

By: Ritter

H.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Residential Construction Commission.

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

SECTION 1. Sections 401.003(a) and (c), Property Code, are amended to read as follows:

(a) In this title, "builder" means any business entity or other person that ~~[individual who]~~, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(1) a new home;

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

(3) an improvement to the interior of an existing home when the cost of the work exceeds \$20,000.

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

SECTION 2. Section 401.005, Property Code, is amended by adding Subsection (c) to read as follows:

1 (c) An individual who builds a home or a material
2 improvement to a home with the intent to sell the home immediately
3 following completion of the building or remodeling and does not
4 live in the home for at least one year following completion of the
5 building or remodeling is liable as a builder under the warranty
6 obligation created by this title for work completed by the
7 individual.

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

10 Sec. 401.007. INJUNCTION. (a) The commission acting
11 through the executive director may petition the district court for
12 injunctive relief as provided by this section. If the district
13 court finds that a person is violating this chapter, the district
14 court may by injunction:

15 (1) prohibit the person from continuing the violation;
16 or
17 (2) grant any other injunctive relief warranted by the
18 facts.

19 (b) The attorney general shall institute and conduct a suit
20 authorized by this section at the request of the commission, acting
21 through the executive director, and in the name of the state.

22 (c) The suit for injunctive relief must be brought in Travis
23 County.

24 SECTION 4. Section 406.004(b), Property Code, is amended to
25 read as follows:

26 (b) A person may not be a member of the commission and may
27 not be a commission employee employed in a "bona fide executive,

1 administrative, or professional capacity," as that phrase is used
2 for purposes of establishing an exemption to the overtime
3 provisions of the federal Fair Labor Standards Act of 1938 (29
4 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

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

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

11 SECTION 5. Section 408.002, Property Code, is amended to
12 read as follows:

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

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

20 SECTION 6. Section 408.003, Property Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) The commission may distribute to consumers
23 informational materials and promotional items that contain
24 commission contact details and outreach information.

25 SECTION 7. Chapter 408, Property Code, is amended by adding
26 Section 408.005 to read as follows:

27 Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission

1 may seek reimbursement of any amounts due to the commission and
2 restitution for any dishonored payment instrument presented for
3 payment to the commission.

4 SECTION 8. Section 416.004, Property Code, is amended by
5 amending Subsection (a) and adding Subsection (c) to read as
6 follows:

7 (a) The commission shall charge and collect:

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

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

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

15 (c) All fees paid to the commission under this section are
16 nonrefundable.

17 SECTION 9. Section 416.008(d), Property Code, is amended to
18 read as follows:

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

23 SECTION 10. Section 416.011(d), Property Code, is amended
24 to read as follows:

25 (d) The certification issued by the commission as a "Texas
26 Star Builder" is valid for at most one year and renewable on a date
27 to be determined at the commission's discretion ~~[shall be for the~~

1 ~~same period of time as the builder's registration under this~~
2 ~~chapter].~~

3 SECTION 11. Section 417.003, Property Code, is amended to
4 read as follows:

5 Sec. 417.003. FEES. (a) The commission shall charge and
6 collect:

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

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

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

14 (b) All fees paid to the commission under this section are
15 nonrefundable.

16 SECTION 12. Sections 418.001 and 418.002, Property Code,
17 are amended to read as follows:

18 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. (a) A
19 person, including a builder or a person who is designated as a
20 builder's agent under Section 416.006 and who owns or controls a
21 majority ownership interest in the builder, is subject to
22 disciplinary action under this chapter for:

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

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

27 (3) naming false consideration in a contract to sell a

1 new home or in a construction contract;

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

4 (5) publishing a false or misleading advertisement;

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

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

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

16 (9) failure to register a home as required by Section
17 426.003;

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

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

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

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

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

3 (15) continuous or repeated failure to comply with the
4 statutory warranties and building performance standards required
5 by this title; or

6 (16) otherwise violating this title or a commission
7 rule adopted under this title.

8 (b) For the purposes of Subsection (a)(12), the commission
9 may not revoke a registration or certification or impose an
10 administrative penalty unless the determination of statutory or
11 common law fraud or misappropriation of funds has been made in a
12 final nonappealable judgment by a court.

13 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. On a
14 determination that a ground for disciplinary action under Section
15 418.001 exists, the commission may:

16 (1) revoke or suspend a registration or certification;
17 (2) probate the suspension of a registration or
18 certification; ~~or~~

19 (3) formally or informally reprimand a registered or
20 certified person; or

21 (4) impose an administrative penalty under Chapter
22 419.

