

BILL ANALYSIS

S.B. 1641
By: Harris
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law requires a builder to provide a notice in a contract giving the builder's name and registration number with the Texas Residential Construction Commission (TRCC) or the building contract is unenforceable. This has the unintended effect of invalidating the lien of the lender that took assignment of the lien in connection with advancing funds. In these cases, the borrowers had the benefit of the fund as did the builder. The builder's inability to enforce the contract and the added penalties assure that the builder provides the notice but the lien securing the loan from the lender should be preserved as it was required by both the builder and the borrower.

S.B. 1641 continues the validity of a lien this is transferred to a lender in connection with a builder's contract in which the builder has not included certain required provisions. The bill authorizes a builder to amend such a contract to add those provisions, prohibits the builder or homeowner from altering any other term or condition of the contract if the builder makes such an amendment, and establishes a civil penalty for failing to include the required provisions in a contract or altering any other contract term or condition.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1641 amends the Property Code to establish that a builder's failure to include in a contract for the construction of a new home or an improvement to an existing home certain required provisions with the builder's name and certificate of registration number and a written disclosure regarding the requirement for a certificate of registration from the Texas Residential Construction Commission does not invalidate a lien of an entity that provided third-party financing to a homeowner or renewed and extended financing for construction under such a contract. The bill authorizes a builder to amend such a contract that does not contain the required provisions to add those provisions to avoid additional civil penalties, and prohibits the builder and the homeowner, if the builder amends the contract to add those provisions, from altering any other term or condition of the contract. The bill makes a person who violates these provisions or who does not include the required provisions in a contract liable for a civil penalty in an amount of not less than \$100 and not more than \$500 for each violation, not to exceed an aggregate amount of \$5,000. The bill establishes that each day such a violation continues constitutes a separate violation. The bill authorizes the attorney general to bring suit to recover a civil penalty under those provisions and requires the amount of the penalty to be based on the seriousness of the violation, the history of previous violations, the amount necessary to deter a future violation, whether the violator demonstrated good faith, and any other matter that justice may require.

EFFECTIVE DATE

September 1, 2009.