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H.B. No. 2295

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Residential
Construction Commission; providing penalties.

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

SECTION 1. Chapter 27, Property Code, is amended by adding
Section 27.0021 to read as follows:

Sec. 27.0021. TIME FOR CERTAIN OFFERS AND ELECTIONS BY
BUILDER. In a dispute subject to Subtitle D, Title 16, if a party to
the dispute is authorized to file an action described by Section
426.005(a) before a recommendation is issued by a third-party
inspector, before a ruling on an appeal of a third-party
inspector's report, or before the expiration of the mediation
period under Section 428A.004, a builder may make a written offer of
settlement to the claimant under Sections 27.004(b) and (c) or an
election to purchase the residence under Section 27.0042 not later
than the 15th day after the earliest date on which the action may be
filed under Section 426.005(g) or 428A.004(b).

SECTION 2. Section 27.003(a), Property Code, is amended to
read as follows:

(a) In an action to recover damages or other relief arising
from a construction defect:

(1) a contractor is not liable for any percentage of
damages caused by:

(A) negligence of a person other than the

1 contractor or an agent, employee, or subcontractor of the
2 contractor;

3 (B) failure of a person other than the contractor
4 or an agent, employee, or subcontractor of the contractor to:

5 (i) take reasonable action to mitigate the
6 damages; or

7 (ii) take reasonable action to maintain the
8 residence;

9 (C) normal wear, tear, or deterioration;

10 (D) normal shrinkage due to drying or settlement
11 of construction components within the tolerance of building
12 standards; or

13 (E) the contractor's reliance on written
14 information relating to the residence, appurtenance, or real
15 property on which the residence and appurtenance are affixed that
16 was obtained from official government records, if the written
17 information was false or inaccurate and the contractor did not know
18 and could not reasonably have known of the falsity or inaccuracy of
19 the information; and

20 (2) if an assignee of the claimant or a person
21 subrogated to the rights of a claimant fails to provide the
22 contractor with the written notice and opportunity to inspect and
23 offer to repair required by Section 27.004 or fails to request an
24 ~~[state-sponsored]~~ inspection ~~[and dispute resolution]~~ under
25 Chapter 428, if applicable, before performing repairs, the
26 contractor is not liable for the cost of any repairs or any
27 percentage of damages caused by repairs made to a construction

1 defect at the request of an assignee of the claimant or a person
2 subrogated to the rights of a claimant by a person other than the
3 contractor or an agent, employee, or subcontractor of the
4 contractor.

5 SECTION 3. Sections 27.004(b), (c), (d), and (l), Property
6 Code, are amended to read as follows:

7 (b) Not later than the 15th day after the date of a final,
8 unappealable determination of a dispute under Subtitle D, Title 16,
9 if applicable, or not later than the 45th day after the date the
10 contractor receives the notice under this section, if Subtitle D,
11 Title 16, does not apply, the contractor may make a written offer of
12 settlement to the claimant. The offer must be sent to the claimant
13 at the claimant's last known address or to the claimant's attorney
14 by certified mail, return receipt requested. The offer may include
15 either an agreement by the contractor to repair or to have repaired
16 by an independent contractor partially or totally at the
17 contractor's expense or at a reduced rate to the claimant any
18 construction defect described in the notice and shall describe in
19 reasonable detail the kind of repairs which will be made. The
20 repairs shall be made not later than the 45th day after the date the
21 contractor receives written notice of acceptance of the settlement
22 offer, unless completion is delayed by the claimant or by other
23 events beyond the control of the contractor. ~~[If a contractor makes~~
24 ~~a written offer of settlement that the claimant considers to be~~
25 ~~unreasonable.~~

26 ~~[(1) on or before the 25th day after the date the~~
27 ~~claimant receives the offer, the claimant shall advise the~~

~~contractor in writing and in reasonable detail of the reasons why
the claimant considers the offer unreasonable, and~~

