

1-1 By: Ritter, McClendon (Senate Sponsor - Fraser) H.B. No. 1038
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 April 27, 2007, read first time and referred to Committee on
1-4 Business and Commerce; May 15, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 15, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1038 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the operation of the Texas Residential Construction
1-11 Commission; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter A, Chapter 5, Property Code, is
1-14 amended by adding Section 5.016 to read as follows:

1-15 Sec. 5.016. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES.

1-16 (a) A seller of residential real property that is exempt from
1-17 Title 16 under Section 401.005 shall give to the purchaser of the
1-18 property a written notice that reads substantially similar to the
1-19 following:

1-20 NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES
1-21 AND BUILDING AND PERFORMANCE STANDARDS

1-22 The property that is subject to this contract is exempt from
1-23 Title 16, Property Code, including the provisions of that title
1-24 that provide statutory warranties and building and performance
1-25 standards.

1-26 (b) A notice required by this section shall be delivered by
1-27 the seller to the purchaser on or before the effective date of an
1-28 executory contract binding the purchaser to purchase the property.
1-29 If a contract is entered into without the seller providing the
1-30 notice, the purchaser may terminate the contract for any reason on
1-31 or before the seventh day after the date the purchaser receives the
1-32 notice.

1-33 (c) This section does not apply to a transfer:

1-34 (1) under a court order or foreclosure sale;

1-35 (2) by a trustee in bankruptcy;

1-36 (3) to a mortgagee by a mortgagor or successor in
1-37 interest or to a beneficiary of a deed of trust by a trustor or
1-38 successor in interest;

1-39 (4) by a mortgagee or a beneficiary under a deed of
1-40 trust who has acquired the land at a sale conducted under a power of
1-41 sale under a deed of trust or a sale under a court-ordered
1-42 foreclosure or has acquired the land by a deed in lieu of
1-43 foreclosure;

1-44 (5) by a fiduciary in the course of the administration
1-45 of a decedent's estate, guardianship, conservatorship, or trust;

1-46 (6) from one co-owner to another co-owner of an
1-47 undivided interest in the real property;

1-48 (7) to a spouse or a person in the lineal line of
1-49 consanguinity of the seller;

1-50 (8) to or from a governmental entity; or

1-51 (9) of only a mineral interest, leasehold interest, or
1-52 security interest.

1-53 SECTION 2. Section 27.002(b), Property Code, is amended to
1-54 read as follows:

1-55 (b) Except as provided by this subsection, to [To] the
1-56 extent of conflict between this chapter and any other law,
1-57 including the Deceptive Trade Practices-Consumer Protection Act
1-58 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law
1-59 cause of action, this chapter prevails. To the extent of conflict
1-60 between this chapter and Title 16, Title 16 prevails.

1-61 SECTION 3. Section 27.004(d), Property Code, is amended to
1-62 read as follows:

1-63 (d) The court or arbitration tribunal shall abate [~~dismiss~~]

2-1 an action governed by this chapter if Subsection (c) does not apply
 2-2 and the court or tribunal, after a hearing, finds that the
 2-3 contractor is entitled to abatement [~~dismissal~~] because the
 2-4 claimant failed to comply with the requirements of Subtitle D,
 2-5 Title 16, if applicable, failed to provide the notice or failed to
 2-6 give the contractor a reasonable opportunity to inspect the
 2-7 property as required by Subsection (a), or failed to follow the
 2-8 procedures specified by Subsection (b). An action is automatically
 2-9 abated [~~dismissed~~] without the order of the court or tribunal
 2-10 beginning on the 11th day after the date a motion to abate [~~dismiss~~]
 2-11 is filed if the motion:

2-12 (1) is verified and alleges that the person against
 2-13 whom the action is pending did not receive the written notice
 2-14 required by Subsection (a), the person against whom the action is
 2-15 pending was not given a reasonable opportunity to inspect the
 2-16 property as required by Subsection (a), or the claimant failed to
 2-17 follow the procedures specified by Subsection (b) or Subtitle D,
 2-18 Title 16; and

2-19 (2) is not controverted by an affidavit filed by the
 2-20 claimant before the 11th day after the date on which the motion to
 2-21 abate [~~dismiss~~] is filed.

2-22 SECTION 4. Section 27.007, Property Code, is amended by
 2-23 adding Subsection (c) to read as follows:

2-24 (c) This section does not apply to a contract relating to a
 2-25 home required to be registered under Section 426.003.

2-26 SECTION 5. Section 41.007, Property Code, is amended by
 2-27 amending Subsection (a) and adding Subsections (c) and (d) to read
 2-28 as follows:

2-29 (a) A contract for improvements to an existing residence
 2-30 described by Section 41.001(b)(3) must contain:

2-31 (1) the contractor's certificate of registration
 2-32 number from the Texas Residential Construction Commission if the
 2-33 contractor is required to register as a builder with the
 2-34 commission;

2-35 (2) the address and telephone number at which the
 2-36 owner may file a complaint with the Texas Residential Construction
 2-37 Commission about the conduct of the contractor if the contractor is
 2-38 required to register as a builder with the commission; and

2-39 (3) the following warning conspicuously printed,
 2-40 stamped, or typed in a size equal to at least 10-point bold type or
 2-41 computer equivalent[, ~~next to the owner's signature line on the~~
 2-42 ~~contract~~]:

2-43 "IMPORTANT NOTICE: You and your contractor are responsible
 2-44 for meeting the terms and conditions of this contract. If you sign
 2-45 this contract and you fail to meet the terms and conditions of this
 2-46 contract, you may lose your legal ownership rights in your home.
 2-47 KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

2-48 (c) A provision of a contract for improvements to an
 2-49 existing residence described by Section 41.001(b)(3) that requires
 2-50 the parties to submit a dispute arising under the contract to
 2-51 binding arbitration must be conspicuously printed or typed in a
 2-52 size equal to at least 10-point bold type or the computer
 2-53 equivalent.

