

By: Solomons

H.B. No. 1495

A BILL TO BE ENTITLED

AN ACT

relating to the registration of homebuilders.

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

SECTION 1. The Occupations Code, is amended by adding Chapter 1203 to read as follows:

CHAPTER 1203. HOMEBUILDERS.

SUBCHAPTER A. GENERAL PROVISIONS.

Sec. 1203.001. SHORT TITLE. This chapter may be cited as the Homebuilder Registration Act.

Sec. 1203.002. Definitions. In this chapter:

(1) "Commission" means the Texas Homebuilder Commission.

(2) "Construction defect" has the meaning assigned to that term under Sec. 27.001, Property Code.

(3) "Home" means:

(A) the real property and improvements and appurtenances for a single-family house, townhome, patio home, zero-lot line home, duplex, triplex, or quadraplex; or

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

(4) "Homebuilders" means a person who constructs, contracts to construct, or offers to construct a new home or a new improvement to real property:

(A) for another for a profit or compensation or

1 in the expectation of receiving profit or compensation; or

2 (B) that the homebuilder intends to sell,
3 transfer, or convey to another for profit or compensation or in the
4 expectation of receiving a profit or compensation.

5 (5) "Homeowner" means a person who owns, contracts to
6 own a home, or subrogee or assignee of a person who owns or
7 contracts to own a home.

8 (6) "Trade association" means a cooperative and
9 voluntarily joined association of business or professional
10 competitors designed to assist its members and their industry or
11 profession as whole, in dealing with mutual business or
12 professional problems, issues, and circumstances and in promoting
13 the common interest of its members and their industry and
14 profession as a whole.

15 Sec. 1203.003. APPLICABILITY OF CHAPTER. This chapter does
16 not apply to:

17 (1) a person who renovates or repairs a home;

18 (2) a governmental entity or public official engaged
19 in official duties; or

20 (3) a person acting under a court order.

21 Sec. 1203.004. SUNSET PROVISION. The commission is subject
22 to Chapter 325, Government Code (Texas Sunset Act). Unless
23 continued in existence as provided by that chapter, the commission
24 is abolished and this chapter expires September 1, 2009.

25 [Sections 1203.005-1203.020 reserved for expansion]

26 SUBCHAPTER B. COMMISSION

27 Sec. 1203.021. TEXAS HOMEBUILDER COMMISSION; MEMBERSHIP.

1 (a) The Texas Homebuilder Commission consists of nine members
2 appointed by the governor with the advice and consent of the senate
3 as follows:

4 (1) two members must be homebuilders with active
5 registrations under this Chapter;

6 (2) two members must be representatives of the general
7 public;

8 (3) one member must be a licensed professional
9 engineer;

10 (4) one member must a licensed architect;

11 (5) one member must be a licensed professional
12 inspector under Chapter 1102;

13 (6) one member must be a licensed real estate broker
14 under Chapter 1101; and

15 (7) one member must be certified real estate appraiser
16 under Chapter 1103.

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

20 Sec. 1203.022. TERMS. (a) Commission members serve
21 staggered six-year terms with three members terms expiring January
22 31 of each odd-number year. The terms of the two representatives of
23 the general public must expire in different years. The terms of the
24 two homebuilders must expire in different years.

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

27 Sec. 1203.023. PRESIDING OFFICER. The governor shall

1 designate a member of the commission as the presiding officer of the
2 commission to serve in that capacity at the pleasure of the
3 governor. At a regular meeting in February of each year, the
4 Commission shall elect from its own membership a vice-chairperson
5 and secretary. A quorum of the commission consists of five members.

6 Sec. 1203.024. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)

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

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

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

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

24 Sec. 1203.025. GROUNDS FOR REMOVAL. (a) It is a ground for
25 removal from the commission that a member:

26 (1) does not have at the time of taking office the
27 qualifications required by Section 1203.021;

1 (2) does not maintain during service on the commission
2 the qualifications required by Section 1203.021;

3 (3) is ineligible for membership under Section
4 1203.021;

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

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

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

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

23 Sec. 1203.026. TRAINING. (a) A person who is appointed to
24 and qualifies for office as a member of the commission may not vote,
25 deliberate, or be counted as a member in attendance at a meeting of
26 the commission until the person completes a training program that
27 complies with this section.

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

3 (1) the legislation that created the commission;

4 (2) the programs operated by the commission;

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

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

8 (5) the current budget for the commission;

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

11 (7) the requirements of:

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

14 (B) the open records law, Chapter 552, Government
15 Code;

16 (C) the administrative procedure law, Chapter
17 2001, Government Code;

18 (D) the general arbitration law, Chapter 171,
19 Civil Practices and Remedies Code; and

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

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

24 (c) A person appointed to the commission is entitled to
25 reimbursement, as provided by the General Appropriations Act, for
26 the travel expenses incurred in attending the training program
27 regardless of whether the attendance at the program occurs before

1 or after the person qualifies for office.

2 Sec. 1203.027. MEETINGS. The commission shall meet at
3 least quarterly and at other times at the call of the presiding
4 officer.

5 [Sections 1203.028-1203.060 reserved for expansion]

6 SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

7 Sec. 1203.061. EXECUTIVE DIRECTOR. The commission shall
8 employ an executive director as the executive head of the agency.

9 Sec. 1203.062. OTHER PERSONNEL. The commission may employ
10 other personnel as necessary for the administration of this
11 chapter.

12 Sec. 1203.063. DIVISION OF RESPONSIBILITIES. The
13 commission shall develop and implement policies that clearly
14 separate the policymaking responsibilities of the commission and
15 the management responsibilities of the executive director and the
16 staff of the commission.

