

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

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

SENATE VERSION

Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
(6) from one co-owner to another co-owner of an undivided interest in the real property;
(7) to a spouse or a person in the lineal line of consanguinity of the seller;
(8) to or from a governmental entity; or
(9) of only a mineral interest, leasehold interest, or security interest.

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

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

SENATE VERSION

Same as House version.

Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

No equivalent provision.

SENATE VERSION

SECTION 4. Section 27.007, Property Code, is amended by adding Subsection (c) to read as follows:
(c) This section does not apply to a contract relating to a home required to be registered under Section 426.003.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

SENATE VERSION

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

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

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

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

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

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

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

SENATE VERSION

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

No equivalent provision.

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

estate or a subrogee or assignee of the individual [~~a person who owns a home~~].

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

Sec. 162.003. BENEFICIARIES OF TRUST FUNDS.

(a) An artisan, laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in this state is a beneficiary of any trust funds paid or received in connection with the improvement.

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

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

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

SENATE VERSION

No equivalent provision.

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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

(8-a) "Material improvement" means a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls, or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

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

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

SECTION 6. Same as House version.

SECTION 7. Same as House version.

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

for the construction of or the supervision or management of 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 \$10,000 [~~\$20,000~~].

(b) The term includes:

- (1) an owner, officer, director, shareholder, partner, affiliate, subsidiary, or employee of the builder;
- (2) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and
- (3) a third-party warranty company and its administrator.

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

- (1) has been issued a license by this state or 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; or

(2) sells a new home and:

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

(B) holds a license issued under Chapter 1101, Occupations Code, or is exempt from that chapter under

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Section 1101.005, Occupations Code.

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

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

(c) An individual who builds a home or a material improvement to a home and sells the home immediately following completion of the building or remodeling and does not live in the home for at least one year following completion of the building or remodeling is liable as a builder under the warranty obligation created by this title for work completed by the individual. Liability under this subsection does not automatically require an individual to register under Section 416.001.

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

Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commission, in addition to any other authorized action,

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

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

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

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

Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commission, in addition to any other authorized action,

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order directly to district court in accordance with Chapter 2001, Government Code.

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

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

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

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

SENATE VERSION

may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order directly to district court in accordance with Chapter 2001, Government Code.

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

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

(d) A suit **by the attorney general** under this section must be brought in Travis County.

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

fees, and deposition costs.

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

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

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

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

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

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

(4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

SENATE VERSION

fees, and deposition costs.

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

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

(a-1) In making appointments under Subsection (a)(2), the governor shall consider individuals who can represent the interests of homeowners, including individuals who have experience representing consumer

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

SENATE VERSION

or homeowner interests.

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

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

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

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

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

SENATE VERSION

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

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

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

Sec. 409.0011. BUILDER LIST. (a) In this section, "volume builder" means a builder who registers at least 100 homes each year as provided by Section 426.003. (b) The commission shall create and make accessible to the public an electronic list and a hard-copy list of builders who:

SENATE VERSION

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

SECTION 13. Same as House version.

SECTION 14. Same as House version.

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

Sec. 409.0011. BUILDER LIST. (a) In this section, "volume builder" means a builder who registers at least 100 homes each year as provided by Section 426.003. (b) The commission shall create and make accessible to the public an electronic list and a hard-copy list of builders who:

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(1) are registered with the commission; and
(2) provide in this state building services, including accessible floor plans, to persons with mobility-related special needs.
(c) The electronic list required under Subsection (b) shall provide, if available, the following information with respect to each listed builder:
(1) a link to the builder's website; and
(2) contact information for the builder, including the municipalities where the builder provides building services described by Subsection (b)(2).
(d) The commission shall contact all volume builders in this state who do not provide building services to persons with mobility-related special needs as described by Subsection (b)(2) and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs.
(e) Before a volume builder is included on the electronic or hard-copy list described by Subsection (b), the commission must certify the builder's floor plans designed for persons with mobility-related special needs. The commission shall establish rules, procedures, and fees necessary to certify floor plans as required by this subsection.
(f) The Veterans' Land Board shall make accessible to the public on its Internet website and in hard-copy format the electronic list required under Subsection (b).

