

By: Duncan

S.B. No. 1390

A BILL TO BE ENTITLED

AN ACT

relating to residential construction in the State of Texas;
providing administrative penalties.

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

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Sections 5.014 and 5.015 to read as follows:

Sec. 5.014. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES.

(a) A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES

AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) A seller of residential real property that is exempt under Section 430.005 from the statutory warranty and building and performance standards established under Section 430.001 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES AND BUILDING

AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt under

1 Section 430.005, Property Code, from the provisions of Title 16,
2 Property Code, that provide statutory warranties and building and
3 performance standards.

4 (c) A notice required by this section shall be delivered by
5 the seller to the purchaser on or before the effective date of an
6 executory contract binding the purchaser to purchase the property.
7 If a contract is entered into without the seller providing the
8 notice, the purchaser may terminate the contract for any reason on
9 or before the seventh day after the date the purchaser receives the
10 notice.

11 (d) This section does not apply to a transfer:

12 (1) under a court order or foreclosure sale;

13 (2) by a trustee in bankruptcy;

14 (3) to a mortgagee by a mortgagor or successor in
15 interest or to a beneficiary of a deed of trust by a trustor or
16 successor in interest;

17 (4) by a mortgagee or a beneficiary under a deed of
18 trust who has acquired the land at a sale conducted under a power of
19 sale under a deed of trust or a sale under a court-ordered
20 foreclosure or has acquired the land by a deed in lieu of
21 foreclosure;

22 (5) by a fiduciary in the course of the administration
23 of a decedent's estate, guardianship, conservatorship, or trust;

24 (6) from one co-owner to another co-owner of an
25 undivided interest in the real property;

26 (7) to a spouse or a person in the lineal line of
27 consanguinity of the seller;

1 (8) to or from a governmental entity; or
2 (9) of only a mineral interest, leasehold interest, or
3 security interest.

4 Sec. 5.015. DISCLOSURE OF LACK OF LOCAL INSPECTION. (a) If
5 a builder, as defined by Section 401.003, sells a home that was not
6 inspected by a local building inspector and the contract between
7 the builder and the purchaser does not provide for a private
8 inspection by an inspector approved by the purchaser, the builder
9 shall provide the purchaser of the property a written notice that
10 complies with this section.

11 (b) If the contract between the builder and the purchaser is
12 entered into before construction of the home is completed, the
13 builder shall provide the purchaser with a written notice that
14 reads substantially similar to the following:

15 NOTICE: CONSTRUCTION NOT SUBJECT
16 TO BUILDING INSPECTION

17 The home that is subject to this contract is not subject to
18 inspection by a municipal building inspector. A private inspection
19 of the construction of the residence will not be performed unless
20 the purchaser arranges for an inspection at the purchaser's
21 expense.

22 (c) If the contract between the builder and the purchaser is
23 entered into after construction of the home is completed, the
24 builder shall provide the purchaser with a written notice that
25 reads substantially similar to the following:

26 NOTICE: CONSTRUCTION NOT SUBJECT

TO BUILDING INSPECTION

The home that is subject to this contract was not subject to inspection by a municipal building inspector, and no inspection was performed during the construction of the home.

(d) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice.

(e) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of

1 consanguinity of the seller;

2 (8) to or from a governmental entity; or

3 (9) of only a mineral interest, leasehold interest, or
4 security interest.

5 SECTION 2. Section 27.002(b), Property Code, is amended to
6 read as follows:

7 (b) Except as provided by this subsection, to [~~to~~] the
8 extent of conflict between this chapter and any other law,
9 including the Deceptive Trade Practices-Consumer Protection Act
10 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law
11 cause of action, this chapter prevails. To the extent of conflict
12 between this chapter and Title 16, Title 16 prevails.

13 SECTION 3. Section 27.004(d), Property Code, is amended to
14 read as follows:

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

27 (1) is verified and alleges that the person against

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

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

10 SECTION 4. Section 401.003, Property Code, is amended by
11 amending Subsection (a) and adding Subsection (d) to read as
12 follows:

13 (a) In this title, "builder" means any person, including a
14 business entity, political subdivision, or individual, who, for a
15 fixed price, commission, fee, wage, or other compensation,
16 constructs or supervises or manages the construction of:

17 (1) a new home;

18 (2) a material improvement to a home, other than an
19 improvement solely to replace or repair a roof of an existing home;
20 or

21 (3) an improvement to the interior of an existing home
22 when the cost of the work exceeds the lesser of:

23 (A) \$20,000; or

24 (B) 20 percent of the taxable value of the home.