17 Sec. 1203.064. QUALIFICATIONS AND STANDARDS OF CONDUCT
18 INFORMATION. The executive director or the executive director
19 designee shall provide to members of the commission and to
20 commission employees, as often as necessary, information regarding
21 the requirements for office or employment under this chapter,
22 including information regarding a person responsibilities under
23 applicable laws relating to standards of conduct for state officers
24 or employees.

25 Sec. 1203.065. CAREER LADDER PROGRAM; PERFORMANCE
26 EVALUATION. (a) The executive director or the executive director
27 designee shall develop an intra-agency career ladder program that

1 addresses opportunities for mobility and advancement for employees
2 within the commission. The program must require intra-agency
3 posting of all nonentry level positions concurrently with any
4 public posting.

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

10 Sec. 1203.066. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL
11 REPORT. (a) The executive director or the executive director
12 designee shall prepare and maintain a written policy statement that
13 implements a program of equal employment opportunity to ensure that
14 all personnel decisions are made without regard to race, color,
15 disability, sex, religion, age, or national origin.

16 (b) The policy statement must include:

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

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

26 (c) The policy statement must:

27 (1) be updated annually;

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

3 (3) be filed with the governor office.

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

8 Sec. 1203.067. INFORMATION AND TRAINING ON STATE EMPLOYEE
9 INCENTIVE PROGRAM. The executive director or the executive
10 director designee shall provide to commission employees
11 information and training on the benefits and methods of
12 participation in the state employee incentive program.

13 [Sections 1203.068-1203.080 reserved for expansion]

14 SUBCHAPTER D. POWERS AND DUTIES

15 Sec. 1203.081. GENERAL POWERS AND DUTIES. The commission
16 shall:

17 (1) administer this chapter;

18 (2) maintain a registry of registrants;

19 (3) adopt and enforce rules and establish buildings
20 standards as required by this chapter to fulfill the purposes of
21 this chapter.

22 (4) authorize specific employees to conduct hearings
23 and issue final decisions in contested cases under Sec. 1203.127
24 and Sec. 1203.182 and in dispute resolution hearings under Sec.
25 1203.246; and

26 (5) adopt procedural rules to make final decisions
27 rendered by specific employees, as hearings officers, under Sec.

1 1203.127 and Sec. 1203.182 are appealable to the commission.

2 Sec. 1203.082. FEES. The commission shall adopt fees as
3 required by this title in amounts that are reasonable and necessary
4 to provide sufficient revenue to cover the costs of administering
5 this chapter. The commission shall charge and collect the
6 following fees:

7 (1) for filing an original application for a
8 homebuilder registration, not more \$500;

9 (2) for annual renewal of homebuilder registration,
10 not more than \$500;

11 (3) for filing a request for a change of place of
12 business or change of name, not more than \$100;

13 (4) for filing a request to replace a lost or destroyed
14 registration certificate, not more than \$100; and

15 (5) for preparing a registration history, not more
16 than \$50;

17 (6) for filing a request to resolve a dispute under
18 Subchapter L, not more than \$100; and

19 (7) for filing a request for moral character
20 determination under Sec. 1203.12, not more than \$100.

21 Sec. 1203.083. ACCESSIBILITY. (a) The commission shall
22 comply with federal and state laws related to program and facility
23 accessibility.

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

1 Sec. 1203.084. ANNUAL REPORT. (a) The commission shall
2 file annually with the governor and the presiding officer of each
3 house of the legislature a complete and detailed written report
4 accounting for all funds received and disbursed by the commission
5 during the preceding fiscal year.

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

8 Sec. 1203.085. RULES RESTRICTING ADVERTISING OR
9 COMPETITIVE BIDDING. (a) The commission may not adopt a rule
10 restricting advertising or competitive bidding by a homebuilder
11 except to prohibit a false, misleading, or deceptive practice by
12 the homebuilder.

13 (b) The commission may not include in rules to prohibit
14 false, misleading, or deceptive practices by a homebuilder a rule
15 that:

16 (1) restricts the use of any advertising medium;

17 (2) restricts the homebuilder personal appearance or
18 use of the homebuilder voice in an advertisement;

19 (3) relates to the size or duration of an
20 advertisement used by the homebuilder; or

21 (4) restricts the homebuilder advertisement under a
22 trade name.

23 Sec. 1203.086. SUBPOENA AUTHORITY. (a) The commission may
24 request and, if necessary, compel by subpoena:

25 (1) the attendance of witnesses for examination under
26 oath; and

27 (2) the production for inspection and copying of

1 records, documents, and other evidence relevant to an investigation
2 or other proceeding authorized under this chapter.

3 (b) A subpoena may be issued throughout the state and may be
4 served by any person designated by the commission.

5 (c) If a person fails to comply with a subpoena issued under
6 this section, the commission, acting through the attorney general,
7 may file suit to enforce the subpoena in a district court in Travis
8 County or in the county in which a hearing conducted by the
9 commission may be held.

10 (d) The court shall order compliance with the subpoena if
11 the court finds that good cause exists to issue the subpoena.