23 SECTION 13. Chapter 418, Property Code, is amended by
24 adding Section 418.005 to read as follows:

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

1 (1) a builder; and

2 (2) a builder's agent who:

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

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

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

11 SECTION 14. Section 419.001, Property Code, is amended to
12 read as follows:

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

19 (b) To impose an administrative penalty for failure to
20 comply with statutory warranties or building and performance
21 standards, the commission must show at a hearing that the
22 violations were repeated or continuous.

23 SECTION 15. Section 426.003(b), Property Code, is amended
24 to read as follows:

25 (b) A builder who enters into a transaction governed by this
26 title, other than the transfer of title of a new home from the
27 builder to the seller, shall register the home involved in the

transaction with the commission. The registration must:

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

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

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

(A) the date of the substantial completion of the construction of the home by ~~[agreement that describes the transaction between the homeowner and]~~ the builder; ~~[or]~~

(B) the date the home is occupied; or

(C) the date of issuance of a certificate of occupancy or a certificate of completion ~~[the commencement of the work on the home]~~.

SECTION 16. Section 426.004, Property Code, is amended by adding Subsection (d) to read as follows:

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

SECTION 17. Section 428.001(g), Property Code, is amended to read as follows:

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

SECTION 18. Sections 428.004(a) and (d), Property Code, are amended to read as follows:

(a) If the dispute involves workmanship and materials in the

1 home of a nonstructural matter, the third-party inspector shall
2 issue a recommendation not later than the 30th [~~15th~~] day after the
3 date the third-party inspector receives the appointment from the
4 commission.

5 (d) Except as provided by this subsection, the third-party
6 inspector's recommendation may not include payment of any monetary
7 consideration. If the inspector finds for the party who submitted
8 the request, the commission may order the other party to reimburse
9 all or part of the fees and inspection expenses paid by the
10 requestor under Section 426.004. The commission may not require a
11 builder to reimburse fees or inspection expenses under this
12 subsection if, before the inspection, the builder made or offered
13 to make repairs substantially equivalent to those required by the
14 findings of the final report confirming the defect requiring
15 repair.

16 SECTION 19. Section 430.001(f), Property Code, is amended
17 to read as follows:

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

22 (1) occupancy; or

23 (2) transfer of title from the builder, developer, or
24 marketing company to the initial homeowner.

25 SECTION 20. Section 430.005, Property Code, is amended to
26 read as follows:

27 Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN

1 CONSTRUCTION. (a) For the purpose of this title, the only
2 statutory warranty and building and performance standards that
3 apply to residential construction in unincorporated areas of
4 counties that are considered economically distressed areas as
5 defined by Section 15.001(11) of the Water Code and located within
6 50 miles of an international border are the standards established
7 for colonial housing programs administered by the Texas Department
8 of Housing and Community Affairs, unless a county commissioners
9 court has adopted other building and performance standards
10 authorized by statute.

11 (b) This section does not exempt a builder in an area
12 described by Subsection (a) from the registration requirements
13 imposed by this title, including the requirements of Sections
14 416.001 and 426.003.

15 (c) An allegation of a postconstruction defect in a
16 construction project in an area described by Subsection (a) is
17 subject to the state-sponsored inspection and dispute resolution
18 process described by this subtitle.

19 SECTION 21. Section 430.006, Property Code, is amended to
20 read as follows:

21 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The
22 warranties established under this chapter supersede all implied
23 warranties. The only warranties that exist for residential
24 construction or residential improvements are:

25 (1) warranties created by this chapter;
26 (2) warranties created ~~[or]~~ by other statutes
27 expressly referring to residential construction or residential

1 improvements;

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

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

6 SECTION 22. Subchapter Z, Chapter 214, Local Government
7 Code, is amended by adding Section 214.906 to read as follows:

8 Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A
9 municipality may not issue a building permit to a builder, as
10 defined by Section 401.003, Property Code, for construction
11 described by Section 401.003(a), Property Code, unless the
12 municipality has determined that the builder is registered with the
13 Texas Residential Construction Commission under Chapter 416,
14 Property Code.

15 SECTION 23. (a) This Act applies only to the following
16 that are filed on or after the effective date of this Act:

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

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

21 (b) An application for a building permit or for
22 certification as a builder or a Texas Star Builder or a request for
23 state-sponsored inspection and dispute resolution that was filed
24 before the effective date of this Act is governed by the law as it
25 existed immediately before the effective date of this Act, and that
26 law is continued in effect for that purpose.

27 SECTION 24. This Act takes effect September 1, 2007.