25 (d) For the purposes of Subsection (a)(3), the commission
26 shall adopt rules governing the method for determining whether the
27 cost of the work exceeds the threshold prescribed by that

1 subdivision.

2 SECTION 5. Chapter 401, Property Code, is amended by adding
3 Section 401.007 to read as follows:

4 Sec. 401.007. PROCEEDING TO ENFORCE TITLE. The attorney
5 general, a district or county attorney, or the commission acting
6 through the executive director may bring a proceeding for an
7 injunction or bring any other proceeding to enforce this title and
8 to enjoin any person, firm, corporation, or depository institution
9 from engaging in or attempting to engage in the business of
10 residential construction in violation of this title or any other
11 law of this state.

12 SECTION 6. Section 406.001, Property Code, is amended by
13 adding Subsection (c) to read as follows:

14 (c) In making appointments under Subsection (a)(2), the
15 governor should consider individuals who can represent the
16 interests of homeowners, including individuals who have experience
17 representing consumer or homeowner interests.

18 SECTION 7. Section 406.004(b), Property Code, is amended to
19 read as follows:

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

26 (1) the person is an officer, employee, or paid
27 consultant of a Texas trade association in the field of residential

1 construction; or

2 (2) the person's spouse is an officer, [~~a~~] manager, or
3 paid consultant of a Texas trade association in the field of
4 residential construction.

5 SECTION 8. Section 408.001, Property Code, is amended to
6 read as follows:

7 Sec. 408.001. RULES. The commission shall adopt and
8 enforce rules as reasonably required in the exercise of the
9 commission's powers and jurisdiction [~~necessary for the~~
10 ~~implementation of this title~~], including rules:

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

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

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

18 (4) approving third-party inspectors.

19 SECTION 9. Section 416.002, Property Code, is amended by
20 amending Subsection (d) and adding Subsection (e) to read as
21 follows:

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

1 Subchapter F, Chapter 411, Government Code [~~Unless the~~
2 ~~information is a public record at the time the commission obtains~~
3 ~~the information under this subsection, the information is~~
4 ~~confidential, and the commission may not release or disclose the~~
5 ~~information to any person except under a court order or with the~~
6 ~~permission of the applicant].~~

7 (e) Each applicant must disclose every person with a
8 financial or management interest in the applicant's business as a
9 builder unless the builder is a publicly traded company.

10 SECTION 10. Section 416.004, Property Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) The commission may assess a late payment penalty that
13 does not exceed \$500 against an applicant who fails to remit a fee
14 for an application for an original certificate of registration or a
15 renewal certificate of registration as required by this chapter.

16 SECTION 11. Section 416.005, Property Code, is amended to
17 read as follows:

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

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

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

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

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

1 (b) To determine an applicant's eligibility for a
2 certificate of registration, the commission may adopt rules that:

3 (1) require the applicant to attest to whether the
4 applicant:

5 (A) has been involved in civil litigation or
6 bankruptcy proceedings that reasonably bear on the applicant's
7 fitness to operate as a builder; or

8 (B) has past due debts, including student loans
9 or state or federal taxes; and

10 (2) require the applicant to include references that
11 can verify the applicant's training or experience or can give
12 information and opinions concerning the applicant's character.

13 (c) An affirmative attestation under Subsection (b)(1) does
14 not automatically make a builder ineligible for a certificate of
15 registration.

16 SECTION 12. Chapter 416, Property Code, is amended by
17 adding Section 416.012 to read as follows:

18 Sec. 416.012. CONTINUING EDUCATION. (a) To renew a
19 certificate of registration, the builder must complete five hours
20 of continuing education annually, one hour of which must address
21 ethics.

22 (b) Continuing education courses to satisfy the
23 requirements of this section must address the International
24 Residential Code for One- and Two-Family Dwellings adopted under
25 Section 430.001 and state laws and rules that apply to builders
26 under this chapter.

27 (c) The commission by rule shall approve continuing

1 education courses, course content, and course providers.