12 [Sections 1203.087–1203.100 reserved for expansion]

13 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

14 Sec. 1203.101. PUBLIC INTEREST INFORMATION. (a) The
15 commission shall prepare information of public interest describing
16 the functions of the commission and the procedures by which
17 complaints or requests to resolve disputes 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. 1203.102. COMPLAINTS AND REQUESTS FOR DISPUTE
22 RESOLUTION. (a) The commission by rule shall establish methods by
23 which consumers and service recipients are notified of the name,
24 mailing address, and telephone number of the commission for the
25 purpose of directing a complaint or submitting a dispute for
26 resolution to the commission. The commission may provide for that
27 notice:

1 (1) on each application for a certificate of
2 registration or written contract for services of a registrant under
3 this chapter;

4 (2) on a sign prominently displayed in the place of
5 business of each person registered under this chapter;

6 (3) in a bill for services provided by a registrant
7 under this chapter; or

8 (4) in conjunction with any notice registrants may be
9 required to provide to consumers or service recipients under this
10 chapter or the rules of the commission.

11 (b) The commission shall provide to a person who files with
12 the commission a complaint relating to a registrant or a request for
13 dispute resolution under Subchapter L and to the registrant against
14 whom the complaint or request is filed:

15 (1) an explanation of the remedies that are available
16 to the person under this chapter; and

17 (2) information about appropriate state or local
18 agencies or officials with whom the person may file a complaint.

19 Sec. 1203.103. COMPLAINT INFORMATION AND INFORMATION IN
20 REQUESTS FOR DISPUTE RESOLUTION.

21 (a) The commission shall maintain an information file about
22 each complaint and request for dispute resolution filed with the
23 commission that the commission has authority to resolve.

24 (b) If a written complaint or a request for dispute
25 resolution is filed with the commission that the commission has
26 authority to resolve, the commission, at least quarterly and until
27 the matter is resolved, shall notify the parties to the complaint or

1 dispute of the status of the complaint or dispute.

2 Sec. 1203.104. COMPLAINT INVESTIGATION AND DISPOSITION.

3 (a) The commission shall investigate the actions and pertinent
4 records of a registrant if:

5 (1) a consumer or service recipient submits a signed,
6 written complaint; and

7 (2) the complaint and any evidence presented with the
8 complaint provide reasonable cause for an investigation.

9 (b) The commission shall promptly provide a written notice
10 to a person registered under this chapter who is the subject of an
11 investigation.

12 (c) An investigation or other action against a person
13 licensed under this chapter may not be initiated on the basis of an
14 anonymous complaint.

15 (d) The commission may authorize a commission employee to
16 file a signed, written complaint against a registrant under this
17 chapter and to conduct an investigation if:

18 (1) the registrant is convicted of a criminal offense
19 that may constitute grounds for the suspension or revocation of the
20 person's registration; or

21 (2) the registrant fails to honor a check issued to the
22 commission.

23 Sec. 1203.105. COMPLAINT INVESTIGATION. The commission
24 shall investigate a signed complaint received by the commission
25 that relates to an act of person required to hold a certificate of
26 registration under this chapter.

27 Sec. 1203.106. PUBLIC PARTICIPATION. (a) The commission

1 shall develop and implement policies that provide the public with a
2 reasonable opportunity to appear before the commission and to speak
3 on any issue under the commission's jurisdiction.

4 (b) The commission shall prepare and maintain a written plan
5 that describes how a person who does not speak English or who has a
6 physical, mental, or developmental disability may be provided
7 reasonable access to the commission's programs.

8 [Sections 1203.107-1203.120 reserved for expansion]

9 SUBCHAPTER F. REGISTRATION REQUIREMENTS

10 Sec. 1203.121. REGISTRATION REQUIRED. (a) Unless a person
11 holds a certificate of registration issued under this chapter, the
12 person may not act as a homebuilder.

13 (b) An applicant for a homebuilder registration may not act
14 as a homebuilder until the person receives the certificate of
15 registration evidencing that authority.

16 Sec. 1203.122 APPLICATION FOR REGISTRATION. (a) Each
17 applicant for a homebuilder registration must submit an application
18 on a form prescribed by the commission.

19 (b) Each applicant for a homebuilder registration must
20 disclose in the application whether the applicant has:

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

23 (2) been convicted of a felony and the time for appeal
24 has elapsed or the judgment or conviction has been affirmed on
25 appeal.

26 (c) The disclosure under Subsection (b) must be provided
27 even if an order has granted community supervision suspending the

1 imposition of the sentence.

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

13 Sec. 1203.123. MORAL CHARACTER DETERMINATION. (a) If
14 before applying for a registration under this chapter a person
15 requests that the commission determine whether the person's moral
16 character complies with the commission's moral character
17 requirements for registration under this chapter and pays the fee
18 prescribed by Section 1203.082, the commission shall make its
19 determination of the person's moral character.

20 (b) Not later than the 30th day after the date the
21 commission makes its determination, the commission shall notify the
22 person of the determination.

23 (c) A person may appeal the commission determination under
24 this section by following the procedure under Sec. 1203.127 for the
25 denial of an application for registration. An appeal hearing
26 concerning a moral character determination is governed by Sec.
27 1203.127.

1 (d) If a person applies for a registration after receiving
2 notice of a determination, the commission may conduct a
3 supplemental moral character determination of the person. The
4 supplemental determination may cover only the period after the date
5 the person requests a moral character determination under this
6 section.

7 Sec. 1203.124. GENERAL ELIGIBILITY REQUIREMENTS. To be
8 eligible to receive a registration under this chapter, a person
9 must:

10 (1) at the time of application:

11 (A) be at least 18 years of age; and

12 (B) be a citizen of the United States or a
13 lawfully admitted alien; and

14 (2) satisfy the commission as to the applicant's honesty,
15 trustworthiness, and integrity.

