

By: Ritter, McClendon

H.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Residential Construction Commission; providing penalties.

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

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.016 to read as follows:

Sec. 5.016. 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 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.

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

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

2           (2) by a trustee in bankruptcy;

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

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

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

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

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

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

18           (9) of only a mineral interest, leasehold interest, or  
19 security interest.

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

22           (b) Except as provided by this subsection, to [~~Te~~] the  
23 extent of conflict between this chapter and any other law,  
24 including the Deceptive Trade Practices-Consumer Protection Act  
25 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law  
26 cause of action, this chapter prevails. To the extent of conflict  
27 between this chapter and Title 16, Title 16 prevails.

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

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

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

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

SECTION 4. Section 41.007, Property Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

1 (a) A contract described by Section 41.001(b)(3) must  
2 contain:

3 (1) the contractor's certificate of registration  
4 number from the Texas Residential Construction Commission if the  
5 contractor is required to register as a builder with the  
6 commission;

7 (2) the address and telephone number at which the  
8 owner may file a complaint with the Texas Residential Construction  
9 Commission about the conduct of the contractor if the contractor is  
10 required to register as a builder with the commission; and

11 (3) the following warning conspicuously printed,  
12 stamped, or typed in a size equal to at least 10-point bold type or  
13 computer equivalent, next to the owner's signature line on the  
14 contract:

15 "IMPORTANT NOTICE: You and your contractor are responsible  
16 for meeting the terms and conditions of this contract. If you sign  
17 this contract and you fail to meet the terms and conditions of this  
18 contract, you may lose your legal ownership rights in your home.  
19 KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

20 (c) A provision of a contract described by Section  
21 41.001(b)(3) that requires the parties to submit a dispute arising  
22 under the contract to binding arbitration must:

23 (1) be conspicuously printed or typed in a size equal  
24 to at least 14-point bold type or the computer equivalent; and

25 (2) provide a space immediately adjacent to the  
26 provision for the owner's signature to indicate acknowledgment of  
27 notice of the provision.

1        (d) A provision described by Subsection (c) is not  
2 enforceable against the owner unless the requirements of Subsection  
3 (c) are met and the owner signs the space acknowledging notice of  
4 the provision.

5        SECTION 5. Subchapter K, Chapter 53, Property Code, is  
6 amended by adding Section 53.2555 to read as follows:

7        Sec. 53.2555. CERTIFICATE OF REGISTRATION NUMBER. (a) A  
8 contractor who is required to register as a builder with the Texas  
9 Residential Construction Commission shall include, in a clear and  
10 conspicuous manner, the contractor's certificate of registration  
11 number on each residential construction contract.

12        (b) The failure of a contractor to comply with Subsection  
13 (a) makes void any mechanic's or materialman's lien by the  
14 contractor or a subcontractor.

15        SECTION 6. Section 401.002(7), Property Code, is amended to  
16 read as follows:

17        (7) "Homeowner" means an individual [~~a person~~] who  
18 owns a home and who contracts with a builder for the construction of  
19 a new home or an improvement to an existing home. The term includes  
20 an attorney-in-fact or legal representative of the individual or  
21 the individual's estate or a subrogee or assignee of the individual  
22 [a person who owns a home].

23        SECTION 7. Section 162.003, Property Code, is amended to  
24 read as follows:

25        Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. (a) An  
26 artisan, laborer, mechanic, contractor, subcontractor, or  
27 materialman who labors or who furnishes labor or material for the

1 construction or repair of an improvement on specific real property  
2 in this state is a beneficiary of any trust funds paid or received  
3 in connection with the improvement.

4 (b) A homeowner, as defined by Section 401.002, is a  
5 beneficiary of trust funds paid in connection with a residential  
6 construction contract governed by Title 16 and held for the purpose  
7 of satisfying the cost of materials and workmanship for labor and  
8 materials provided by persons described by Subsection (a) for the  
9 homeowner under the contract.

10 SECTION 8. Section 162.006(a), Property Code, is amended to  
11 read as follows:

12 (a) A contractor who enters into a written contract with a  
13 property owner or homeowner, as defined by Section 401.002, to  
14 construct improvements to ~~[a] residential property [homestead]~~ for  
15 an amount exceeding \$5,000 shall deposit the trust funds in a  
16 construction account in a financial institution.

17 SECTION 9. Section 401.002, Property Code, is amended by  
18 adding Subdivisions (7-a) and (8-a) to read as follows:

19 (7-a) "Improvement to the interior of an existing  
20 home" means any modification to the interior living space of a home,  
21 which includes the addition or installation of permanent fixtures  
22 inside the home. An improvement to the interior of an existing home  
23 does not include improvements to an existing home if the  
24 improvements are designed primarily to repair or replace the home's  
25 component parts.

26 (8-a) "Material improvement" means a modification to  
27 an existing home that either increases or decreases the home's

1 total square footage of living space that also modifies the home's  
2 foundation, perimeter walls, or roof. A material improvement does  
3 not include modifications to an existing home if the modifications  
4 are designed primarily to repair or replace the home's component  
5 parts.