2 SECTION 13. Section 418.001, Property Code, is amended to
3 read as follows:

4 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. (a) A
5 person is subject to disciplinary action under this chapter for:

6 (1) fraud or deceit in obtaining a registration or
7 certification under this subtitle;

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

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

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

14 (5) publishing a false or misleading advertisement;

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

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

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

24 (9) failure to register a home as required by Section
25 426.003;

26 (10) failure to remit the fee for registration of a
27 home under Section 426.003; [~~or~~]

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

3 (12) failure to register as a builder under Chapter
4 416;

5 (13) engaging in statutory or common law fraud or
6 misappropriation of funds, as determined by the commission after a
7 hearing under Section 418.003;

8 (14) continuous or repeated failure to comply with the
9 statutory warranties and building and performance standards;

10 (15) failure to cooperate with the state inspection
11 and dispute resolution process; or

12 (16) otherwise violating this title or a rule adopted
13 or order issued by the commission under this title.

14 (b) For the purposes of Subsection (a)(13), the commission
15 may not revoke a registration or certification or impose an
16 administrative penalty unless the determination of statutory or
17 common law fraud or misappropriation of funds has been made in a
18 final, unappealable judgment by a court.

19 SECTION 14. Section 418.002, Property Code, is amended to
20 read as follows:

21 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. On a
22 determination that a ground for disciplinary action under Section
23 418.001 exists, the commission may:

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

25 (2) probate the suspension of a registration or
26 certification; [~~or~~]

27 (3) formally or informally reprimand a registered or

1 certified person; or

2 (4) impose an administrative penalty under Chapter
3 419.

4 SECTION 15. Chapter 426, Property Code, is amended by
5 adding Section 426.0015 to read as follows:

6 Sec. 426.0015. POLICY AND PURPOSE. It is this state's
7 policy to ensure the right of homeowners and builders to have an
8 accessible and equitable avenue to quickly and efficiently address
9 construction defects. To protect that right, it is in the public
10 interest and is the purpose of this subtitle to ensure maximum
11 quality, efficiency, and equity in the state-sponsored inspection
12 and dispute resolution process.

13 SECTION 16. Section 426.003, Property Code, is amended by
14 amending Subsection (b) and adding Subsections (e) and (f) to read
15 as follows:

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

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

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

24 (3) be delivered to the commission not later than the
25 15th day after the earlier of:

26 (A) the effective date of the mechanic's lien
27 contract or other agreement that describes the transaction between

1 the homeowner and the builder; or

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

3 (e) Notwithstanding Subsection (c), a registration fee is
4 not required for a home registered by a builder who is a political
5 subdivision.

6 (f) A builder required to provide notice to a purchaser
7 under Section 5.015(c) shall include with the registration
8 submitted for the home written notice to the commission that the
9 home was not inspected by a municipal building inspector.

10 SECTION 17. Section 426.004(a), Property Code, is amended
11 to read as follows:

12 (a) A party who submits a request under this subtitle shall
13 pay a reasonable ~~[any]~~ amount prescribed ~~[required]~~ by the
14 commission by rule that does not exceed \$150 ~~[to cover the expense~~
15 ~~of the third-party inspector]~~.

16 SECTION 18. Section 426.006, Property Code, is amended to
17 read as follows:

18 Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
19 RESOLUTION. (a) For an alleged defect discovered during an
20 applicable warranty period, the ~~[The]~~ state-sponsored inspection
21 and dispute resolution process must be requested ~~[on or before the~~
22 ~~second anniversary of the date of discovery of the conditions~~
23 ~~claimed to be evidence of the construction defect but]~~ not later
24 than the 90th ~~[30th]~~ day after the date the applicable warranty
25 period expires.

26 (b) If the alleged defect was not discoverable by a
27 reasonable, prudent inspection or examination of the home or

1 improvement within the applicable warranty period, the
2 state-sponsored inspection and dispute resolution process must be
3 requested:

4 (1) on or before the second anniversary of the date of
5 discovery of the conditions claimed to be evidence of the
6 construction defect; and

7 (2) not later than the 10th anniversary of the date of
8 the initial transfer of title from the builder to the initial owner
9 of the home or improvement that is the subject of the dispute or, if
10 there is not a closing, the date on which the contract for
11 construction of the improvement is entered into.