2-54 (d) A provision described by Subsection (c) is not
 2-55 enforceable against the owner unless the requirements of Subsection
 2-56 (c) are met.

2-57 SECTION 6. Section 401.002, Property Code, is amended by
 2-58 adding Subdivisions (7-a) and (8-a) to read as follows:

2-59 (7-a) "Improvement to the interior of an existing
 2-60 home" means any modification to the interior living space of a home,
 2-61 which includes the addition or installation of permanent fixtures
 2-62 inside the home. An improvement to the interior of an existing home
 2-63 does not include improvements to an existing home if the
 2-64 improvements are designed primarily to repair or replace the home's
 2-65 component parts.

2-66 (8-a) "Material improvement" means a modification to
 2-67 an existing home that either increases or decreases the home's
 2-68 total square footage of living space that also modifies the home's
 2-69 foundation, perimeter walls, or roof. A material improvement does

3-1 not include modifications to an existing home if the modifications
3-2 are designed primarily to repair or replace the home's component
3-3 parts.

3-4 SECTION 7. Section 401.003, Property Code, is amended to
3-5 read as follows:

3-6 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
3-7 "builder" means any person [~~business entity or individual~~] who, for
3-8 a fixed price, commission, fee, wage, or other compensation, sells,
3-9 constructs, or supervises or manages the construction of, or
3-10 contracts for the construction of or the supervision or management
3-11 of the construction of:

3-12 (1) a new home;
3-13 (2) a material improvement to a home, other than an
3-14 improvement solely to replace or repair a roof of an existing home;
3-15 or

3-16 (3) an improvement to the interior of an existing home
3-17 when the cost of the work exceeds \$10,000 [~~\$20,000~~].

3-18 (b) The term includes:

3-19 (1) an owner, officer, director, shareholder,
3-20 partner, affiliate, subsidiary, or employee of the builder;

3-21 (2) a risk retention group governed by Article 21.54,
3-22 Insurance Code, that insures all or any part of a builder's
3-23 liability for the cost to repair a residential construction defect;
3-24 and

3-25 (3) a third-party warranty company and its
3-26 administrator.

3-27 (c) The term does not include any person [~~business entity or~~
3-28 ~~individual~~] who:

3-29 (1) has been issued a license by this state or an
3-30 agency [~~or political subdivision~~] of this state to practice a trade
3-31 or profession related to or affiliated with residential
3-32 construction if the work being done by the entity or individual to
3-33 the home is solely for the purpose for which the license was issued;
3-34 or

3-35 (2) sells a new home and:

3-36 (A) does not construct or supervise or manage the
3-37 construction of the home; and

3-38 (B) holds a license issued under Chapter 1101,
3-39 Occupations Code, or is exempt from that chapter under Section
3-40 1101.005, Occupations Code.

3-41 SECTION 8. Section 401.005, Property Code, is amended by
3-42 amending Subsection (b) and adding Subsection (c) to read as
3-43 follows:

3-44 (b) This title does not apply to a homeowner or to a
3-45 homeowner's real estate broker, agent, interior designer
3-46 registered under Chapter 1053, Occupations Code, interior
3-47 decorator, or property manager who supervises or arranges for the
3-48 construction of an improvement to a home owned by the homeowner.

3-49 (c) An individual who builds a home or a material
3-50 improvement to a home and sells the home immediately following
3-51 completion of the building or remodeling and does not live in the
3-52 home for at least one year following completion of the building or
3-53 remodeling is responsible as a builder under the warranty
3-54 obligation created by this title for work completed by the
3-55 individual. Responsibility under this subsection does not
3-56 automatically require an individual to register under Section
3-57 416.001.

3-58 SECTION 9. Chapter 401, Property Code, is amended by adding
3-59 Section 401.007 to read as follows:

3-60 Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission
3-61 has reasonable cause to believe that a person is violating a statute
3-62 to which this chapter applies, the commission, in addition to any
3-63 other authorized action, may issue an order to cease and desist from
3-64 the violation or an order to take affirmative action, or both, to
3-65 enforce compliance. A person may appeal the order directly to
3-66 district court in accordance with Chapter 2001, Government Code.

3-67 (b) Before issuing an order under this section, the
3-68 commission shall set and give notice of a hearing before a hearings
3-69 officer. The hearing is governed by Chapter 2001, Government Code.

4-1 Based on the findings of fact, conclusions of law, and
 4-2 recommendations of the hearings officer, the commission by order
 4-3 may find whether a violation has occurred.

4-4 (c) The commission, after providing notice and an
 4-5 opportunity to appear for a hearing, may impose against a person who
 4-6 violates a cease and desist order an administrative penalty in an
 4-7 amount not to exceed \$1,000 for each day of violation. In addition
 4-8 to any other remedy provided by law, the attorney general or the
 4-9 commission may institute in district court a suit for injunctive
 4-10 relief and to collect an administrative penalty. A bond is not
 4-11 required of the commission with respect to injunctive relief
 4-12 granted under this section. In the action, the court may enter as
 4-13 proper an order awarding a preliminary or final injunction.

4-14 (d) A suit by the attorney general under this section must
 4-15 be brought in Travis County.

4-16 (e) The attorney general and the commission may recover
 4-17 reasonable expenses incurred in obtaining injunctive relief under
 4-18 this section, including court costs, reasonable attorney's fees,
 4-19 investigative costs, witness fees, and deposition costs.