SECTION 19. Section 409.003, Property Code, is

SENATE VERSION

(1) are registered with the commission; and
(2) provide in this state building services, including accessible floor plans, to persons with mobility-related special needs.
(c) The electronic list required under Subsection (b) shall provide, if available, the following information with respect to each listed builder:
(1) a link to the builder's website; and
(2) contact information for the builder, including the municipalities where the builder provides building services described by Subsection (b)(2).
(d) The commission shall contact all volume builders in this state and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs.

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

SECTION 16. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

amended by adding Subsections (d), (e), and (f) to read as follows:

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

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

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

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

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

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

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

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

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

SENATE VERSION

SECTION 17. Same as House version.

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

(a) The commission shall charge and collect:

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

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

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

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

SENATE VERSION

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

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

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

(a) The commission shall charge and collect:

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

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

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

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

(d) The certification issued by the commission as a

SENATE VERSION

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

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

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

SECTION 21. Same as House version.

SECTION 22. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

"Texas Star Builder" is valid for at most one year and renewable on a date to be determined at the commission's discretion ~~[shall be for the same period of time as the builder's registration under this chapter]~~.

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

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

Sec. 416.013. CONTINUING EDUCATION.

(a) During the first year a builder is registered with the commission, the builder must complete five hours of continuing education, one hour of which must address ethics.

(b) After satisfying the requirements of Subsection (a), a builder must complete five hours of continuing

SENATE VERSION

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

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

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

(c) A builder who is registered before September 1, 2007, and all other builders who register for the first time

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

education, one hour of which must address ethics, once every five years.

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

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

SENATE VERSION

on or after September 1, 2007, and satisfy the requirements of Subsection (b), must complete five hours of continuing education every five years, one hour of which must address ethics.

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

- (1) successfully completing or auditing a course sponsored by an institution of higher education;
- (2) successfully completing a course certified by a professional or trade organization;
- (3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course on the practice of residential construction;
- (4) participating in an in-house course sponsored by a corporation or other business entity;
- (5) teaching a course described by Subdivisions (1)-(4);
- (6) publishing an article, paper, or book on the practice of residential construction;
- (7) making or attending a presentation at a meeting of a residential or builder association or organization or writing a paper presented at the meeting;
- (8) participating in the activities of a residential or

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

builder association, including serving on a committee of the organization; and
(9) engaging in self-directed study on the practice of residential construction.
(e) A registered builder may not receive more than two continuing education credit hours during each five-year period for engaging in self-directed study.
(f) At least two hours of the continuing education requirement under this section must address:
(1) limited statutory warranties;
(2) building and performance standards; and
(3) requirements of the International Residential Code as adopted under Section 430.001 and other statutes and rules that apply to builders under this title.
(g) A builder's agent or other designated individual may satisfy the requirements of this section for the builder if the builder is a corporation or other business entity.

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

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

- (1) a filing fee for an application for certification under this chapter that does not exceed \$100; ~~and~~
- (2) a fee for renewal of a certification under this chapter that does not exceed \$50; and
- (3) a late fee that does not exceed the amount of the fee due if payment of a registration or application fee due under this title is late.

SECTION 24. Same as House version.