6 SECTION 10. Section 401.003, Property Code, is amended to  
7 read as follows:

8 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,  
9 "builder" means any person [~~business entity or individual~~] who, for  
10 a fixed price, commission, fee, wage, or other compensation, sells,  
11 constructs, or supervises or manages the construction of, or  
12 contracts for the construction of or the supervision or management  
13 of the construction of:

14 (1) a new home;

15 (2) a material improvement to a home, other than an  
16 improvement solely to replace or repair a roof of an existing home;  
17 or

18 (3) an improvement to the interior of an existing home  
19 when the cost of the work exceeds \$10,000 [~~\$20,000~~].

20 (b) The term includes:

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

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

27 (3) a third-party warranty company and its

1 administrator.

2 (c) The term does not include any person [~~business entity or~~  
3 ~~individual~~] who:

4 (1) has been issued a license by this state or an  
5 agency [~~or political subdivision~~] of this state to practice a trade  
6 or profession related to or affiliated with residential  
7 construction if the work being done by the entity or individual to  
8 the home is solely for the purpose for which the license was issued;  
9 or

10 (2) sells a new home and:

11 (A) does not construct or supervise or manage the  
12 construction of the home; and

13 (B) holds a license issued under Chapter 1101,  
14 Occupations Code, or is exempt from that chapter under Section  
15 1101.005, Occupations Code.

16 SECTION 11. Section 401.005, Property Code, is amended by  
17 amending Subsection (b) and adding Subsection (c) to read as  
18 follows:

19 (b) This title does not apply to a homeowner or to a  
20 homeowner's real estate broker, agent, interior designer  
21 registered under Chapter 1053, Occupations Code, or property  
22 manager who supervises or arranges for the construction of an  
23 improvement to a home owned by the homeowner.

24 (c) An individual who builds a home or a material  
25 improvement to a home and sells the home immediately following  
26 completion of the building or remodeling and does not live in the  
27 home for at least one year following completion of the building or



1 remodeling is liable as a builder under the warranty obligation  
2 created by this title for work completed by the individual.  
3 Liability under this subsection does not automatically require an  
4 individual to register under Section 416.001.

5 SECTION 12. Chapter 401, Property Code, is amended by  
6 adding Section 401.007 to read as follows:

7 Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission  
8 has reasonable cause to believe that a person is violating a statute  
9 to which this chapter applies, the commission, in addition to any  
10 other authorized action, may issue an order to cease and desist from  
11 the violation or an order to take affirmative action, or both, to  
12 enforce compliance. A person may appeal the order directly to  
13 district court in accordance with Chapter 2001, Government Code.

14 (b) Before issuing an order under this section, the  
15 commission shall set and give notice of a hearing before a hearings  
16 officer. The hearing is governed by Chapter 2001, Government Code.  
17 Based on the findings of fact, conclusions of law, and  
18 recommendations of the hearings officer, the commission by order  
19 may find whether a violation has occurred.

20 (c) The commission, after providing notice and an  
21 opportunity to appear for a hearing, may impose against a person who  
22 violates a cease and desist order an administrative penalty in an  
23 amount not to exceed \$1,000 for each day of violation. In addition  
24 to any other remedy provided by law, the attorney general or the  
25 commission may institute in district court a suit for injunctive  
26 relief and to collect an administrative penalty. A bond is not  
27 required of the commission with respect to injunctive relief

1 granted under this section. In the action, the court may enter as  
2 proper an order awarding a preliminary or final injunction.

3 (d) A suit under this section must be brought in Travis  
4 County.

5 (e) The attorney general and the commission may recover  
6 reasonable expenses incurred in obtaining injunctive relief under  
7 this section, including court costs, reasonable attorney's fees,  
8 investigative costs, witness fees, and deposition costs.

9 (f) If a party seeks review of the order by the commission,  
10 the party shall file a petition initiating judicial review not  
11 later than the 30th day after the date of the issuance of the  
12 decision.

13 SECTION 13. Section 406.001, Property Code, is amended by  
14 amending Subsection (a) and adding Subsections (c), (d), (e), and  
15 (f) to read as follows:

16 (a) The Texas Residential Construction Commission consists  
17 of nine members appointed by the governor with the advice and  
18 consent of the senate as follows:

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

21 (2) three members must be representatives of the  
22 general public, each of whom has demonstrated a continued interest  
23 in consumer protection;

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

26 (4) one member must be either a licensed architect who  
27 practices in the area of residential construction or a building

1 inspector who meets the requirements set forth in Chapter 427 and  
2 practices in the area of residential construction.

3 (c) A person may not be a public member of the commission if  
4 the person or the person's spouse:

5 (1) is a builder registered with the commission, or is  
6 otherwise registered, certified, or licensed by a regulatory agency  
7 in the field of residential construction;

8 (2) is employed by or participates in the management  
9 of a business entity or other organization regulated by or  
10 receiving money from the commission;

11 (3) owns or controls, directly or indirectly, more  
12 than a 10 percent interest in a business entity or other  
13 organization regulated by or receiving money from the commission;  
14 or

15 (4) uses or receives a substantial amount of tangible  
16 goods, services, or money from the commission other than  
17 compensation or reimbursement authorized by law for commission  
18 membership, attendance, or expenses.