4-20 (f) If a party seeks review of the order by the commission,
 4-21 the party shall file a petition initiating judicial review not
 4-22 later than the 30th day after the date of the issuance of the
 4-23 decision.

4-24 SECTION 10. Section 406.001, Property Code, is amended by
 4-25 adding Subsections (a-1) and (c) to read as follows:

4-26 (a-1) In making appointments under Subsection (a)(2), the
 4-27 governor shall consider individuals who can represent the interests
 4-28 of homeowners, including individuals who have experience
 4-29 representing consumer or homeowner interests.

4-30 (c) A person may not be a public member of the commission if
 4-31 the person or the person's spouse:

4-32 (1) is a builder registered with the commission, or is
 4-33 otherwise registered, certified, or licensed by a regulatory agency
 4-34 in the field of residential construction;

4-35 (2) is employed by or participates in the management
 4-36 of a business entity or other organization regulated by or
 4-37 receiving money from the commission;

4-38 (3) owns or controls, directly or indirectly, more
 4-39 than a 10 percent interest in a business entity or other
 4-40 organization regulated by or receiving money from the commission;
 4-41 or

4-42 (4) uses or receives a substantial amount of tangible
 4-43 goods, services, or money from the commission other than
 4-44 compensation or reimbursement authorized by law for commission
 4-45 membership, attendance, or expenses.

4-46 SECTION 11. Sections 406.004(b) and (c), Property Code, are
 4-47 amended to read as follows:

4-48 (b) A person may not be a member of the commission and may
 4-49 not be a commission employee employed in a "bona fide executive,
 4-50 administrative, or professional capacity," as that phrase is used
 4-51 for purposes of establishing an exemption to the overtime
 4-52 provisions of the federal Fair Labor Standards Act of 1938 (29
 4-53 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

4-54 (1) the person is an officer, employee, manager, or
 4-55 paid consultant of a Texas trade association or consumer
 4-56 association in the field of residential construction; or

4-57 (2) the person's spouse is an officer, [a] manager, or
 4-58 paid consultant of a Texas trade association or consumer
 4-59 association in the field of residential construction.

4-60 (c) A person may not be a member of the commission or act as
 4-61 the general counsel to the commission if the person is required to
 4-62 register as a lobbyist under Chapter 305, Government Code [~~because~~
 4-63 ~~of the person's activities for compensation on behalf of a~~
 4-64 ~~profession related to the operation of the commission].~~

4-65 SECTION 12. Section 408.002, Property Code, is amended to
 4-66 read as follows:

4-67 Sec. 408.002. FEES. (a) The commission shall adopt fees
 4-68 as required by this title in amounts that are reasonable and
 4-69 necessary to provide sufficient revenue to cover the costs of

5-1 administering this title.

5-2 (b) The commission may charge a late fee for late payment of
 5-3 any fee due to the commission. The late fee may be any amount that
 5-4 does not exceed the amount of the fee due.

5-5 (c) The commission may charge a reasonable fee for:

5-6 (1) a homeowner to submit a request for
 5-7 state-sponsored inspection under Subtitle D;

5-8 (2) providing public information requested under
 5-9 Chapter 552, Government Code, excluding information requested from
 5-10 the commission under Section 409.001; or

5-11 (3) producing, mailing, and distributing special
 5-12 printed materials and publications generated in bulk by the
 5-13 commission for use and distribution by builders.

5-14 (d) The commission may waive or reduce the fee for an
 5-15 inspection under Subtitle D for a homeowner who demonstrates an
 5-16 inability to pay the fee.

5-17 SECTION 13. Section 408.003, Property Code, is amended by
 5-18 adding Subsection (c) to read as follows:

5-19 (c) The commission may procure and distribute to consumers
 5-20 informational materials and promotional items that contain
 5-21 commission contact details and outreach information.

5-22 SECTION 14. Chapter 408, Property Code, is amended by
 5-23 adding Section 408.005 to read as follows:

5-24 Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission
 5-25 may seek reimbursement of any amounts due to the commission and
 5-26 restitution for any dishonored payment instrument presented for
 5-27 payment to the commission.

5-28 SECTION 15. Chapter 409, Property Code, is amended by
 5-29 adding Section 409.0011 to read as follows:

5-30 Sec. 409.0011. BUILDER LIST. (a) In this section, "volume
 5-31 builder" means a builder who registers at least 100 homes each year
 5-32 as provided by Section 426.003.

5-33 (b) The commission shall create and make accessible to the
 5-34 public an electronic list and a hard-copy list of builders who:

5-35 (1) are registered with the commission; and
 5-36 (2) provide in this state building services, including
 5-37 accessible floor plans, to persons with mobility-related special
 5-38 needs.

5-39 (c) The electronic list required under Subsection (b) shall
 5-40 provide, if available, the following information with respect to
 5-41 each listed builder:

5-42 (1) a link to the builder's website; and
 5-43 (2) contact information for the builder, including the
 5-44 municipalities where the builder provides building services
 5-45 described by Subsection (b)(2).

5-46 (d) The commission shall contact all volume builders in this
 5-47 state and encourage those builders to develop floor plans that are
 5-48 designed to be accessible for persons with mobility-related special
 5-49 needs.

5-50 (e) The Veterans' Land Board shall make accessible to the
 5-51 public on its Internet website and in hard-copy format the
 5-52 electronic list required under Subsection (b).

5-53 SECTION 16. Section 409.003, Property Code, is amended by
 5-54 adding Subsections (d), (e), and (f) to read as follows:

5-55 (d) The commission shall make available to the public
 5-56 information about each complaint that resulted in disciplinary
 5-57 action by the commission.