12 SECTION 19. Section 426.007, Property Code, is amended to
13 read as follows:

14 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
15 who submits a request for state-sponsored inspection and dispute
16 resolution or responds to a request under Chapter 428 must disclose
17 in the request or response the name of any person who, before the
18 request is submitted, inspected the home on behalf of the requestor
19 or respondent in connection with the construction defect alleged in
20 the request or response. If a person's name is known to the
21 requestor or respondent at the time of the request or response and
22 is not disclosed as required by this section, the requestor or
23 respondent may not designate the person as an expert or use
24 materials prepared by that person in:

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

27 (2) any action arising out of the construction defect

1 that is the subject of the request or response.

2 SECTION 20. Section 426.008(b), Property Code, is amended
3 to read as follows:

4 (b) The presumption established by this section applies
5 only to an action between the homeowner and the builder. A
6 recommendation or ruling under this subtitle is not admissible in
7 an action between any other parties, other than a disciplinary
8 action under Chapter 418.

9 SECTION 21. Chapter 426, Property Code, is amended by
10 adding Section 426.009 to read as follows:

11 Sec. 426.009. TESTIMONY OF THIRD-PARTY OR STATE INSPECTOR;
12 AUTHENTICATION OF RECOMMENDATION OR RULING. (a) In an action
13 involving a construction defect, the third-party inspector or a
14 member of the panel of state inspectors that issued a
15 recommendation or ruling in the state-sponsored inspection and
16 dispute resolution process concerning the defect may not be called
17 as a witness by any party.

18 (b) For the purposes of admissibility of a third-party
19 inspector's recommendation or a ruling by a panel of state
20 inspectors, the recommendation or ruling shall be considered a
21 business record in accordance with Rule 902, Texas Rules of
22 Evidence.

23 SECTION 22. Sections 427.001(b)-(d), Property Code, are
24 amended to read as follows:

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

27 (1) have a minimum of three [~~five~~] years' experience in

1 the residential construction industry; and

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

4 (c) A third-party inspector who inspects an issue involving
5 a structural matter or involving both workmanship and materials and
6 a structural matter must:

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

9 (2) have a minimum of five [~~10~~] years' experience in
10 residential construction.

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

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

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

18 SECTION 23. Chapter 427, Property Code, is amended by
19 adding Section 427.003 to read as follows:

20 Sec. 427.003. IMMUNITY FROM LIABILITY. (a) A person who
21 performs services for the commission as a third-party inspector or
22 a state inspector is not liable in a civil action for an act
23 performed in good faith in the execution of the person's duties as a
24 third-party inspector or state inspector.

25 (b) Immunity from liability under this section does not
26 apply to intentional acts of misconduct or gross negligence on the
27 part of the inspector.

1 SECTION 24. Sections 428.001(b) and (d), Property Code, are
2 amended to read as follows:

3 (b) The request must:

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

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

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

15 (4) be accompanied by the fees required under Section
16 426.004; and

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

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

25 SECTION 25. Chapter 428, Property Code, is amended by
26 adding Section 428.0011 to read as follows:

27 Sec. 428.0011. RESPONSE TO REQUEST. (a) If a request for

1 state-sponsored inspection and dispute resolution is filed under
2 this chapter, the party to the dispute who did not file the request
3 may submit a written response to the allegations specified in the
4 request and evidence in support of that response not later than the
5 15th day after the date the person receives a copy of the request
6 under Section 428.001(d).

7 (b) If the response alleges the existence of a construction
8 defect not alleged in the original request, the third-party
9 inspector shall inspect for an issue a determination with regard to
10 that defect and any defect alleged in the request.

11 SECTION 26. Section 428.004(b), Property Code, is amended
12 to read as follows:

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

24 SECTION 27. Section 429.001, Property Code, is amended by
25 amending Subsection (c) and adding Subsection (d) to read as
26 follows:

27 (c) The panel shall:

1 (1) review the request, any response to the request,
2 and the recommendation without a hearing unless a hearing is
3 otherwise required by rules adopted by the commission;

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

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

10 (d) The review under Subsection (c)(1) must be limited to
11 the factual information contained in the request, response, and
12 recommendation and to the applicable statutory warranties and
13 building and performance standards.