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

- (1) fraud or deceit in obtaining a registration or certification under this subtitle;
- (2) misappropriation or misapplication of trust funds in the practice of residential construction, including a violation of Chapter 32, Penal Code, or Chapter 162, if found by a final nonappealable court judgment;
- (3) naming false consideration in a contract to sell a new home or in a construction contract;
- (4) discriminating on the basis of race, color, religion, sex, national origin, or ancestry;
- (5) publishing a false or misleading advertisement;
- (6) failure to honor, within a reasonable time, a check issued to the commission, or any other instrument of payment, including a credit or debit card or electronic fund transfer, after the commission has sent by certified mail a request for payment to the person's last known business address, according to commission records;
- (7) failure to pay an administrative penalty assessed by

SENATE VERSION

SECTION 25. Sections 418.001 and 418.002, Property Code, are amended to read as follows:

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

- (1) fraud or deceit in obtaining a registration or certification under this subtitle;
- (2) misappropriation or misapplication of trust funds in the practice of residential construction, including a violation of Chapter 32, Penal Code, or Chapter 162, if found by a final nonappealable court judgment;
- (3) naming false consideration in a contract to sell a new home or in a construction contract;
- (4) discriminating on the basis of race, color, religion, sex, national origin, or ancestry;
- (5) publishing a false or misleading advertisement;
- (6) failure to honor, within a reasonable time, a check issued to the commission, or any other instrument of payment, including a credit or debit card or electronic fund transfer, after the commission has sent by certified mail a request for payment to the person's last known business address, according to commission records;
- (7) failure to pay an administrative penalty assessed by

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

the commission under Chapter 419 or a fee due under Chapter 426;
(8) failure to pay ~~[nonpayment of]~~ a final nonappealable judgment arising from a construction defect or other transaction between the person and a homeowner;
(9) failure to register a home as required by Section 426.003;
(10) failure to remit the fee for registration of a home under Section 426.003; ~~[or]~~
(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;

SENATE VERSION

the commission under Chapter 419 or a fee due under Chapter 426;
(8) failure to pay ~~[nonpayment of]~~ a final nonappealable **court** judgment arising from a construction defect or other transaction between the person and a homeowner;
(9) failure to register a home as required by Section 426.003;
(10) failure to remit the fee for registration of a home under Section 426.003; ~~[or]~~
(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) **a repeated** 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 or names disclosed to the commission;
(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;

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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 based on:
(A) the recommendation of a third-party inspector under Section 428.004; or
(B) the final holding of an appeal under Chapter 429;
(22) failure to participate in commission efforts to resolve a complaint that arises during the construction or renovation of a home;
(23) failure to respond to a commission request for information;
(24) otherwise violating this title or a commission rule adopted under this title;
(25) failure to substantially complete all the obligations under an express contract for construction without reasonable grounds for the failure, if found by a final nonappealable court judgment;
(26) failure to obtain a permit required by a political subdivision before constructing a new home or an improvement to an existing home; or
(27) abandoning or wilfully failing to perform, without justification, any home improvement contract or residential construction project engaged in or undertaken by the person, if found to have done so by a final,

SENATE VERSION

(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 based on:
(A) the recommendation of a third-party inspector under Section 428.004; or
(B) the final holding of an appeal under Chapter 429;

(22) a repeated failure to respond to a commission request for information;

(23) a failure to obtain a building permit required by a political subdivision before constructing a new home or an improvement to an existing home;
(24) abandoning, without justification, any home improvement contract or new home construction project engaged in or undertaken by the person, if found to have done so by a final, nonappealable court judgment;

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

nonappealable judgment of a court.

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

Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a) Except as provided by Subsection (b), on [Ø] a determination that a ground for disciplinary action under Section 418.001 exists, the commission may:

(1) revoke or suspend a registration or certification;

(2) probate the suspension of a registration or certification; [Ø]

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

(4) impose an administrative penalty under Chapter 419.

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

SENATE VERSION

(25) a repeated failure to comply with the requirements of Subtitle F; or

(26) otherwise violating this title or a commission rule adopted under this title.

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

(1) revoke or suspend a registration or certification in the event of repeated prior violations that have resulted in disciplinary action;

(2) probate the suspension of a registration or certification; [Ø]

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

(4) impose an administrative penalty under Chapter 419.