5-58 (e) The commission may not disclose the address of any
 5-59 individual home registered with the commission when making
 5-60 information available to the public under this title, except as
 5-61 necessary to implement this title.

5-62 (f) Notwithstanding Subsections (d) and (e), the commission
 5-63 may not disclose the address of an individual home registered with
 5-64 the commission:

5-65 (1) on the commission's Internet website; or
 5-66 (2) in connection with an open records request under
 5-67 Chapter 552, Government Code.

5-68 SECTION 17. Chapter 409, Property Code, is amended by
 5-69 adding Section 409.004 to read as follows:

6-1 Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall
 6-2 make available to the public a list of each builder who holds a
 6-3 certificate of registration issued under Chapter 416.

6-4 SECTION 18. Section 416.002, Property Code, is amended by
 6-5 adding Subsection (e) to read as follows:

6-6 (e) Based on a commission investigation of an alleged
 6-7 violation of Sections 418.001(a)(14)-(20), the commission may
 6-8 require an applicant for renewal of a certificate of registration
 6-9 to disclose to the commission every person with an ownership
 6-10 interest in the applicant's business as a builder. This subsection
 6-11 does not apply to a publicly traded company.

6-12 SECTION 19. Section 416.004, Property Code, is amended by
 6-13 amending Subsection (a) and adding Subsection (c) to read as
 6-14 follows:

6-15 (a) The commission shall charge and collect:

6-16 (1) a filing fee for an application for an original
 6-17 certificate of registration that does not exceed \$500; ~~and~~

6-18 (2) a fee for renewal of a certificate of registration
 6-19 that does not exceed \$300; and

6-20 (3) a late fee that does not exceed the amount of the
 6-21 fee due if payment of a registration application or renewal fee due
 6-22 under this title is late.

6-23 (c) All fees paid to the commission under this section are
 6-24 nonrefundable.

6-25 SECTION 20. Sections 416.008(d) and (e), Property Code, are
 6-26 amended to read as follows:

6-27 (d) The hearing officer may grant a motion for continuance
 6-28 of the hearing on the request of the commission or either party ~~[may~~
 6-29 ~~be continued from time to time with the consent of the applicant].~~

6-30 (e) The hearing shall be held before a hearings officer
 6-31 appointed by the commission. After the hearing, the hearings
 6-32 officer shall enter an appropriate order. ~~[The order of the~~
 6-33 ~~hearings officer under this subsection is a final decision.]~~

6-34 SECTION 21. Section 416.010, Property Code, is amended by
 6-35 adding Subsection (e) to read as follows:

6-36 (e) A builder may designate a United States Postal Service
 6-37 postal box for use in correspondence. The builder may not use the
 6-38 box as the builder's principal place of business for purposes of
 6-39 this section.

6-40 SECTION 22. Section 416.011(d), Property Code, is amended
 6-41 to read as follows:

6-42 (d) The certification issued by the commission as a "Texas
 6-43 Star Builder" is valid for at most one year and renewable on a date
 6-44 to be determined at the commission's discretion ~~[shall be for the~~
 6-45 ~~same period of time as the builder's registration under this~~
 6-46 ~~chapter].~~

6-47 SECTION 23. Chapter 416, Property Code, is amended by
 6-48 adding Section 416.012 to read as follows:

6-49 Sec. 416.012. CONTINUING EDUCATION PROGRAMS. (a) The
 6-50 commission shall recognize or administer continuing education
 6-51 programs for builders registered by the commission. A registered
 6-52 builder must participate in the programs to the extent required by
 6-53 this section to maintain the builder's registration.

6-54 (b) A builder who registers for the first time on or after
 6-55 September 1, 2007, must complete, during the first year the builder
 6-56 is registered with the commission, five hours of continuing
 6-57 education, one hour of which must address ethics.

6-58 (c) A builder who is registered before September 1, 2007,
 6-59 and all other builders who register for the first time on or after
 6-60 September 1, 2007, and satisfy the requirements of Subsection (b),
 6-61 must complete five hours of continuing education every five years,
 6-62 one hour of which must address ethics.

6-63 (d) The commission shall permit a registered builder to
 6-64 receive continuing education credit for educational, technical,
 6-65 ethical, or professional management activities related to the
 6-66 practice of residential construction, including:

6-67 (1) successfully completing or auditing a course
 6-68 sponsored by an institution of higher education;