14 SECTION 28. Section 430.001, Property Code, is amended by
15 adding Subsection (i) to read as follows:

16 (i) Notwithstanding any other provision of this section,
17 the commission shall periodically review amendments to the
18 International Residential Code adopted by the International Code
19 Council and amend the limited statutory warranties and building and
20 performance standards to reflect any of those amendments if the
21 commission determines the amendment is appropriate.

22 SECTION 29. Section 437.001(a), Property Code, is amended
23 to read as follows:

24 (a) If an arbitration award made in a residential
25 construction arbitration is filed in a court of competent
26 jurisdiction in this state, the filer shall also, not later than the
27 30th day after the date the [an] award is filed with the court [made

1 ~~in a residential construction arbitration]~~, file with the
2 commission a summary of the arbitration award that includes:

- 3 (1) the names of the parties to the dispute;
- 4 (2) the name of each party's attorney, if any;
- 5 (3) the name of the arbitrator who conducted the
6 arbitration;
- 7 (4) the name of the arbitration services provider who
8 administered the arbitration, if any;
- 9 (5) the fee charged to conduct the arbitration;
- 10 (6) a general statement of each issue in dispute;
- 11 (7) the arbitrator's determination, including the
12 party that prevailed in each issue in dispute and the amount of any
13 monetary award; and
- 14 (8) the date of the arbitrator's award.

15 SECTION 30. Subchapter F, Chapter 411, Government Code, is
16 amended by adding Section 411.1407 to read as follows:

17 Sec. 411.1407. ACCESS TO CRIMINAL HISTORY RECORD
18 INFORMATION: TEXAS RESIDENTIAL CONSTRUCTION COMMISSION. (a) The
19 Texas Residential Construction Commission is entitled to obtain
20 from the department criminal history record information maintained
21 by the department that relates to a person who is an applicant or is
22 responsible for an application under Chapter 416, Property Code.

23 (b) Criminal history record information obtained by the
24 Texas Residential Construction Commission under this section may
25 not be released or disclosed to any person except on court order or
26 with the consent of the person who is the subject of the criminal
27 history record.

1 SECTION 31. Chapter 214, Local Government Code, is amended
2 by adding Subchapter H to read as follows:

3 SUBCHAPTER H. ISSUANCE OF RESIDENTIAL BUILDING

4 PERMITS BY MUNICIPALITY

5 Sec. 214.231. VERIFICATION OF BUILDER REGISTRATION. A
6 municipality may not issue a building permit to a builder, as
7 defined by Section 401.003, Property Code, for construction
8 described by Section 401.003(a), Property Code, unless the
9 municipality has determined that the builder is registered with the
10 Texas Residential Construction Commission under Chapter 416,
11 Property Code.

12 SECTION 32. Section 436.001(1), Property Code, is repealed.

13 SECTION 33. (a) The change in law made by Sections 5.014
14 and 5.015, Property Code, as added by this Act, applies only to a
15 contract for the sale of real property entered into on or after
16 September 1, 2005. A contract entered into before September 1,
17 2005, is governed by the law in effect immediately before the
18 effective date of this Act, and that law is continued in effect for
19 that purpose.

20 (b) The amendment by this Act of Section 27.002(b), Property
21 Code, is intended to clarify rather than change existing law.

22 (c) The change in law made by Section 27.004(d), Property
23 Code, as amended by this Act, and Section 426.009, Property Code, as
24 added by this Act, applies only to an action commenced on or after
25 the effective date of this Act. An action commenced before the
26 effective date of this Act is governed by the law in effect
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 (d) Not later than December 1, 2005, the Texas Residential
3 Construction Commission shall adopt rules under Section 401.003,
4 Property Code, as amended by this Act. Except as provided by this
5 subsection, the change in law made by Section 401.003, Property
6 Code, as amended by this Act, applies only to conduct occurring on
7 or after the effective date of those rules. Conduct occurring
8 before the effective date of those rules or under a contract entered
9 into before the effective date of this Act is governed by the law in
10 effect immediately before the effective date of this Act, and that
11 law is continued in effect for that purpose.

12 (e) The change in law made by Section 401.007, Property
13 Code, as added by this Act, applies only to a person's act or
14 omission that occurs on or after the effective date of this Act. An
15 act or omission that occurs before the effective date of this Act is
16 governed by the law in effect immediately before that date, and that
17 law is continued in effect for that purpose.

