]~~ the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after ~~[within the 60-day period following]~~ the date of service, if Subtitle D, Title 16, does not apply. If, while an action ~~[a suit]~~ subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action ~~[suit]~~ shall be abated ~~[for up to 75 days in order]~~ to allow compliance with Subsections (a) and (b).

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

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

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

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

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

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

(A) the fair market value of the contractor's

last offer of settlement under Subsection (b) ~~[reasonable cost of the offered repairs which are necessary to cure the construction defect and which are the responsibility of the contractor]; or~~

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

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

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

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

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

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

(3) reasonable and necessary engineering and consulting fees;

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

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

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

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

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

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

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

(l) If Subtitle D, Title 16, applies to the claim and the contractor's offer of repair is accepted by the claimant, the contractor, on completion of the repairs and at the contractor's expense, shall engage the third-party inspector who provided the recommendation regarding the construction defect involved in the claim to inspect the repairs and determine whether the residence, as repaired, complies with the applicable limited statutory warranty and building and performance standards adopted by the commission. The contractor is entitled to a reasonable period not to exceed 15 days to address minor cosmetic items that are necessary to fully complete the repairs. The determination of the third-party inspector of whether the repairs comply with the applicable limited statutory warranty and building and performance standards adopted by the commission establishes a rebuttable presumption on that issue. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing

evidence that the determination is inconsistent with the applicable limited statutory warranty and building and performance standards.

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

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

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

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

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

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

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

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

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

(2) the homeowner may recover:

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

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

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

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

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

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

to read as follows:

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

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

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

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

ARTICLE 3. EFFECTIVE DATE

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

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