6-69 (2) successfully completing a course certified by a

7-1 professional or trade organization;
 7-2 (3) attending a seminar, tutorial, short course,
 7-3 correspondence course, videotaped course, or televised course on
 7-4 the practice of residential construction;
 7-5 (4) participating in an in-house course sponsored by a
 7-6 corporation or other business entity;
 7-7 (5) teaching a course described by Subdivisions
 7-8 (1)-(4);
 7-9 (6) publishing an article, paper, or book on the
 7-10 practice of residential construction;
 7-11 (7) making or attending a presentation at a meeting of
 7-12 a residential or builder association or organization or writing a
 7-13 paper presented at the meeting;
 7-14 (8) participating in the activities of a residential
 7-15 or builder association, including serving on a committee of the
 7-16 organization; and
 7-17 (9) engaging in self-directed study on the practice of
 7-18 residential construction.
 7-19 (e) A registered builder may not receive more than two
 7-20 continuing education credit hours during each five-year period for
 7-21 engaging in self-directed study.
 7-22 (f) At least two hours of the continuing education
 7-23 requirement under this section must address:
 7-24 (1) limited statutory warranties;
 7-25 (2) building and performance standards; and
 7-26 (3) requirements of the International Residential
 7-27 Code as adopted under Section 430.001 and other statutes and rules
 7-28 that apply to builders under this title.
 7-29 (g) A builder's agent or other designated individual may
 7-30 satisfy the requirements of this section for the builder if the
 7-31 builder is a corporation or other business entity.
 7-32 SECTION 24. Section 417.003, Property Code, is amended to
 7-33 read as follows:
 7-34 Sec. 417.003. FEES. (a) The commission shall charge and
 7-35 collect:
 7-36 (1) a filing fee for an application for certification
 7-37 under this chapter that does not exceed \$100; ~~and~~
 7-38 (2) a fee for renewal of a certification under this
 7-39 chapter that does not exceed \$50; and
 7-40 (3) a late fee that does not exceed the amount of the
 7-41 fee due if payment of a registration or application fee due under
 7-42 this title is late.
 7-43 (b) All fees paid to the commission under this section are
 7-44 nonrefundable.
 7-45 SECTION 25. Sections 418.001 and 418.002, Property Code,
 7-46 are amended to read as follows:
 7-47 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person,
 7-48 including a builder or a person who is designated as a builder's
 7-49 agent under Section 416.006, or a person who owns or controls a
 7-50 majority ownership interest in the builder is subject to
 7-51 disciplinary action under this chapter for:
 7-52 (1) fraud or deceit in obtaining a registration or
 7-53 certification under this subtitle;
 7-54 (2) misappropriation or misapplication of trust funds
 7-55 in the practice of residential construction, including a violation
 7-56 of Chapter 32, Penal Code, or Chapter 162, if found by a final
 7-57 nonappealable court judgment;
 7-58 (3) naming false consideration in a contract to sell a
 7-59 new home or in a construction contract;
 7-60 (4) discriminating on the basis of race, color,
 7-61 religion, sex, national origin, or ancestry;
 7-62 (5) publishing a false or misleading advertisement;
 7-63 (6) failure to honor, within a reasonable time, a
 7-64 check issued to the commission, or any other instrument of payment,
 7-65 including a credit or debit card or electronic fund transfer, after
 7-66 the commission has sent by certified mail a request for payment to
 7-67 the person's last known business address, according to commission
 7-68 records;
 7-69 (7) failure to pay an administrative penalty assessed

8-1 by the commission under Chapter 419 or a fee due under Chapter 426;
 8-2 (8) failure to pay [~~nonpayment of~~] a final
 8-3 nonappealable court judgment arising from a construction defect or
 8-4 other transaction between the person and a homeowner;
 8-5 (9) failure to register a home as required by Section
 8-6 426.003;
 8-7 (10) failure to remit the fee for registration of a
 8-8 home under Section 426.003; [~~or~~]
 8-9 (11) failure to reimburse a homeowner the amount
 8-10 ordered by the commission as provided by [~~in~~] Section 428.004(d);
 8-11 (12) engaging in statutory or common-law fraud or
 8-12 misappropriation of funds, as determined by the commission after a
 8-13 hearing under Section 418.003;
 8-14 (13) a repeated failure to participate in the
 8-15 state-sponsored inspection and dispute resolution process if
 8-16 required by this title;
 8-17 (14) failure to register as a builder as required
 8-18 under Chapter 416;
 8-19 (15) using or attempting to use a certificate of
 8-20 registration that has expired or that has been revoked;
 8-21 (16) falsely representing that the person holds a
 8-22 certificate of registration issued under Chapter 416;
 8-23 (17) acting as a builder using a name other than the
 8-24 name or names disclosed to the commission;
 8-25 (18) aiding, abetting, or conspiring with a person who
 8-26 does not hold a certificate of registration to evade the provisions
 8-27 of this title or rules adopted under this title, if found by a final
 8-28 nonappealable court judgment;
 8-29 (19) allowing the person's certificate of registration
 8-30 to be used by another person;
 8-31 (20) acting as an agent, partner, or associate of a
 8-32 person who does not hold a certificate of registration with the
 8-33 intent to evade the provisions of this title or rules adopted under
 8-34 this title;
 8-35 (21) a failure to reasonably perform on an accepted
 8-36 offer to repair or a repeated failure to make an offer to repair
 8-37 based on:
 8-38 (A) the recommendation of a third-party
 8-39 inspector under Section 428.004; or
 8-40 (B) the final holding of an appeal under Chapter
 8-41 429;
 8-42 (22) a repeated failure to respond to a commission
 8-43 request for information;
 8-44 (23) a failure to obtain a building permit required by
 8-45 a political subdivision before constructing a new home or an
 8-46 improvement to an existing home;
 8-47 (24) abandoning, without justification, any home
 8-48 improvement contract or new home construction project engaged in or
 8-49 undertaken by the person, if found to have done so by a final,
 8-50 nonappealable court judgment; or
 8-51 (25) otherwise violating this title or a commission
 8-52 rule adopted under this title.
 8-53 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a) On a
 8-54 determination that a ground for disciplinary action under Section
 8-55 418.001 exists, the commission may:
 8-56 (1) revoke or suspend a registration or certification
 8-57 in the event of repeated prior violations that have resulted in
 8-58 disciplinary action;
 8-59 (2) probate the suspension of a registration or
 8-60 certification; [~~or~~]
 8-61 (3) formally or informally reprimand a registered or
 8-62 certified person; or
 8-63 (4) impose an administrative penalty under Chapter
 8-64 419.
 8-65 (b) The commission must consider the factors described by
 8-66 Section 419.002(b) before taking disciplinary action under this
 8-67 chapter.
 8-68 (c) For purposes of Section 418.001(12), the commission may
 8-69 not conduct a hearing, revoke, or suspend a registration or

9-1 certification unless the determination of statutory or common-law
 9-2 fraud or misappropriation of funds has been made in a final
 9-3 nonappealable judgment by a court.