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

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

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

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

9           (f) In this section, "Texas trade association" means a  
10 cooperative and voluntarily joined statewide association of  
11 business or professional competitors in this state designed to  
12 assist its members and its industry or profession in dealing with  
13 mutual business or professional problems and in promoting their  
14 common interest.

15           SECTION 14. Section 406.004(b), Property Code, is amended  
16 to read as follows:

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

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

26           (2) the person's spouse is an officer, [~~a~~] manager, or  
27 paid consultant of a Texas trade association in the field of

1 residential construction.

2 SECTION 15. Section 408.002, Property Code, is amended to  
3 read as follows:

4 Sec. 408.002. FEES. (a) The commission shall adopt fees as  
5 required by this title in amounts that are reasonable and necessary  
6 to provide sufficient revenue to cover the costs of administering  
7 this title.

8 (b) The commission may charge a late fee for late payment of  
9 any fee due to the commission. The late fee may be any amount that  
10 does not exceed the amount of the fee due.

11 (c) The commission may charge a reasonable fee for:

12 (1) a homeowner to submit a request for  
13 state-sponsored inspection under Subtitle D;

14 (2) providing public information requested under  
15 Chapter 552, Government Code, excluding information requested from  
16 the commission under Section 409.001; or

17 (3) producing, mailing, and distributing special  
18 printed materials and publications generated in bulk by the  
19 commission for use and distribution by builders.

20 (d) Fees paid to the commission under Subsections (b) and  
21 (c) are nonrefundable.

22 (e) The commission may waive or reduce the fee for an  
23 inspection under Subtitle D for a homeowner who demonstrates an  
24 inability to pay the fee.

25 SECTION 16. Section 408.003, Property Code, is amended by  
26 adding Subsection (c) to read as follows:

27 (c) The commission may procure and distribute to consumers

1 informational materials and promotional items that contain  
2 commission contact details and outreach information.

3 SECTION 17. Chapter 408, Property Code, is amended by  
4 adding Section 408.005 to read as follows:

5 Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission  
6 may seek reimbursement of any amounts due to the commission and  
7 restitution for any dishonored payment instrument presented for  
8 payment to the commission.

9 SECTION 18. Chapter 409, Property Code, is amended by  
10 adding Section 409.0011 to read as follows:

11 Sec. 409.0011. BUILDER LIST. (a) In this section, "volume  
12 builder" means a builder who registers at least 100 homes each year  
13 as provided by Section 426.003.

14 (b) The commission shall create and make accessible to the  
15 public an electronic list and a hard-copy list of builders who:

16 (1) are registered with the commission; and

17 (2) provide in this state building services, including  
18 accessible floor plans, to persons with mobility-related special  
19 needs.

20 (c) The electronic list required under Subsection (b) shall  
21 provide, if available, the following information with respect to  
22 each listed builder:

23 (1) a link to the builder's website; and

24 (2) contact information for the builder, including the  
25 municipalities where the builder provides building services  
26 described by Subsection (b)(2).

27 (d) The commission shall contact all volume builders in this

1 state who do not provide building services to persons with  
2 mobility-related special needs as described by Subsection (b)(2)  
3 and encourage those builders to develop floor plans that are  
4 designed to be accessible for persons with mobility-related special  
5 needs.

6 (e) Before a volume builder is included on the electronic or  
7 hard-copy list described by Subsection (b), the commission must  
8 certify the builder's floor plans designed for persons with  
9 mobility-related special needs. The commission shall establish  
10 rules, procedures, and fees necessary to certify floor plans as  
11 required by this subsection.

12 (f) The Veterans' Land Board shall make accessible to the  
13 public on its Internet website and in hard-copy format the  
14 electronic list required under Subsection (b).

15 SECTION 19. Section 409.003, Property Code, is amended by  
16 adding Subsections (d), (e), and (f) to read as follows:

17 (d) The commission shall make available to the public  
18 information about each complaint that resulted in disciplinary  
19 action by the commission.

20 (e) The commission may not disclose the address of any  
21 individual home registered with the commission when making  
22 information available to the public under this title, except as  
23 necessary to implement this title.

24 (f) Notwithstanding Subsections (d) and (e), the commission  
25 may not disclose the address of an individual home registered with  
26 the commission:

27 (1) on the commission's Internet website; or

1           (2) in connection with an open records request under  
2 Chapter 552, Government Code.

3           SECTION 20. Chapter 409, Property Code, is amended by  
4 adding Section 409.004 to read as follows:

5           Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall  
6 make available to the public a list of each builder who holds a  
7 certificate of registration issued under Chapter 416.

8           SECTION 21. Section 416.001, Property Code, is amended to  
9 read as follows:

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

13          (b) A person commits an offense if the person violates  
14 Subsection (a). An offense under this section is a Class A  
15 misdemeanor.

16          SECTION 22. Section 416.002, Property Code, is amended by  
17 adding Subsection (e) to read as follows:

18          (e) Based on a commission investigation of an alleged  
19 violation of Sections 418.001(a)(14)-(20), the commission may  
20 require an applicant for renewal of a certificate of registration  
21 to disclose to the commission every person with a financial or  
22 management interest in the applicant's business as a builder. This  
23 subsection does not apply to a publicly traded company.