16 Sec. 1203.125. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS
17 FOR BUSINESS ENTITIES. (a) To be eligible to register under this
18 chapter:

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

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

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

26 (b) A corporation, limited liability company, partnership,
27 limited partnership, or limited liability partnership is not

1 eligible to be registered under this chapter and may not act as a
2 homebuilder unless the entity's designated agent, according to the
3 commission's records, is individually registered as a homebuilder.

4 (c) Except as provided by Subsection (d), a corporation,
5 limited liability company, partnership, limited partnership, or
6 limited liability partnership is not eligible to be registered
7 under this chapter and may not act as a homebuilder if any of its
8 officers, managers, or partners was or is the subject of an order
9 from the commission revoking:

10 (1) the individual officer, manager, or partner
11 registration under this chapter; or

12 (2) the registration of a business entity for whom the
13 officer, manager, or partner was an officer, manager, or partner
14 during the time the acts causing the revocation were committed.

15 (d) The commission may waive the application of Subsection
16 (c) if it is satisfied as to the officer, manager, or partner
17 honesty, integrity, and trustworthiness.

18 Sec. 1203.126. ISSUANCE OF A CERTIFICATE OF REGISTRATION.

19 (a) The commission shall issue a certificate of registration to an
20 applicant who meets the requirements for a registration under this
21 chapter.

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

25 Sec. 1203.127. DENIAL OF REGISTRATION. (a) The commission
26 shall immediately give written notice to the applicant of the
27 commission's denial of a registration.

1 (b) Before the applicant may appeal a denial of an
2 application, a denial of an application to renew a certificate of
3 registration, or a moral character determination, the applicant
4 must file, not later than the 10th day after the date the applicant
5 receives the notice, an appeal requesting a time and place for a
6 hearing before the commission. If the applicant fails to request a
7 hearing as provided by this subsection, the commission's decision
8 becomes final and is not subject to judicial review.

9 (c) The commission shall:

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

12 (2) give notice of the hearing to the applicant before
13 the 10th day preceding the date of the hearing.

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

16 (e) The hearing shall be before a hearings officer appointed
17 by the commission. After the hearing, the hearings officer shall
18 enter an appropriate order, which shall be a final decision.

19 (f) The commission shall adopt procedural rules under which
20 all decisions rendered by a hearings officer are appealable to the
21 commission.

22 (g) A hearing under this section is governed by Chapter
23 2001, Government Code.

24 [Sections 1203.128-1203.140 reserved for expansion]

25 SUBCHAPTER G. RENEWAL OF REGISTRATION CERTIFICATES

26 Sec. 1203.141. EXPIRATION OF CERTIFICATE OF REGISTRATION.

27 (a) The commission may issue or renew a certificate of registration

1 for a period not to exceed 24 months.

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

6 (c) For a year in which the certificate of registration
7 expiration date is changed, renewal fees payable shall be prorated
8 on a monthly basis so that each certificate holder pays only that
9 portion of the fee that is allocable to the number of months during
10 which the certificate of registration is valid. On renewal of the
11 certificate of registration on the new expiration date, the total
12 renewal fee is payable.

13 Sec. 1203.142. INFORMATION REQUIRED FOR RENEWAL. (a) Each
14 applicant for the renewal of a certificate of registration must
15 disclose in the renewal application whether the applicant has:

16 (1) entered a plea of guilty or nolo contendere to a
17 felony; or

18 (2) been convicted of a felony and the time for appeal
19 has elapsed or the judgment or conviction has been affirmed on
20 appeal.

21 (b) The disclosure under Subsection (a) must be provided
22 even if an order has granted community supervision suspending the
23 imposition of the sentence.

24 Sec. 1203.143. ADDITIONAL RENEWAL REQUIREMENTS FOR
25 BUSINESS ENTITIES. (a) To renew a certificate of registration
26 under this chapter:

27 (1) a corporation must designate one of its officers

1 as its agent for purposes of this chapter;

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

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

7 (b) A corporation, limited liability company, partnership,
8 limited partnership, or limited liability partnership may not act
9 as a homebuilder unless the entity's designated agent, according to
10 the commission's records, is individually registered as a
11 homebuilder under this chapter.

12 (c) Except as provided by Subsection (d), a corporation,
13 limited liability company, partnership, limited partnership, or
14 limited liability partnership may not act as a homebuilder if any of
15 the officers, managers, or partners was or is the subject of an
16 order from the commission revoking:

17 (1) the individual officer, manager, or partner
18 registration under this chapter; or

19 (2) the registration of a business entity for which
20 the officer, manager, or partner was an officer, manager, or
21 partner during the time the acts causing the revocation were
22 committed.

23 (d) The commission may waive the application of Subsection
24 (c) if it is satisfied as to the officer, manager, or partner
25 honesty, integrity, and trustworthiness.

26 Sec. 1203.144 DENIAL OF RENEWAL. (a) If the commission
27 denies the renewal of an applicant for renewal, the commission

1 shall immediately give written notice to the applicant of the
2 denial.

3 (b) The applicant may appeal the denial by following the
4 procedures under Section 1203.127.

5 (c) An appeal hearing under this section is governed by Sec.
6 1203.127.

7 [Sections 1203.145-1203.160 reserved for expansion]

8 SUBCHAPTER H. PRACTICES BY CERTIFICATE HOLDERS

9 Sec. 1203.161. FIXED OFFICE REQUIRED; CHANGE OF ADDRESS;
10 OFFICE LOCATIONS. (a) A homebuilder shall maintain a fixed office
11 in this state. The address of the principal place of business for
12 the homebuilder shall be designated on the certificate of
13 registration.