9-4 (d) Prior to imposing disciplinary action under Subsection
 9-5 (a)(1) based upon grounds that involve a transaction between a
 9-6 builder and a homeowner, there must be repeated prior violations
 9-7 that have resulted in disciplinary action that involve the greater
 9-8 of:

9-9 (1) at least three homes registered by the builder
 9-10 under Section 426.003; or

9-11 (2) at least one percent of the homes registered by the
 9-12 builder under Section 426.003 during the preceding 12 months.

9-13 (e) When the commission has information that a matter may be
 9-14 criminal in nature, the commission may refer the matter to a local
 9-15 district attorney or county attorney for investigation.

9-16 SECTION 26. Section 418.004, Property Code, is amended by
 9-17 adding Subsection (c) to read as follows:

9-18 (c) An appeal to a district court of a final decision of the
 9-19 commission under this section regarding a revocation or suspension
 9-20 of a registration or certification is determined by substantial
 9-21 evidence.

9-22 SECTION 27. Chapter 418, Property Code, is amended by
 9-23 adding Section 418.005 to read as follows:

9-24 Sec. 418.005. RESPONSIBILITY FOR ADMINISTRATIVE ACTIONS.

9-25 (a) The commission may simultaneously take administrative action
 9-26 under this chapter against:

9-27 (1) a builder; and
 9-28 (2) a person who owns or controls a majority ownership
 9-29 interest in the builder.

9-30 (b) A builder and a person who owns or controls a majority
 9-31 ownership interest in the builder are jointly and severally liable
 9-32 for any amounts due to the commission under this title.

9-33 SECTION 28. Section 419.001, Property Code, is amended to
 9-34 read as follows:

9-35 Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 9-36 [In a contested case involving disciplinary action, the] commission
 9-37 may[, as part of the commission's order,] impose an administrative
 9-38 penalty on a [registered or certified] person who violates this
 9-39 title or a rule adopted or order issued by the commission under this
 9-40 title.

9-41 SECTION 29. Section 419.002, Property Code, is amended by
 9-42 amending Subsection (a) and adding Subsection (c) to read as
 9-43 follows:

9-44 (a) Except as provided by Subsection (c), an [An]
 9-45 administrative penalty imposed under this chapter may not exceed
 9-46 \$10,000 [~~\$5,000~~] for each violation.

9-47 (c) A violation of Section 418.001(a)(2) or (12) is
 9-48 punishable by a penalty not to exceed \$100,000.

9-49 SECTION 30. Subtitle C, Title 16, Property Code, is amended
 9-50 by adding Chapter 420 to read as follows:

9-51 CHAPTER 420. BUILDING CONTRACT PROVISIONS

9-52 Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract
 9-53 for the construction of a new home or an improvement to an existing
 9-54 home required to be registered under Section 426.003, the contract
 9-55 must contain a notice to the consumer in at least 10-point bold type
 9-56 or the computer equivalent that gives the telephone number of the
 9-57 commission and states:

9-58 STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF
 9-59 REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF
 9-60 THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON
 9-61 CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME
 9-62 OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE
 9-63 TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR
 9-64 AND MATERIALS).

9-65 YOU MAY CONTACT THE COMMISSION AT [insert commission's
 9-66 telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID
 9-67 CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION
 9-68 AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS,
 9-69 REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

10-1 This contract is subject to Chapter 426, Property Code. The
 10-2 provisions of that chapter govern the process that must be followed
 10-3 in the event a dispute arises out of an alleged construction
 10-4 defect. If you have a complaint concerning a construction defect
 10-5 you may contact the Commission at the toll-free telephone number to
 10-6 learn how to proceed under the State-Sponsored Inspection and
 10-7 Dispute Resolution Process.

10-8 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract
 10-9 for the construction of a new home or an improvement to an existing
 10-10 home required to be registered under Section 426.003, the contract
 10-11 is not enforceable against a homeowner unless the contract:

10-12 (1) contains the builder's name and certificate of
 10-13 registration number; and

10-14 (2) contains the notice required by Section 420.001.

10-15 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION.

10-16 (a) In a contract for the construction of a new home or the
 10-17 improvement of an existing home required to be registered under
 10-18 Section 426.003 and that contains a provision requiring the parties
 10-19 to submit a dispute arising under the contract to binding
 10-20 arbitration, the provision must be conspicuously printed or typed
 10-21 in a size equal to at least 10-point bold type or the computer
 10-22 equivalent.

10-23 (b) A provision described by Subsection (a) is not
 10-24 enforceable against the homeowner unless the requirements of
 10-25 Subsection (a) are met.

10-26 SECTION 31. Section 426.003(b), Property Code, is amended
 10-27 to read as follows:

10-28 (b) A builder who enters [~~into~~] a transaction governed by
 10-29 this title, other than the transfer of title of a new home from the
 10-30 builder to the seller, shall register the home involved in the
 10-31 transaction with the commission. The registration must:

10-32 (1) include the information required by the commission
 10-33 by rule;

10-34 (2) be accompanied by the fee required by Subsection
 10-35 (c); and

10-36 (3) be delivered to the commission not later than the
 10-37 15th day after the earlier of:

10-38 (A) the date of the substantial completion of the
 10-39 home or other residential construction project [~~of the agreement~~
 10-40 ~~that describes the transaction between the homeowner and the~~
 10-41 ~~builder]; [~~or~~]~~

10-42 (B) the date the new home is occupied; or

10-43 (C) the date of issuance of a certificate of
 10-44 occupancy or a certificate of completion [~~commencement of the work~~
 10-45 ~~on the home].~~