24          SECTION 23. Section 416.004, Property Code, is amended by  
25 amending Subsection (a) and adding Subsections (c) and (d) to read  
26 as follows:

27          (a) The commission shall charge and collect:



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

3           (2) a fee for renewal of a certificate of registration  
4 that does not exceed \$300; and

5           (3) a late fee that does not exceed the amount of the  
6 fee due if payment of a registration application or renewal fee due  
7 under this title is late.

8           (c) All fees paid to the commission under this section are  
9 nonrefundable.

10          (d) The fees in Subsection (a) apply to each builder,  
11 including each sole proprietor, corporation, limited liability  
12 company, partnership, limited partnership, limited liability  
13 partnership, and subsidiary.

14          SECTION 24. Sections 416.008(d) and (e), Property Code, are  
15 amended to read as follows:

16          (d) The hearing officer may grant a motion for continuance  
17 of the hearing on the request of the commission or the applicant  
18 ~~[may be continued from time to time with the consent of the~~  
19 ~~applicant].~~

20          (e) The hearing shall be held before a hearings officer  
21 appointed by the commission. After the hearing, the hearings  
22 officer shall enter an appropriate order. ~~[The order of the~~  
23 ~~hearings officer under this subsection is a final decision.]~~

24          SECTION 25. Section 416.010, Property Code, is amended by  
25 adding Subsection (e) to read as follows:

26          (e) A builder may designate a United States Postal Service  
27 postal box for use in correspondence. The builder may not use the

1 box as the builder's principal place of business for purposes of  
2 this section.

3 SECTION 26. Section 416.011(d), Property Code, is amended  
4 to read as follows:

5 (d) The certification issued by the commission as a "Texas  
6 Star Builder" is valid for at most one year and renewable on a date  
7 to be determined at the commission's discretion [~~shall be for the~~  
8 ~~same period of time as the builder's registration under this~~  
9 ~~chapter~~].

10 SECTION 27. Chapter 416, Property Code, is amended by  
11 adding Sections 416.012 and 416.013 to read as follows:

12 Sec. 416.012. REGISTRATION REQUIRED TO ENFORCE CONTRACT. A  
13 builder may not sue to enforce a residential construction contract  
14 with a homeowner or collect fees or damages under a contract with a  
15 homeowner unless the builder, at the time the builder entered into  
16 the contract and performed work under the contract for the  
17 homeowner, held a certificate of registration issued under this  
18 chapter.

19 Sec. 416.013. CONTINUING EDUCATION. (a) During the first  
20 year a builder is registered with the commission, the builder must  
21 complete five hours of continuing education, one hour of which must  
22 address ethics.

23 (b) After satisfying the requirements of Subsection (a), a  
24 builder must complete five hours of continuing education, one hour  
25 of which must address ethics, once every five years.

26 (c) Continuing education courses that satisfy the  
27 requirements of this section must address the International

1 Residential Code for One- and Two-Family Dwellings adopted under  
2 Section 430.001 and state laws and rules that apply to builders  
3 under this chapter.

4 (d) The commission by rule shall approve continuing  
5 education courses, course content, and course providers. This  
6 subsection does not prohibit the commission from providing  
7 continuing education courses for a reasonable fee.

8 SECTION 28. Section 417.003, Property Code, is amended to  
9 read as follows:

10 Sec. 417.003. FEES. (a) The commission shall charge and  
11 collect:

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

14 (2) a fee for renewal of a certification under this  
15 chapter that does not exceed \$50; and

16 (3) a late fee that does not exceed the amount of the  
17 fee due if payment of a registration or application fee due under  
18 this title is late.

19 (b) All fees paid to the commission under this section are  
20 nonrefundable.

21 SECTION 29. Sections 418.001 and 418.002, Property Code,  
22 are amended to read as follows:

23 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. (a) A  
24 person, including a builder, a person who is designated as a  
25 builder's agent under Section 416.006, or a person who owns or  
26 controls a majority ownership interest in the builder, is subject  
27 to disciplinary action under this chapter for:

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

3           (2) misappropriation or misapplication of trust funds  
4 in the practice of residential construction, including a violation  
5 of Chapter 32, Penal Code, or Chapter 162, if found by a final  
6 nonappealable court judgment;

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

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

11          (5) publishing a false or misleading advertisement;

12          (6) failure to honor, within a reasonable time, a  
13 check issued to the commission, or any other instrument of payment,  
14 including a credit or debit card or electronic fund transfer, after  
15 the commission has sent by certified mail a request for payment to  
16 the person's last known business address, according to commission  
17 records;

18          (7) failure to pay an administrative penalty assessed  
19 by the commission under Chapter 419 or a fee due under Chapter 426;

20          (8) failure to pay [~~nonpayment of~~] a final  
21 nonappealable judgment arising from a construction defect or other  
22 transaction between the person and a homeowner;

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

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

27          (11) failure to reimburse a homeowner the amount

ordered by the commission as provided by ~~in~~ Section 428.004(d);