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

(c) For purposes of Section 418.001(12), the commission may not conduct a hearing, revoke, or suspend a registration or certification unless the determination of statutory or common-law fraud or

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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

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

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

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

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

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

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

Sec. 418.005. **JOINT AND SEVERAL LIABILITY OF BUILDER AND AGENT.** (a) The commission may

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

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

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

Sec. 418.005. **RESPONSIBILITY FOR ADMINISTRATIVE ACTIONS.** (a) The commission

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

simultaneously take administrative action under this chapter against:

(1) a builder; and

(2) a person who:

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

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

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

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

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

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

(a) Except as provided by Subsection (c), an [An]

SENATE VERSION

may simultaneously take administrative action under this chapter against:

(1) a builder; and

(2) a person who owns or controls a majority ownership interest in the builder.

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

SECTION 28. Same as House version.

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

(a) Except as provided by Subsection (c), an [An]

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

administrative penalty imposed under this chapter may not exceed \$10,000 [~~\$5,000~~] for each violation.

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

(1) the seriousness of the violation, including the 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

SENATE VERSION

administrative penalty imposed under this chapter may not exceed \$10,000 [~~\$5,000~~] for each violation.

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

SECTION 30. 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.

In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract must contain a notice to the consumer in at least 10-point bold type or the computer equivalent that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

SENATE VERSION

TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

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 INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

PERFORMED THE POOR QUALITY WORK.

Sec. 420.002. REQUIRED CONTRACT PROVISIONS.

A contract for the construction of a new home or an improvement to an existing home when the cost of the work exceeds \$10,000 is not enforceable against a homeowner unless the contract:

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

(2) contains the notice required by Section 420.001.

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

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

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

(b) A provision described by Subsection (a) is not enforceable against the homeowner unless the

SENATE VERSION

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

Sec. 420.002. REQUIRED CONTRACT PROVISIONS.

In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract is not enforceable against a homeowner unless the contract:

(1) contains the builder's name and certificate of registration number; and

(2) contains the notice required by Section 420.001.

Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a) In a contract for the construction of a new home or the improvement of an existing home required to be registered under Section 426.003 and that contains a provision requiring the parties to submit a dispute arising under the contract to binding arbitration, the provision must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(b) A provision described by Subsection (a) is not enforceable against the homeowner unless the

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

requirements of Subsection (a) are met and the homeowner signs the space accepting the provision.

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

(b) A builder who enters into a contract for the construction of a new home or an improvement to an existing home in which the value of the work exceeds \$20,000 ~~[transaction governed by this title, other than the transfer of title of a new home from the 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 the construction is substantially completed ~~[of the agreement that describes the transaction between the homeowner and the builder];~~ or

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

SECTION 36. Chapter 419, Property Code, is amended

SENATE VERSION

requirements of Subsection (a) are met.

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

(b) A builder who enters ~~[into]~~ a transaction governed by this title, other than the transfer of title of a new home from the 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 home or other residential construction project ~~[of the agreement that describes the transaction between the homeowner and the builder];~~ ~~[or]~~
 - (B) the date the new home is occupied; or
 - (C) the date of issuance of a certificate of occupancy or a certificate of completion ~~[commencement of the work on the home].~~

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

by adding Section 419.0031 to read as follows:

Sec. 419.0031. INTEREST ON UNPAID PENALTY.
Interest accrues on an unpaid administrative penalty at a
rate of 18 percent compounded annually beginning on
the day after the date specified for payment under
Section 419.003.

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

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

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

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

(B) damage to goods; and

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

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

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

SECTION 38. Section 426.004, Property Code, is

SENATE VERSION

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

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

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

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

(B) damage to goods; and

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

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

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

SECTION 33. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) If the transfer of the title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions between the builder and homeowner was entered into before January 1, 2004, the commission shall register the home and the builder ~~[the person who submits a request involving the home]~~ shall pay~~[, in addition to the inspection expenses required by this section,]~~ the registration fee required by Section 426.003.