10-46 SECTION 32. Section 426.001(a), Property Code, is amended
 10-47 to read as follows:

10-48 (a) This subtitle applies to a dispute between a builder and
 10-49 a homeowner if:

10-50 (1) the dispute arises out of an alleged construction
 10-51 defect, other than a claim solely for:

10-52 (A) personal injury, survival, or wrongful
 10-53 death; or

10-54 (B) damage to goods; and

10-55 (2) a request is submitted to the commission not later
 10-56 than the 30th day after [~~on or before~~] the 10th anniversary of:

10-57 (A) the date of the initial transfer of title
 10-58 from the builder to the initial owner of the home or the improvement
 10-59 that is the subject of the dispute; or

10-60 (B) [~~7~~] if there is not a closing in which title is
 10-61 transferred, the date on which the [~~contract for~~] construction of
 10-62 the improvement was substantially completed [~~entered into~~].

10-63 SECTION 33. Section 426.004, Property Code, is amended by
 10-64 amending Subsection (c) and adding Subsection (d) to read as
 10-65 follows:

10-66 (c) If the transfer of the title of the home from the builder
 10-67 to the initial homeowner occurred before January 1, 2004, or if the
 10-68 contract for improvements or additions between the builder and
 10-69 homeowner was entered into before January 1, 2004, the commission

11-1 shall register the home and the builder ~~[the person who submits a~~
 11-2 ~~request involving the home]~~ shall pay~~[, in addition to the~~
 11-3 ~~inspection expenses required by this section,]~~ the registration fee
 11-4 required by Section 426.003.

11-5 (d) The commission may reimburse an inspector for travel
 11-6 expenses incurred to complete an inspection regardless of whether
 11-7 the expenses exceed the amount collected under this section.

11-8 SECTION 34. Section 426.005, Property Code, is amended by
 11-9 amending Subsection (a) and adding Subsection (f) to read as
 11-10 follows:

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

11-14 (f) A homeowner is not required to comply with this subtitle
 11-15 if, at the time a homeowner and a builder enter into a contract
 11-16 covered by this title:

11-17 (1) the builder was not registered; or
 11-18 (2) the certificate of registration of the builder has
 11-19 been revoked.

11-20 SECTION 35. Section 426.006, Property Code, is amended to
 11-21 read as follows:

11-22 Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
 11-23 RESOLUTION. (a) For an alleged defect discovered during an
 11-24 applicable warranty period, the [The] state-sponsored inspection
 11-25 and dispute resolution process must be requested on or before the
 11-26 second anniversary of the date of discovery of the conditions
 11-27 claimed to be evidence of the construction defect but not later than
 11-28 the 90th [30th] day after the date the applicable warranty period
 11-29 expires.

11-30 (b) If the alleged defect would violate the statutory
 11-31 warranty of habitability and was not discoverable by a reasonable,
 11-32 prudent inspection or examination of the home or improvement within
 11-33 the applicable warranty period, the state-sponsored inspection and
 11-34 dispute resolution process must be requested:

11-35 (1) on or before the second anniversary of the date of
 11-36 discovery of the conditions claimed to be evidence of the
 11-37 construction defect; and

11-38 (2) not later than the 10th anniversary of the date of
 11-39 the initial transfer of title from the builder to the initial owner
 11-40 of the home or improvement that is the subject of the dispute or, if
 11-41 there is not a closing, the date on which the contract for
 11-42 construction of the improvement is entered into.

11-43 SECTION 36. Section 426.007, Property Code, is amended to
 11-44 read as follows:

11-45 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
 11-46 who submits a request for state-sponsored inspection and dispute
 11-47 resolution or responds to a request under Chapter 428 must disclose
 11-48 in the request or response the name of any expert [person] who,
 11-49 before the request is submitted, inspected the home on behalf of the
 11-50 requestor or respondent in connection with the construction defect
 11-51 alleged in the request or response. If an expert's [a person's]
 11-52 name is known to the requestor or respondent at the time of the
 11-53 request or response and is not disclosed as required by this
 11-54 section, the requestor or respondent may not designate the person
 11-55 as an expert or use materials prepared by that person in:

11-56 (1) the state-sponsored inspection and dispute
 11-57 resolution process arising out of the request; or

11-58 (2) any action arising out of the construction defect
 11-59 that is the subject of the request or response.

11-60 SECTION 37. Section 426.008, Property Code, is amended by
 11-61 adding Subsection (c) to read as follows:

11-62 (c) For the purposes of admissibility of a third-party
 11-63 inspector's recommendation or a ruling by a panel of state
 11-64 inspectors, the recommendation or ruling shall be considered a
 11-65 business record under Rule 902, Texas Rules of Evidence.

11-66 SECTION 38. Section 427.001, Property Code, is amended by
 11-67 amending Subsections (b), (c), and (d) and adding Subsection (c-1)
 11-68 to read as follows:

11-69 (b) A third-party inspector who inspects an issue involving

workmanship and materials must:

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

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

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

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

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

(c-1) A third-party inspector who inspects an issue involving a structural matter and an unrelated issue involving workmanship and materials matters must meet the requirements of Subsections (b) and (c).

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

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

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

SECTION 39. Chapter 427, Property Code, is amended by adding Section 427.003 to read as follows:

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

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

SECTION 40. Sections 428.001(d) and (g), Property Code, are amended to read as follows:

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

(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 41. Section 428.003(a), Property Code, is amended to read as follows:

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

SECTION 42. Section 428.004, Property Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

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

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

(f) If, before the inspection, the builder has made or offered to make repairs substantially equivalent to those required by the findings of the final report confirming the defect, the agency may not list the finding on the commission's Internet website.