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

(13) failure to participate in the state-sponsored inspection and dispute resolution process if required by this title;

(14) failure to register as a builder as required under Chapter 416;

(15) using or attempting to use a certificate of registration that has expired or that has been revoked;

(16) falsely representing that the person holds a certificate of registration issued under Chapter 416;

(17) acting as a builder using a name other than the name listed on the person's certificate of registration;

(18) aiding, abetting, or conspiring with a person who does not hold a certificate of registration to evade the provisions of this title or rules adopted under this title, if found by a final nonappealable court judgment;

(19) allowing the person's certificate of registration to be used by another person;

(20) acting as an agent, partner, or associate of a person who does not hold a certificate of registration with the intent to evade the provisions of this title or rules adopted under this title;

(21) a failure to reasonably perform on an accepted offer to repair or a repeated failure to make an offer to repair

1 based on:

2 (A) the recommendation of a third-party  
3 inspector under Section 428.004; or

4 (B) the final holding of an appeal under Chapter  
5 429;

6 (22) failure to participate in commission efforts to  
7 resolve a complaint that arises during the construction or  
8 renovation of a home;

9 (23) failure to respond to a commission request for  
10 information;

11 (24) otherwise violating this title or a commission  
12 rule adopted under this title;

13 (25) failure to substantially complete all the  
14 obligations under an express contract for construction without  
15 reasonable grounds for the failure, if found by a final  
16 nonappealable court judgment;

17 (26) failure to obtain a permit required by a  
18 political subdivision before constructing a new home or an  
19 improvement to an existing home; or

20 (27) abandoning or wilfully failing to perform,  
21 without justification, any home improvement contract or  
22 residential construction project engaged in or undertaken by the  
23 person, if found to have done so by a final, nonappealable judgment  
24 of a court.

25 (b) For the purposes of Subsection (a)(12), the commission  
26 may not revoke a registration or certification unless the  
27 determination of statutory or common law fraud or misappropriation

1 of funds has been made in a final nonappealable judgment by a court.

2       Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a)  
3 Except as provided by Subsection (b), on ~~On~~ a determination that a  
4 ground for disciplinary action under Section 418.001 exists, the  
5 commission may:

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

7               (2) probate the suspension of a registration or  
8 certification; ~~or~~

9               (3) formally or informally reprimand a registered or  
10 certified person; or

11               (4) impose an administrative penalty under Chapter  
12 419.

13       (b) The commission must consider the factors described by  
14 Section 419.002(b) before taking disciplinary action under this  
15 chapter.

16       SECTION 30. Section 418.004, Property Code, is amended by  
17 adding Subsection (c) to read as follows:

18       (c) An appeal to a district court of a final decision of the  
19 commission under this section regarding a revocation or suspension  
20 of a registration or certification is determined by a preponderance  
21 of the evidence.

22       SECTION 31. Chapter 418, Property Code, is amended by  
23 adding Section 418.005 to read as follows:

24       Sec. 418.005. JOINT AND SEVERAL LIABILITY OF BUILDER AND  
25 AGENT. (a) The commission may simultaneously take administrative  
26 action under this chapter against:

27               (1) a builder; and

1           (2) a person who:

2                   (A) is designated as the builder's agent under  
3 Section 416.006; or

4                   (B) owns or controls a majority ownership  
5 interest in the builder.

6           (b) A builder and a person who is designated as a builder's  
7 agent under Section 416.006 or owns or controls a majority  
8 ownership interest in the builder are jointly and severally liable  
9 for any amounts due to the commission under this title.

10           SECTION 32. Section 419.001, Property Code, is amended to  
11 read as follows:

12           Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
13 ~~[In a contested case involving disciplinary action, the]~~ commission  
14 may~~[, as part of the commission's order,]~~ impose an administrative  
15 penalty on a ~~[registered or certified]~~ person who violates this  
16 title or a rule adopted or order issued by the commission under this  
17 title.

18           SECTION 33. Section 419.002, Property Code, is amended by  
19 amending Subsections (a) and (b) and adding Subsection (c) to read  
20 as follows:

21           (a) Except as provided by Subsection (c), an ~~[An]~~  
22 administrative penalty imposed under this chapter may not exceed  
23 \$10,000 ~~[\$5,000]~~ for each violation.

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

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



- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; ~~and~~
- (5) the deterrent effect on others in the industry;
- (6) the economic harm to the homeowner; and
- (7) any other matter justice may require.

(c) A violation of Section 418.001(a)(2) or (12) is punishable by a penalty not to exceed \$100,000.

SECTION 34. Subtitle C, Title 16, Property Code, is amended by adding Chapter 420 to read as follows:

CHAPTER 420. BUILDING CONTRACT PROVISIONS

Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. Before beginning work on a project to construct a new home or an improvement to an existing home when the cost of the work exceeds \$10,000, a builder must provide a notice to the homeowner in at least 14-point bold type that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT AN IMPROVEMENT TO AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

BUILDERS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS COMPLETE

1 INFORMATION ON THE HISTORY OF BUILDERS, INCLUDING ANY SUSPENSION,  
2 REVOCATION, COMPLAINT, AND RESOLUTION OF COMPLAINT.