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

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

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

(1) the builder is not registered; or

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

SENATE VERSION

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

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

(f) A homeowner is not required to comply with this subtitle if:

(1) at the time a homeowner and a builder enter into a contract covered by this title the builder was not registered; or

(2) the certificate or registration of the builder has been revoked.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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

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

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

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

SECTION 35. Same as House version.

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

- (1) the state-sponsored inspection and dispute resolution process arising out of the request; or
- (2) any action arising out of the construction defect that is the subject of the request or response.

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

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

SENATE VERSION

SECTION 36. Section 426.007, Property Code, is amended to read as follows:

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

- (1) the state-sponsored inspection and dispute resolution process arising out of the request; or
- (2) any action arising out of the construction defect that is the subject of the request or response.

SECTION 37. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(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.

SENATE VERSION

SECTION 38. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 44. 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 45. 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 46. 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

SENATE VERSION

SECTION 39. Same as House version.

SECTION 40. Same as House version.

SECTION 41. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under Subsection (c).

SECTION 47. 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 **or after** 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 **report** the finding **against the builder.**

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

Sec. 428.006. RESPONSE TO REQUEST. (a) If a request for state-sponsored inspection and dispute

SENATE VERSION

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.**

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

resolution is filed under this chapter and accepted by the commission, a party to the dispute who did not file the request, including a third-party warranty company, may submit a written response to the allegations specified in the request and present evidence in support of the response not later than the 15th day after the date the person received a copy of the request under Section 428.001(d).

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

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

(c) The panel shall:

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

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

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

SECTION 50. Chapter 430, Property Code, is amended

SENATE VERSION

SECTION 43. Same as House version.

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

by adding Section 430.0015 to read as follows:

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

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

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

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

(c) An allegation of a postconstruction defect in a

SENATE VERSION

SECTION 44. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

construction project in an area described by Subsection (a) is subject to the state-sponsored inspection and dispute resolution process described by this subtitle.

SECTION 52. Section 430.006, Property Code, is amended to read as follows:
Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are:
(1) warranties created by this chapter;
(2) warranties created ~~[or]~~ by other statutes expressly referring to residential construction or residential improvements;
(3) ~~[, or]~~ any express, written warranty acknowledged by the homeowner and the builder; and
(4) warranties that apply to an area described by Section 430.005(a) as described by that section.

No equivalent provision.

SECTION 45. Same as House version.

SECTION __. Subtitle D, Title 16, Property Code, is amended by adding Chapter 431 to read as follows:
CHAPTER 431. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM
Sec. 431.001. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM. (a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

1709(b), (i), and (k)).

(b) The commission, in consultation with the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System, the Texas Commission on Environmental Quality, and an advisory committee appointed by the commission, may establish an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003, Health and Safety Code, by 15 percent or more.

(c) If the commission establishes a program under this chapter, the commission, in consultation with the Energy Systems Laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the commission establishes a program under this chapter, the program must include a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under Chapter 388, Health and Safety Code.

Sec. 431.002. PUBLIC INFORMATION PROGRAM. The commission may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Sec. 431.003. MEASUREMENT SYSTEM FOR REDUCTION IN ENERGY AND EMISSIONS. If the commission establishes a program under this chapter, the Energy Systems Laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Sec. 431.004. CERTIFICATION FEE. If the commission establishes a program under this chapter, the commission may set a certification fee sufficient to cover the cost of administering the program and pay for any education efforts conducted under this chapter.

No equivalent provision.

SECTION __. Title 16, Property Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. INSPECTION OF NEW RESIDENTIAL CONSTRUCTION CHAPTER 446. RESIDENTIAL CONSTRUCTION IN UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL INSPECTIONS

Sec. 446.001. APPLICABILITY OF CHAPTER. This chapter applies to residential construction described by Section 401.003(a)(1), (2) and (3) in an unincorporated area and to other areas not subject to municipal inspections.

Sec. 446.002. INSPECTION REQUIRED.(a) A builder shall have a new home or other improvement to which this chapter applies inspected by a fee inspector.