13-1 SECTION 43. Section 429.001(c), Property Code, is amended
13-2 to read as follows:

13-3 (c) The panel shall:

13-4 (1) review the recommendation for compliance with this
13-5 title as [without a hearing unless a hearing is otherwise] required
13-6 by rules adopted by the commission;

13-7 (2) approve, reject, or modify the recommendation of
13-8 the third-party inspector or remand the dispute for further action
13-9 by the third-party inspector; and

13-10 (3) issue written findings of fact and a ruling on the
13-11 appeal not later than the 30th day after the date the notice of
13-12 appeal is filed with the commission.

13-13 SECTION 44. Section 430.005, Property Code, is amended to
13-14 read as follows:

13-15 Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN
13-16 CONSTRUCTION. (a) For the purpose of this title, the only
13-17 statutory warranty and building and performance standards that
13-18 apply to residential construction in unincorporated areas of
13-19 counties that are considered economically distressed areas as
13-20 defined by Section 15.001(11) of the Water Code and located within
13-21 50 miles of an international border are the standards established
13-22 for colonia housing programs administered by the Texas Department
13-23 of Housing and Community Affairs, unless a county commissioners
13-24 court has adopted other building and performance standards
13-25 authorized by statute.

13-26 (b) This section does not exempt a builder in an area
13-27 described by Subsection (a) from the registration requirements
13-28 imposed by this title, including the requirements of Sections
13-29 416.001 and 426.003.

13-30 (c) An allegation of a postconstruction defect in a
13-31 construction project in an area described by Subsection (a) is
13-32 subject to the state-sponsored inspection and dispute resolution
13-33 process described by this subtitle.

13-34 SECTION 45. Section 430.006, Property Code, is amended to
13-35 read as follows:

13-36 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The
13-37 warranties established under this chapter supersede all implied
13-38 warranties. The only warranties that exist for residential
13-39 construction or residential improvements are:

13-40 (1) warranties created by this chapter;

13-41 (2) warranties created ~~[or]~~ by other statutes
13-42 expressly referring to residential construction or residential
13-43 improvements;

13-44 (3) ~~[, or]~~ any express, written warranty acknowledged
13-45 by the homeowner and the builder; and

13-46 (4) warranties that apply to an area described by
13-47 Section 430.005(a) as described by that section.

13-48 SECTION 46. Subchapter Z, Chapter 214, Local Government
13-49 Code, is amended by adding Section 214.906 to read as follows:

13-50 Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A
13-51 municipality may not issue a building permit to a builder, as
13-52 defined by Section 401.003, Property Code, for construction
13-53 described by Section 401.003(a), Property Code, unless the
13-54 municipality has verified that the builder is registered with the
13-55 Texas Residential Construction Commission under Chapter 416,
13-56 Property Code, or is exempt from registration under Section
13-57 401.005, Property Code.

13-58 SECTION 47. (a) The House Committee on State Affairs shall
13-59 conduct an interim study regarding the feasibility of creating a
13-60 fund designed to reimburse aggrieved persons who experience actual
13-61 damages from a builder's actions in violation of Title 16, Property
13-62 Code. The speaker of the house of representatives shall appoint two
13-63 additional members of the house of representatives who have
13-64 expressed an interest in this issue as voting adjunct members of the
13-65 committee for the purpose of participating in the study.

13-66 (b) The committee shall investigate:

13-67 (1) potential methods for payments into the fund,
13-68 procedures for managing the fund, and methods for making claims to
13-69 the fund; and

14-1 (2) similar funds created by other states and
14-2 jurisdictions of the United States and the relative successes or
14-3 failures of those funds.

14-4 (c) Not later than September 1, 2008, the committee shall
14-5 submit to the speaker of the house of representatives and the
14-6 members of the house of representatives:

14-7 (1) the results of the study; and

14-8 (2) any recommendations for statutory changes
14-9 resulting from the findings of the study.

14-10 (d) This section expires October 1, 2008.

14-11 SECTION 48. (a) This Act applies only to the following
14-12 that are filed on or after September 1, 2007:

14-13 (1) an application for a building permit or
14-14 certification as a builder or a Texas Star Builder; or

14-15 (2) a request for state-sponsored inspection and
14-16 dispute resolution.

14-17 (b) An application for a building permit or for
14-18 certification as a builder or a Texas Star Builder or a request for
14-19 state-sponsored inspection and dispute resolution that was filed
14-20 before September 1, 2007, is governed by the law as it existed
14-21 immediately before September 1, 2007, and that law is continued in
14-22 effect for that purpose.

14-23 SECTION 49. Section 5.016, Property Code, as added by this
14-24 Act, applies only to a transfer of residential property in which the
14-25 improvements to the property commenced on or after September 1,
14-26 2007. A transfer of residential property in which the improvements
14-27 commenced before September 1, 2007, is governed by the law in effect
14-28 at the time the improvements were commenced, and the former law is
14-29 continued in effect for that purpose.

14-30 SECTION 50. Section 416.012, Property Code, as added by
14-31 this Act, applies only to work performed by a builder on or after
14-32 September 1, 2007. Work performed by a builder before that date is
14-33 governed by the law in effect when the work is performed, and the
14-34 former law is continued in effect for that purpose.

14-35 SECTION 51. The changes in law made by this Act by the
14-36 amendment of Section 418.001, Property Code, apply only to conduct
14-37 that occurs on or after September 1, 2007. Conduct that occurs
14-38 before that date is governed by the law in effect when the conduct
14-39 occurs, and the former law is continued in effect for that purpose.

14-40 SECTION 52. This Act takes effect September 1, 2007.

14-41 * * * * *