3 IF YOU HAVE A COMPLAINT AGAINST A BUILDER, YOU MAY CONTACT THE  
4 TOLL-FREE TELEPHONE NUMBER TO OBTAIN A COMPLAINT FORM AND FURTHER  
5 INFORMATION.

6 IF THE BUILDER FAILED TO COMPLETE THE WORK OR PERFORMED POOR  
7 QUALITY WORK, YOU MAY FILE A COMPLAINT WITH THE COMMISSION BY  
8 CONTACTING THE TOLL-FREE TELEPHONE NUMBER. YOU MUST FILE ALL  
9 COMPLAINTS WITHIN TWO YEARS OF THE DATE THE BUILDER ABANDONED THE  
10 PROJECT OR PERFORMED THE POOR QUALITY WORK.

11 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. A contract for  
12 the construction of a new home or an improvement to an existing home  
13 when the cost of the work exceeds \$10,000 is not enforceable against  
14 a homeowner unless the contract:

15 (1) contains the builder's name, physical address, and  
16 certificate of registration number; and

17 (2) contains the notice required by Section 420.001.

18 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a)  
19 A provision in a contract for the construction of a new home, or the  
20 improvement of an existing home in which the value of the work  
21 exceeds \$10,000, that requires the parties to submit a dispute  
22 arising under the contract to binding arbitration must:

23 (1) be conspicuously printed or typed in a size equal  
24 to at least 14-point bold type or the computer equivalent; and

25 (2) provide a space immediately adjacent to the  
26 provision for the homeowner's signature to indicate acceptance of  
27 the provision.

1        (b) A provision described by Subsection (a) is not  
2 enforceable against the homeowner unless the requirements of  
3 Subsection (a) are met and the homeowner signs the space accepting  
4 the provision.

5        SECTION 35. Section 426.003(b), Property Code, is amended  
6 to read as follows:

7        (b) A builder who enters into a contract for the  
8 construction of a new home or an improvement to an existing home in  
9 which the value of the work exceeds \$20,000 ~~[transaction governed~~  
10 ~~by this title, other than the transfer of title of a new home from~~  
11 ~~the builder to the seller,]~~ shall register the home involved in the  
12 transaction with the commission. The registration must:

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

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

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

19                    (A) the date the construction is substantially  
20 completed ~~[of the agreement that describes the transaction between~~  
21 ~~the homeowner and the builder]~~; or

22                    (B) the date the new home is occupied, if the  
23 contract is for the construction of a new home ~~[commencement of the~~  
24 ~~work on the home]~~.

25        SECTION 36. Chapter 419, Property Code, is amended by  
26 adding Section 419.0031 to read as follows:

27        Sec. 419.0031. INTEREST ON UNPAID PENALTY. Interest

1 accrues on an unpaid administrative penalty at a rate of 18 percent  
2 compounded annually beginning on the day after the date specified  
3 for payment under Section 419.003.

4 SECTION 37. Section 426.001(a), Property Code, is amended  
5 to read as follows:

6 (a) This subtitle applies to a dispute between a builder and  
7 a homeowner if:

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

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

12 (B) damage to goods; and

13 (2) a request is submitted to the commission not later  
14 than the 30th day after ~~[on or before]~~ the 10th anniversary of:

15 (A) the date of the initial transfer of title  
16 from the builder to the first homeowner to own ~~[initial owner of]~~  
17 the home or the improvement that is the subject of the dispute; or

18 (B) ~~[7]~~ if there is not a closing in which title is  
19 transferred, the date on which the ~~[contract for]~~ construction of  
20 the improvement was substantially completed ~~[entered into]~~.

21 SECTION 38. Section 426.004, Property Code, is amended by  
22 amending Subsection (c) and adding Subsection (d) to read as  
23 follows:

24 (c) If the transfer of the title of the home from the builder  
25 to the initial homeowner occurred before January 1, 2004, or if the  
26 contract for improvements or additions between the builder and  
27 homeowner was entered into before January 1, 2004, the commission

1 shall register the home and the builder [~~the person who submits a~~  
2 ~~request involving the home~~] shall pay[, ~~in addition to the~~  
3 ~~inspection expenses required by this section,~~] the registration fee  
4 required by Section 426.003.

5 (d) The commission may reimburse an inspector for travel  
6 expenses incurred to complete an inspection regardless of whether  
7 the expenses exceed the amount collected under this section.

8 SECTION 39. Section 426.005, Property Code, is amended by  
9 amending Subsection (a) and adding Subsection (f) to read as  
10 follows:

11 (a) A homeowner or builder must comply with this subtitle  
12 before initiating an action for damages or other relief arising  
13 from an alleged construction defect.

14 (f) A homeowner is not required to comply with this subtitle  
15 if, at the time of a homeowner's requests for an inspection:

16 (1) the builder is not registered; or

17 (2) the certificate of registration of the builder has  
18 been revoked or is inactive.

19 SECTION 40. Section 426.006, Property Code, is amended to  
20 read as follows:

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

1 expires.