(b) For new construction subject to this chapter, there

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

shall be a minimum of three inspections performed during the project to ensure code compliance, as applicable at the following stages of construction:
(i) foundation, prior to the placement of concrete;
(ii) framing and mechanical systems prior to being covered with sheetrock or other interior wall covering;
and
(iii) final inspection when the home is completed.
(c)For improvements other than new construction, the inspections described in Subsection (b) shall occur as necessary based upon the scope of work of the project.
(d)The builder shall be responsible for contracting with a fee inspector authorized by this chapter to perform the inspections required bythis section.
(e)The commission may establish fees necessary to administer this subtitle. Such fees may be included in the home registration fee required described in Section 426.003(c).
Sec. 446.003.ELECTRONIC REPORTING SYSTEM.
(a)The commission shall establish an Internet based process to implement this subtitle. The process shall be password protected. Inspectors will use the Internet based process to report the satisfactory completion of the inspections required bySection 446.002 to the commission. Upon reporting of satisfactory completion of the inspections, the commission shall issue a certificate of completion which shall be forwarded to the homeowner within 30 days following the registration of a home, as required by Section 426.003.
(b)The commission shall allow for an alternative

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

reporting system for persons who demonstrate to the commission an inability to comply with the electronic reporting requirements of Subsection (a).

Sec. 446.004. FEE INSPECTOR. A fee inspector must be either a licensed engineer, a registered architect, a professional inspector licensed by the Texas Real Estate Commission or a third party inspector qualified under Section 427.001(b). A builder may use the same or a different fee inspector for inspections required under this chapter.

Sec. 446.005. ELEMENTS OF INSPECTION. The commission by rule shall:

(1) establish the elements of the construction that must be

inspected under this chapter in accordance with Section 446.002 to ensure compliance with the applicable code provisions as required by Section 430.001(d); and

(2) prescribe the form and the manner in which the results of the inspection will be reported in writing.

Sec. 446.006. CONSTRUCTION IN CERTAIN AREAS: ELIGIBILITY FOR CERTAIN WINDSTORM AND HAIL INSURANCE. (a) This section applies only to construction in an unincorporated area in which windstorm and hail insurance coverage is available under Chapter 2210, Insurance Code.

(b) In addition to an inspection required pursuant to Section 446.002, the builder must, if required by statute, obtain a certificate of compliance for the structure in the manner provided under Section 2210.251, Insurance Code.

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. On or before June 1, 2008, the Texas Residential Construction Commission shall adopt all rules necessary to implement Subtitle F, Title 16, Property Code, as added by this Act.

No equivalent provision.

SECTION __. Subtitle F, Title 16, Property Code, as added by this Act, applies only to construction commenced on or after September 1, 2008. For the purposes of Subtitle F, Title 16, Property Code, as added by this Act, construction commenced before September 1, 2008, is governed by the law in effect immediately before the effective date of this Act and the former law is continued in effect for such construction.

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

Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A municipality may not issue a building permit to a builder, as defined by Section 401.003, Property Code, for construction described by Section 401.003(a) of that code, unless the municipality has determined that the builder is registered with the Texas Residential Construction Commission under Chapter 416 of that code or is exempt from registration under Section 401.005, Property Code. A municipality

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

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

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

shall verify that the builder's registration number is both current and valid and make a record of that registration number.

No equivalent provision.

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

(b) The committee shall investigate:

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

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

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

SENATE VERSION

SECTION __. Section 388.009, Health and Safety Code, is repealed.

SECTION 47. Same as House version.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (1) the results of the study; and
- (2) any recommendations for statutory changes resulting from the findings of the study.
- (d) This section expires October 1, 2008.

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

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

No equivalent provision.

SENATE VERSION

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

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

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

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

SENATE VERSION

that purpose.

No equivalent provision.

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

No equivalent provision.

CONFERENCE

House Bill 1038
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

SENATE VERSION

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

SECTION 52. Same as House version.

CONFERENCE