14 (b) Not later than the 10th day after the date a homebuilder
15 moves from the address designated on the certificate of
16 registration, the homebuilder shall submit an application,
17 accompanied by the appropriate fee, for a certificate of
18 registration that designates the new location of the homebuilder
19 principal place of business. The commission shall issue a
20 certificate of registration that designates the new location if the
21 new location complies with the requirements of this section.

22 (c) A homebuilder who maintains more than one place of
23 business in this state shall notify the commission in writing of
24 each additional office location maintained by the homebuilder not
25 later than the 10th day after the homebuilder opens the additional
26 location.

27 Sec. 1203.162. REQUIRED NOTICES AND PROVISIONS IN A

1 HOMEBUILDER CONTRACT. (a) When homebuilder enters into a contract
2 to sell to a homeowner real estate on which the homebuilder
3 constructed a new home, the homebuilder shall include in the
4 written contract:

5 (1) a written notice that the homeowner should:

6 (A) have the abstract covering the real estate
7 that is the subject of the contract examined by an attorney chosen
8 by the homeowner; or

9 (B) be provided with or obtain a title insurance
10 policy;

11 (2) the written notice required by Section 27.007,
12 Property Code; and

13 (3) a provision that entitles the homeowner, at the
14 homeowner election, to submit a dispute related to a construction
15 defect to the commission for resolution under Subchapter L before
16 the dispute is submitted to litigation or arbitration as the
17 contract may require.

18 (b) When a homebuilder enters into a contract or agreement
19 with a homeowner to construct a new home or new improvements to an
20 existing home on the homeowner real estate, the homebuilder shall
21 include in the written contract the notice described under
22 Subsection (a)(2) of this section and the provision described under
23 Subsection (a)(3) of this section.

24 [Sections 1203.163-1203.180 reserved for expansion]

25 SUBCHAPTER I. PROHIBITED PRACTICES AND DISCIPLINARY PROCEEDINGS

26 Sec. 1203.181. GROUNDS FOR SUSPENSION OR REVOCATION OF
27 CERTIFICATE OF REGISTRATION. (a) The commission may suspend or

1 revoke a certificate of registration issued under this chapter if
2 the certificate holder:

3 (1) enters a plea of guilty or nolo contendere to or is
4 convicted of a felony, and the time for appeal has elapsed or the
5 judgment or conviction has been affirmed on appeal, without regard
6 to an order granting community supervision that suspends the
7 imposition of the sentence;

8 (2) procures or attempts to procure a certificate of
9 registration under this chapter for the certificate holder or
10 another by fraud, misrepresentation, or deceit or by making a
11 material misstatement of fact in an application for a certificate
12 of registration;

13 (3) engages in an intentional misrepresentation or
14 fraud when selling, buying, trading, or leasing real property;

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

19 (5) fails to provide, within a reasonable time,
20 information requested by the commission that relates to a formal or
21 informal complaint to the commission that would indicate a
22 violation of this chapter;

23 (6) fails to surrender to the owner, without just
24 cause, a document or instrument to a dispute that is requested by
25 the owner and that is in the certificate holder's possession;

26 (7) fails to pay or otherwise comply with a final award
27 issued against the homebuilder under Subchapter L; or

1 (8) disregards or violates this chapter.

2 (b) The commission may suspend or revoke a certificate of
3 registration issued under this chapter if the certificate holder,
4 while acting as a homebuilder:

5 (1) makes a material misrepresentation to a homeowner
6 concerning a significant defect, including a latent structural
7 defect, known to the homebuilder that would be a significant factor
8 to a reasonable and prudent homeowner in making a decision to
9 purchase the home or accept construction by the homebuilder as
10 substantially complete;

11 (2) fails to disclose to a homeowner a defect
12 described by Subdivision (1) that is known to the homebuilder;

13 (3) makes a false promise that is likely to influence a
14 person to enter into an agreement when the homebuilder is unable or
15 does not intend to keep the promise;

16 (4) pursues a continued and flagrant course of
17 misrepresentation or makes false promises through advertising, or
18 otherwise;

19 (5) fails within a reasonable time to properly account
20 for or remit money that is received by the homebuilder and that
21 belongs to another person;

22 (6) commingles money that belongs to another person
23 with the homebuilder's own money;

24 (7) solicits, sells, or offers for sale a home by means
25 of a lottery;

26 (8) solicits, sells, or offers for sale a home by means
27 of a deceptive practice;

1 (9) guarantees or authorizes or permits a person to
2 guarantee that future profits will result from a resale of a home;

3 (10) negotiates or attempts to negotiate the sale,
4 exchange, or lease of real property with an owner, landlord, buyer,
5 or tenant with knowledge that person is a exclusively represented
6 by an attorney or broker in connection with the transaction;

7 (11) publishes or causes to be published any
8 advertisement that is false or misleads or is likely to deceive the
9 public;

10 (12) withholds from or inserts into a statement of
11 account or invoice a statement that the homebuilder knows makes the
12 statement of account or invoice inaccurate in a material way;

13 (13) publishes or circulates an unjustified or
14 unwarranted threat of a legal proceeding or other action;

15 (14) aids, abets, or conspires with another person to
16 circumvent this chapter;

17 (15) fails or refuses to provide, on request, a copy of
18 a document relating to a transaction to a person who signed the
19 document;

20 (16) fails to include in a contract for the sale of a
21 home to a homeowner or a contract for construction of a new home or
22 new improvements the notices required under 1203.162;

23 (17) fails to deposit, within a reasonable time, money
24 the certificate holder receives as earnest money;

25 (A) in trust with a title company authorized to
26 do business in this state; or

27 (B) in a custodial, trust, or escrow account

1 maintained for that purpose in a banking institution authorized to
2 do business in this state;

3 (18) conditions the sale of a home on the homeowner
4 using a title company that the homebuilder selects if the homeowner
5 pays for the title policy;

6 (19) conditions the sale of a home on the buyer using a
7 lender that the homebuilder selects;

8 (20) discriminates against a homeowner or prospective
9 homeowner on the basis of race, color, religion, sex, national
10 origin, or ancestry, including directing a homeowner or prospective
11 homeowner interested in equivalent properties to a different area
12 based on the race, color, religion, sex, national origin, or
13 ancestry of the homeowner or prospective homeowner; or

14 (21) disregards or violates this chapter.