18 (f) The change in law made by Section 406.004, Property
19 Code, as amended by this Act, applies only to a member of the Texas
20 Residential Construction Commission appointed on or after the
21 effective date of this Act. The service of a commission member
22 appointed before the effective date of this Act is governed by the
23 law in effect immediately before that date, and that law is
24 continued in effect for that purpose.

25 (g) Except as provided by this subsection, the change in law
26 made to Chapter 416, Property Code, as amended by this Act, applies
27 only to an application for a certificate of registration under that

1 chapter, or for renewal of a certificate, that is submitted on or
2 after the effective date of this Act. An application submitted
3 before the effective date of this Act is governed by the law in
4 effect immediately before that date, and that law is continued in
5 effect for that purpose. Section 416.012, Property Code, as added
6 by this Act, applies only to an application for renewal of a
7 certificate of registration submitted on or after January 1, 2006.

8 (h) The change in law made by Chapter 418, Property Code, as
9 amended by this Act, applies only to conduct that occurs on or after
10 the effective date of this Act. Conduct that occurs before the
11 effective date of this Act is governed by the law in effect
12 immediately before that date, and that law is continued in effect
13 for that purpose.

14 (i) The change in law made by Section 426.003(b), Property
15 Code, as amended by this Act, and Section 426.003(f), Property
16 Code, as added by this Act, applies only to a home involved in a
17 transaction entered into on or after the effective date of this Act.
18 A home involved in a transaction entered into before the effective
19 date of this Act is governed by the law in effect immediately before
20 that date, and that law is continued in effect for that purpose.

21 (j) The change in law made by Section 426.003(e), Property
22 Code, as added by this Act, applies only to a registration of a home
23 on or after the effective date of this Act. A registration of a home
24 before the effective date of this Act is governed by the law in
25 effect immediately before that date, and that law is continued in
26 effect for that purpose.

27 (k) The change in law made by Sections 426.004(a), 426.006,

1 426.007, and 428.001, Property Code, as amended by this Act, and
2 Section 428.0011, Property Code, as added by this Act, applies only
3 to a request for state-sponsored inspection and dispute resolution
4 submitted under Title 16, Property Code, on or after the effective
5 date of this Act. A request submitted before the effective date of
6 this Act is governed by the law in effect immediately before that
7 date, and that law is continued in effect for that purpose.

8 (l) The change in law made by Section 426.008(b), Property
9 Code, as amended by this Act, applies only to a disciplinary action
10 commenced on or after the effective date of this Act. A
11 disciplinary action commenced before the effective date of this Act
12 is governed by the law in effect immediately before that date, and
13 that law is continued in effect for that purpose.

14 (m) Section 427.003, Property Code, as added by this Act,
15 applies only to a cause of action that accrues on or after the
16 effective date of this Act. A cause of action that accrues before
17 the effective date of this Act is governed by the law in effect
18 immediately before that date, and that law is continued in effect
19 for that purpose.

20 (n) The change in law made by Section 429.001, Property
21 Code, as amended by this Act, applies only to a recommendation of a
22 third-party inspector issued under Subtitle D, Title 16, Property
23 Code, on or after the effective date of this Act. A recommendation
24 issued before the effective date of this Act is governed by the law
25 in effect immediately before that date, and that law is continued in
26 effect for that purpose.

27 (o) The change in law made by Section 437.001(a), Property

1 Code, as amended by this Act, applies only to an arbitration award
2 filed in a court on or after the effective date of this Act. An
3 arbitration award filed in a court before the effective date of this
4 Act is governed by the law in effect immediately before that date,
5 and that law is continued in effect for that purpose.

6 (p) Section 411.1407, Government Code, as added by this Act,
7 applies only to the release of criminal history record information
8 relating to a person who submits or is responsible for the
9 submission of an application made under Chapter 416, Property Code,
10 on or after the effective date of this Act. The release of criminal
11 history record information relating to a person who submits or is
12 responsible for the submission of an application made under that
13 chapter before the effective date of this Act is governed by the law
14 in effect immediately before that date, and that law is continued in
15 effect for that purpose.

16 (q) The change in law made by Section 214.231, Local
17 Government Code, as added by this Act, applies only to a building
18 permit issued on or after the effective date of this Act. A
19 building permit issued before the effective date of this Act is
20 governed by the law in effect immediately before that date, and that
21 law is continued in effect for that purpose.

22 SECTION 34. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2005.