2 (b) If the alleged defect would violate the statutory  
3 warranty of habitability and was not discoverable by a reasonable,  
4 prudent inspection or examination of the home or improvement within  
5 the applicable warranty period, the state-sponsored inspection and  
6 dispute resolution process must be requested:

7 (1) on or before the second anniversary of the date of  
8 discovery of the conditions claimed to be evidence of the  
9 construction defect; and

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

15 SECTION 41. Section 426.007, Property Code, is amended to  
16 read as follows:

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

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

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

5           SECTION 42. Section 426.008, Property Code, is amended by  
6 adding Subsection (c) to read as follows:

7           (c) For the purposes of admissibility of a third-party  
8 inspector's recommendation or a ruling by a panel of state  
9 inspectors, the recommendation or ruling shall be considered a  
10 business record under Rule 902, Texas Rules of Evidence.

11           SECTION 43. Section 427.001, Property Code, is amended by  
12 amending Subsections (b), (c), and (d) and adding Subsection (c-1)  
13 to read as follows:

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

16                 (1) have a minimum of three [~~five~~] years' experience in  
17 the residential construction industry; and

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

20           (c) A third-party inspector who inspects an issue involving  
21 a structural matter or involving workmanship, materials, and a  
22 structural matter must:

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

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

27           (c-1) A third-party inspector who inspects an issue

1 involving a structural matter and an unrelated issue involving  
2 workmanship and materials matters must meet the requirements of  
3 Subsections (b) and (c).

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

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

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

11 SECTION 44. Chapter 427, Property Code, is amended by  
12 adding Section 427.003 to read as follows:

13 Sec. 427.003. NO CIVIL LIABILITY. (a) A person who  
14 performs services for the commission as a third-party inspector or  
15 a state inspector who does not act with wanton and wilful disregard  
16 for the rights, safety, or property of another is not liable for  
17 civil damages for any act or omission within the course and scope of  
18 carrying out the person's duties or functions as a third-party  
19 inspector or state inspector.

20 (b) This section does not apply to an intentional act of  
21 misconduct or gross negligence.

22 SECTION 45. Sections 428.001(d) and (g), Property Code, are  
23 amended to read as follows:

24 (d) At the time a [A] person [who] submits a request under  
25 this section, the person must send by certified mail, return  
26 receipt requested, a copy of the request, including evidence  
27 submitted with the request, to each other party involved in the



1 dispute.

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

5 SECTION 46. Section 428.003(a), Property Code, is amended  
6 to read as follows:

7 (a) On or before the 30th [~~15th~~] day after the date the  
8 commission receives a request, the commission shall appoint the  
9 next available third-party inspector from the applicable lists of  
10 third-party inspectors maintained by the commission under  
11 Subsection (c).

12 SECTION 47. Section 428.004, Property Code, is amended by  
13 amending Subsection (a) and adding Subsections (e) and (f) to read  
14 as follows:

15 (a) If the dispute involves workmanship and materials in the  
16 home of a nonstructural matter, the third-party inspector shall  
17 issue a recommendation not later than the 30th [~~15th~~] day after the  
18 date the third-party inspector receives the appointment from the  
19 commission.

20 (e) The commission may not require a builder to reimburse  
21 fees or inspection expenses under this section if, before the  
22 inspection, the builder offered to make repairs or have repairs  
23 made substantially equivalent to those required by the findings of  
24 the final report confirming the defect requiring repair.

25 (f) If, before or after the inspection, the builder has made  
26 or offered to make repairs substantially equivalent to those  
27 required by the findings of the final report confirming the defect,

1 the agency may not report the finding against the builder.

2 SECTION 48. Chapter 428, Property Code, is amended by  
3 adding Section 428.006 to read as follows:

4 Sec. 428.006. RESPONSE TO REQUEST. (a) If a request for  
5 state-sponsored inspection and dispute resolution is filed under  
6 this chapter and accepted by the commission, a party to the dispute  
7 who did not file the request, including a third-party warranty  
8 company, may submit a written response to the allegations specified  
9 in the request and present evidence in support of the response not  
10 later than the 15th day after the date the person received a copy of  
11 the request under Section 428.001(d).

12 (b) If the response alleges the existence of a construction  
13 defect not alleged in the original request, the third-party  
14 inspector shall inspect and issue a determination regarding that  
15 defect and any other defect alleged in the response.

16 SECTION 49. Section 429.001(c), Property Code, is amended  
17 to read as follows:

18 (c) The panel shall:

19 (1) review the recommendation for compliance with this  
20 title as [~~without a hearing unless a hearing is otherwise~~] required  
21 by rules adopted by the commission;

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

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

1           SECTION 50. Chapter 430, Property Code, is amended by  
2 adding Section 430.0015 to read as follows:

3           Sec. 430.0015. USE OF CERTAIN MATERIALS PROHIBITED. In  
4 adopting building and performance standards under Section 430.001,  
5 the commission shall require the use of graded rebar in accordance  
6 with the requirements of the building code in effect in the  
7 political subdivision in which the residential construction  
8 occurs.