15 Sec. 1203.182. ADDITIONAL DISCIPLINARY AUTHORITY OF
16 COMMISSION. (a) If a certificate holder violates this chapter or a
17 commission rule, the commission may, in addition to any other
18 authority under this chapter:

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

20 (2) place on probation a person whose certificate of
21 registration has been suspended;

22 (3) reprimand a certificate holder; or

23 (4) assess an administrative penalty that complies
24 with Subchapter J against a certificate holder, alone or in
25 addition to a suspension, probation, or reprimand.

26 (b) The commission may probate a suspension, revocation, or
27 cancellation of a certificate of registration under reasonable

1 terms determined by the commission.

2 Sec. 1203.183. HEARING. (a) If the commission proposes to
3 take any disciplinary action described in Section 1203.182 against
4 a certificate holder, the certificate holder is entitled to a
5 hearing before the a hearings officer appointed by the commission.

6 (b) The commission shall adopt procedural rules by which all
7 decisions to take disciplinary action against certificate holder
8 are appealable to the commission.

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

11 (d) A hearing under this section is governed by the
12 contested case procedures under Chapter 2001, Government Code.

13 Sec. 1203.184. APPEAL. (a) A person aggrieved by a ruling,
14 order, or decision of the commission is entitled to appeal to a
15 district court in the county in which the administrative hearing
16 was held.

17 (b) An appeal is governed by the procedures under Chapter
18 2001, Government Code.

19 [Sections 1203.185-1203.200 reserved for expansion]

20 SUBCHAPTER J. ADMINISTRATIVE PENALTY

21 Sec. 1203.201. IMPOSITION OF ADMINISTRATIVE PENALTY. In
22 contested cases involving disciplinary action, the commission, as
23 part of the order, may impose an administrative penalty on a
24 certificate holder who violates this chapter or a rule adopted or
25 order issued by the commission under this chapter.

26 Sec. 1203.202. AMOUNT OF PENALTY. (a) The amount of an
27 administrative penalty may not exceed \$5,000 for each violation.

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

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

5 (2) the history of previous violations;

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

7 (4) efforts to correct the violation; and

8 (5) any other matter that justice may require.

9 Sec. 1203.203. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
10 later than the time specified in the commission's order, which may
11 not be sooner than 30 days after the order becomes final, the person
12 shall pay the administrative penalty.

13 Sec. 1203.204. COLLECTION OF PENALTY. If the person does
14 not pay the administrative penalty and the enforcement of the
15 penalty is not stayed, the commission may:

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

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

22 [Sections 1203.205–1203.220 reserved for expansion]

23 SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

24 Sec. 1203.221. INJUNCTIVE ACTION BROUGHT BY COMMISSION.

25 (a) In addition to any other action authorized by law, the
26 commission may bring an action in its name to enjoin a violation of
27 this chapter or a commission rule.

1 (b) To obtain an injunction under this section, the
2 commission is not required to allege or prove that:

3 (1) an adequate remedy at law does not exist; or

4 (2) substantial or irreparable damage would result
5 from the continued violation.

6 Sec. 1203.222. ADDITIONAL INJUNCTIVE AUTHORITY. (a) In
7 addition to any other action authorized by law, the commission,
8 acting through the attorney general, may bring an action to abate a
9 violation or enjoin a violation or potential violation of this
10 chapter or a commission rule if the commission determines that a
11 person has violated or is about to violate this chapter.

12 (b) The action shall be brought in the name of the state in
13 the district court in the county in which:

14 (1) the violation occurred or is about to occur; or

15 (2) the defendant resides.

16 (c) An injunctive action may be brought to abate or
17 temporarily or permanently enjoin an act or to enforce this
18 chapter.

19 (d) The commission is not required to give a bond in an
20 action under Subsection (a), and court costs may not be recovered
21 from the commission.

22 (e) If the commission determines that a person has violated
23 or is about to violate this chapter, the attorney general or the
24 county attorney or district attorney in the county in which the
25 violation has occurred or is about to occur or in the county of the
26 defendant's residence may bring an action in the name of the state
27 in the district court of the county to abate or temporarily or

1 permanently enjoin the violation or to enforce this chapter. The
2 plaintiff in an action under this subsection is not required to give
3 a bond, and court costs may not be recovered from the plaintiff.

4 Sec. 1203.223. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY A
5 CERTIFICATE HOLDER. (a) In addition to injunctive relief under
6 Sections 1203.221 and 1203.222, a person who receives a profit or
7 other consideration as a result of acting as a homebuilder without
8 holding a certificate of registration under this chapter is liable
9 to the state for a civil penalty of not less than the amount of money
10 received or more than three times the amount of money received.

11 (b) The commission may recover the civil penalty, court
12 costs, and reasonable attorney's fees on behalf of the state.

13 (c) The commission is not required to give a bond in an
14 action under this section, and court costs may not be recovered from
15 the commission.

16 Sec. 1203.0224. PRIVATE CAUSE OF ACTION FOR CERTAIN
17 VIOLATIONS BY CERTIFICATE HOLDER. (a) A person who receives a
18 profit or other consideration as a result of acting as a homebuilder
19 without holding a certificate of registration under this chapter is
20 liable to an aggrieved person for a penalty of not less than the
21 amount of money received or more than three times the amount of
22 money received.

23 (b) The aggrieved person may file suit to recover a penalty
24 under this section.

25 Sec. 1203.225. APPEAL BOND EXEMPTION. The commission is
26 not required to give an appeal bond in an action to enforce this
27 chapter.

1 Sec. 1203.226. GENERAL CRIMINAL PENALTY. (a) A person
2 commits an offense if the person willfully violates or fails to
3 comply with this chapter or a commission order.

4 (b) An offense under this section is a Class A misdemeanor.

5 Sec. 1203.227. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY
6 CERTIFICATE HOLDER. (a) A person commits an offense if the person
7 engages in an activity for which a certificate of registration is
8 required under this chapter without holding a certificate.

9 (b) Except as provided by Subsection (c), (d), or (e), an
10 offense under this section is a misdemeanor punishable by:

11 (1) a fine of not less than \$100 or more than \$500;

12 (2) confinement in the county jail for not more than
13 one year; or

14 (3) both the fine and confinement.

15 (c) An offense under this section by a person other than an
16 individual is punishable by a fine of not less than \$1,000 or more
17 than \$2,000.

18 (d) A second or subsequent offense under this section by an
19 individual is punishable by:

20 (1) a fine of not less than \$500 or more than \$1,000;

21 (2) confinement for not more than two years; or

22 (3) both the fine and confinement.

23 (e) A second or subsequent offense under this section by a
24 person other than an individual is punishable by a fine of not less
25 than \$2,000 or more than \$5,000.

26 [Sections 1203.228-1203.240 reserved for expansion]

27 SUBCHAPTER L. VOLUNTARY INSPECTION AND DISPUTE RESOLUTION PROCESS

1 Sec. 1203.240. APPLICABILITY OF SUBCHAPTER. (a) This
2 subchapter applies only to disputes between homebuilders and
3 homeowners to which Chapter 27, Property Code applies if the
4 homeowner files a written request with the commission to resolve
5 the dispute under this subchapter.

6 (b) Notwithstanding any provision in a contract or
7 agreement between a homebuilder and a homeowner to the contrary, a
8 homeowner may submit a dispute, to which this subchapter applies,
9 to the commission for resolution under this subchapter.

10 (c) This subchapter applies only to the part of a dispute
11 and only to causes of action that seek reimbursement of actual
12 damages caused by a construction defect.

13 (d) This subchapter does not apply to construction defects
14 that are not brought within 2 years after the homeowner knew or
15 should have reasonably known of the construction defect and that
16 are not brought within 10 years after the home or improvement was
17 constructed.

18 Sec. 1203.241. EFFECT OF COMMISSION FINAL RESOLUTION AND
19 DETERMINATIONS. The commission resolution of the dispute and
20 determination of the existence of construction defect under this
21 subchapter is binding and dispositive and is, for all purposes, an
22 enforceable arbitration award under Chapter 171, Civil Practices
23 and Remedies Code.

24 Sec. 1203.242. PREREQUISITE TO FILING REQUEST. Before
25 filing a request under this subchapter, the homeowner must:

26 (1) not later than 30 days before filing the request have
27 notified the homebuilder in writing of the alleged construction

1 defect; and

2 (2) offered the homebuilder and the homebuilder experts
3 reasonable opportunity and access to inspect the alleged
4 construction defect.

5 Sec. 1203.243. INFORMATION REQUIRED TO BE SUBMITTED WITH
6 WRITTEN REQUEST. A homeowner who submits a request to the
7 commission for dispute resolution under this subchapter must pay
8 the commission the fee authorized under Section 1203.082(6) and in
9 the request must:

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

12 (2) state the amount of any known out-of-pocket expenses and
13 fees for experts, inspectors, consultants, and attorneys incurred,
14 as of the date of filing, by the homeowner in connection with each
15 alleged construction defect;

16 (3) include any evidence that depicts the nature and cause
17 of each alleged construction defect and the nature and extent of
18 repairs that the homeowner believes is reasonably necessary to
19 remedy the construction defect, including inspection reports,
20 photographs, videotapes, and other relevant information;

21 (4) disclose the name, address, and phone number of any
22 person who has, on behalf of the requestor, inspected the home in
23 connection with the construction defect alleged in the request;

24 (5) include a copy of the written notice required under
25 Section 1203.242 and the homebuilder response, if any; and

26 (6) state the amount that the homeowner seeks to recover
27 from the homebuilder as of the date of filing.

1 Sec. 1203.244. NOTICE TO REQUESTOR AND TO HOMEBUILDER. (a)

2 Not later than the 15th day after the commission receives the
3 request under Section 1203.243, the commission shall provide the
4 person who filed the request with a copy of the commission
5 procedures relating to the investigation and resolution of the
6 dispute.

7 (b) Not later than the 15th day after the commission
8 receives a request under Section 1203.243, the commission shall
9 send to the homebuilder:

10 (1) a copy of the request;

11 (2) a copy of all the information submitted with the
12 request; and

13 (3) a copy of the commission procedures relating to
14 the investigation and resolution of the dispute.