9           SECTION 51. Section 430.005, Property Code, is amended to  
10 read as follows:

11           Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN  
12 CONSTRUCTION. (a) For the purpose of this title, the only  
13 statutory warranty and building and performance standards that  
14 apply to residential construction in unincorporated areas of  
15 counties that are considered economically distressed areas as  
16 defined by Section 15.001(11) of the Water Code and located within  
17 50 miles of an international border are the standards established  
18 for colonia housing programs administered by the Texas Department  
19 of Housing and Community Affairs, unless a county commissioners  
20 court has adopted other building and performance standards  
21 authorized by statute.

22           (b) This section does not exempt a builder in an area  
23 described by Subsection (a) from the registration requirements  
24 imposed by this title, including the requirements of Sections  
25 416.001 and 426.003.

26           (c) An allegation of a postconstruction defect in a  
27 construction project in an area described by Subsection (a) is

1 subject to the state-sponsored inspection and dispute resolution  
2 process described by this subtitle.

3 SECTION 52. Section 430.006, Property Code, is amended to  
4 read as follows:

5 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The  
6 warranties established under this chapter supersede all implied  
7 warranties. The only warranties that exist for residential  
8 construction or residential improvements are:

9 (1) warranties created by this chapter;

10 (2) warranties created [~~or~~] by other statutes  
11 expressly referring to residential construction or residential  
12 improvements;

13 (3) [~~or~~] any express, written warranty acknowledged  
14 by the homeowner and the builder; and

15 (4) warranties that apply to an area described by  
16 Section 430.005(a) as described by that section.

17 SECTION 53. Subchapter Z, Chapter 214, Local Government  
18 Code, is amended by adding Section 214.906 to read as follows:

19 Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A  
20 municipality may not issue a building permit to a builder, as  
21 defined by Section 401.003, Property Code, for construction  
22 described by Section 401.003(a) of that code, unless the  
23 municipality has determined that the builder is registered with the  
24 Texas Residential Construction Commission under Chapter 416 of that  
25 code or is exempt from registration under Section 401.005, Property  
26 Code. A municipality shall verify that the builder's registration  
27 number is both current and valid and make a record of that

1 registration number.

2           SECTION 54. (a) The House Committee on State Affairs shall  
3 conduct an interim study regarding the feasibility of creating a  
4 fund designed to reimburse aggrieved persons who experience actual  
5 damages from a builder's actions in violation of Title 16, Property  
6 Code. The speaker of the house of representatives shall appoint two  
7 additional members of the house of representatives who have  
8 expressed an interest in this issue as voting adjunct members of the  
9 committee for the purpose of participating in the study.

10           (b) The committee shall investigate:

11                 (1) potential methods for payments into the fund,  
12 procedures for managing the fund, and methods for making claims to  
13 the fund; and

14                 (2) similar funds created by other states and  
15 jurisdictions of the United States and the relative successes or  
16 failures of those funds.

17           (c) Not later than September 1, 2008, the committee shall  
18 submit to the speaker of the house of representatives and the  
19 members of the house of representatives:

20                 (1) the results of the study; and

21                 (2) any recommendations for statutory changes  
22 resulting from the findings of the study.

23           (d) This section expires October 1, 2008.

24           SECTION 55. (a) This Act applies only to the following that  
25 are filed on or after the effective date of this Act:

26                 (1) an application for a building permit or  
27 certification as a builder or a Texas Star Builder; or

1           (2) a request for state-sponsored inspection and  
2 dispute resolution.

3           (b) An application for a building permit or for  
4 certification as a builder or a Texas Star Builder or a request for  
5 state-sponsored inspection and dispute resolution that was filed  
6 before the effective date of this Act is governed by the law as it  
7 existed immediately before the effective date of this Act, and that  
8 law is continued in effect for that purpose.

9           SECTION 56. The changes in law made by this Act to Section  
10 416.001, Property Code, apply only to an offense committed on or  
11 after the effective date of this Act. An offense committed before  
12 the effective date of this Act is governed by the law in effect at  
13 the time the offense was committed, and the former law is continued  
14 in effect for that purpose. For the purposes of this section, an  
15 offense was committed before the effective date of this Act if any  
16 element of the offense occurred before that date.

17           SECTION 57. Section 416.012, Property Code, as added by  
18 this Act, applies only to work performed by a builder on or after  
19 the effective date of this Act. Work performed by a builder before  
20 that date is governed by the law in effect when the work is  
21 performed, and the former law is continued in effect for that  
22 purpose.

23           SECTION 58. The change in law made by Section 419.0031,  
24 Property Code, as added by this Act, applies only to an  
25 administrative penalty assessed on or after the effective date of  
26 this Act. A penalty assessed before the effective date of this Act  
27 is subject to the law in effect immediately before that date, and

1   that law is continued in effect for that purpose.

2           SECTION 59. The changes in law made by this Act by the  
3   amendment of Section 418.001, Property Code, apply only to conduct  
4   that occurs on or after the effective date of this Act. Conduct that  
5   occurs before that date is governed by the law in effect when the  
6   conduct occurs, and the former law is continued in effect for that  
7   purpose.

8           SECTION 60. This Act takes effect September 1, 2007.