15 Sec. 1203.245. STATE INSPECTORS. (a) The commission shall
16 employ or contract with state inspectors to inspect the alleged
17 construction defect in the request.

18 (b) The commission shall employ or contract with only
19 trained and qualified inspectors and, by rule, shall set criteria
20 that state inspectors must satisfy to be employed by the commission
21 and to remain employed by the commission as a state inspector.

22 (c) After receiving the request, the commission shall send a
23 state inspector to inspect the home and interview the homebuilder
24 and homeowner.

25 (d) The state inspector shall complete a written report and
26 written recommendations concerning any necessary repairs to the
27 alleged construction defect. The state inspector shall, upon

1 completion, provide a copy the report to the homeowner and
2 homebuilder.

3 Sec. 1203.246. DISPUTE RESOLUTION HEARING. (a) If after
4 the 30th day after the state inspector has sent a copy of the report
5 to the homeowner and homebuilder as required by Section 1203.246(d)
6 the parties to the dispute have not otherwise resolved the dispute,
7 the commission shall set an arbitration hearing and give notice of
8 the hearing to the parties to the dispute.

9 (b) A hearings officer designated by the commission shall
10 conduct the hearing. The state inspector that inspected the
11 alleged construction defect shall, at the request of either the
12 homeowner or homebuilder, be present to testify at the hearing. The
13 state inspector report shall be admissible as evidence regardless
14 of whether the state inspector is called to testify at the hearing.
15 The hearings officer shall make findings of fact and conclusions
16 and issue an award.

17 (c) A proceeding under this section is an arbitration
18 hearing governed by Chapter 171, Civil Practices and Remedies Code
19 and by the rules the commission adopts under Sec. 1203.248.

20 (d) The commission shall prescribe the time and place of the
21 hearing.

22 Sec. 1203.247. THE AWARD. (a) The hearings officer may
23 award only:

24 (1) reimbursement of actual damages caused by the
25 construction defect;

26 (2) reimbursement of reasonable out-of-pocket
27 expenses;

1 (3) interest on the out-of-pocket expenses awarded at
2 the rate of 10 percent per annum from the date the homeowner
3 incurred the expense; and

4 (4) reasonable attorney fees.

5 (b) Actual damages under Subdivision (1) of Subsection (a)
6 are to be measured by one of the following methods:

7 (1) the cost to repair the construction defect;

8 (2) the decrease in the market value of the home caused
9 by the construction defect; or

10 (3) both methods under Subdivisions (1) and (2) of
11 this subsection if a decrease in market value is evident after the
12 construction defect is repaired.

13 (c) Out-of-pocket expenses under Subdivision (2) of
14 Subsection (a) include, but are not limited to:

15 (1) fees paid to experts, inspectors, and consultants
16 reasonably necessary to evaluate the construction defect;

17 (2) reasonable attorney's fees paid by the homeowner;
18 and

19 (3) other reasonable expenses or repairs necessary to
20 mitigate damage caused by the construction defect.

21 Sec. 1203.248. RULES OF ARBITRATION. The commission shall
22 adopt rules of procedure that are:

23 (1) necessary for the implementation of the intent and
24 purposes of this subchapter; and

25 (2) consistent with Chapter 171, Civil Practices and
26 Remedies Code.

27 Sec. 1203.249. EFFECT OF AWARD ON OTHER CAUSES OF ACTION.

1 An award under this subchapter is dispositive of all claims for the
2 types of damages the commission is authorized to award under this
3 chapter and is binding on the homeowner and homebuilder as an
4 arbitration award. Neither the award nor this subchapter dispose
5 of claim or cause for damage that is not awardable under this
6 subchapter.

7 [Sections 1203.250-1203.260 reserved for expansion]

8 SUBCHAPTER M. BUILDING STANDARDS

9 Sec. 1203.261. BUILDING STANDARDS. (a) For the purposes of
10 evaluating evidence and resolving disputes under Subchapter L, the
11 commission by rule shall adopt building standards for residential
12 construction that comply with this section.

13 (b) The building standards must substantially comply with
14 the standards contained in the version of the International
15 Residential code for One- and Two-Family Dwellings published by the
16 International Code Council that is applicable under Subsection (c).

17 (c) The International Residential Code for One- and
18 Two-Family Dwellings that applies to residential construction for
19 the purposes of the building standards under this section is:

20 (1) for residential construction located in a
21 municipality, the version of the International Residential Code
22 applicable to residential construction in the municipality under
23 Section 214.212, Local Government Code; and

24 (2) for residential construction located in an
25 unincorporated area, the version of the International Residential
26 Code applicable to residential construction in the municipality
27 that is the county seat of the county in which the construction is

1 located.

2 SECTION 2. (a) This Act takes effect September 1, 2003.

3 (b) A person is not required to be registered under this
4 Act, before March 1, 2004.

5 SECTION 3. For the purposes of implementing new Chapter
6 1203, the governor may appoint two persons who are regularly
7 engaged in the homebuilding industry in Texas to fill the two
8 positions on the Texas Homebuilder Commission under new Section
9 1203.021(1) and the appointees may continue to serve after March 1,
10 2004 provided that the appointees are registered under this Act not
11 later than May 1, 2004. New Section 1203.025(1)-(3) shall not apply
12 to the two commissioners who are required to be registered under
13 this Act until May 1, 2004.

14 SECTION 4. The governor may assign to the persons the
15 governor appoints as commissioners under this Act the length of the
16 appointees initial terms, which will expire at staggered times as
17 required by new Section 1203.022.