~~[(2) not later than the 10th day after the date the
contractor receives notice under Subdivision (1), the contractor
may make a supplemental written offer of settlement to the claimant
by sending the offer to the claimant or the claimant's attorney.]~~

(c) If compliance with Subtitle D, Title 16, or the giving
of the notice under Subsections (a) and (b) within the period
prescribed by those subsections is impracticable because of the
necessity of initiating an action at an earlier date to prevent
expiration of the statute of limitations or if the complaint is
asserted as a counterclaim, compliance with Subtitle D, Title 16,
or the notice is not required. However, the action or counterclaim
shall specify in reasonable detail each construction defect that is
the subject of the complaint. If Subtitle D, Title 16, applies to
the complaint, simultaneously with the filing of an action by a
claimant, the claimant must submit a request under Section 428.001.
If Subtitle D, Title 16, does not apply, the inspection provided for
by Subsection (a) may be made not later than the 75th day after the
date of service of the suit, request for arbitration, or
counterclaim on the contractor, and the offer provided for by
Subsection (b) may be made not later than the 15th day after the
date the ~~[state-sponsored]~~ inspection ~~[and dispute resolution]~~
process under Chapter 428 is completed, if Subtitle D, Title 16,
applies, or not later than the 60th day after the date of service,
if Subtitle D, Title 16, does not apply. If, while an action
subject to this chapter is pending, the statute of limitations for

1 the cause of action would have expired and it is determined that the
2 provisions of Subsection (a) were not properly followed, the action
3 shall be abated to allow compliance with Subsections (a) and (b).

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

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

22 (2) is not controverted by an affidavit filed by the
23 claimant before the 11th day after the date on which the motion to
24 abate is filed.

25 (1) If Subtitle D, Title 16, applies to the claim and the
26 contractor's offer of repair is accepted by the claimant, the
27 contractor, on completion of the repairs and in accordance with

1 Section 428.0041 ~~[at the contractor's expense]~~, shall engage the
2 third-party inspector who provided the recommendation regarding
3 the construction defect involved in the claim to inspect the
4 repairs and determine whether the residence, as repaired, complies
5 with the applicable limited statutory warranty and building and
6 performance standards adopted by the commission. ~~[The contractor~~
7 ~~is entitled to a reasonable period not to exceed 15 days to address~~
8 ~~minor cosmetic items that are necessary to fully complete the~~
9 ~~repairs.]~~ The determination of the third-party inspector of
10 whether the repairs comply with the applicable limited statutory
11 warranty and building and performance standards adopted by the
12 commission establishes a rebuttable presumption on that issue. A
13 party seeking to dispute, vacate, or overcome that presumption must
14 establish by clear and convincing evidence that the determination
15 is inconsistent with the applicable limited statutory warranty and
16 building and performance standards.

17 SECTION 4. Section 41.007(a), Property Code, is amended to
18 read as follows:

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

21 (1) the contractor's license ~~[certificate of~~
22 ~~registration]~~ number from the Texas Residential Construction
23 Commission if the contractor is required to be licensed ~~[register]~~
24 as a builder by ~~[with]~~ the commission;

25 (2) the address and telephone number at which the
26 owner may file a complaint with the Texas Residential Construction
27 Commission about the conduct of the contractor if the contractor is

1 required to be licensed [~~register~~] as a builder by [~~with~~] the
2 commission; and

3 (3) the following warning conspicuously printed,
4 stamped, or typed in a size equal to at least 10-point bold type or
5 computer equivalent:

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

11 SECTION 5. Chapter 401, Property Code, is amended by adding
12 Section 401.0011 to read as follows:

13 Sec. 401.0011. PURPOSE; TEXAS RESIDENTIAL CONSTRUCTION
14 COMMISSION. (a) The Texas Residential Construction Commission
15 oversees persons required to be licensed by the commission to
16 ensure that those persons are responsible and accountable to the
17 homeowners with whom they contract.

18 (b) The commission's mission includes:

19 (1) educating builders and homeowners about all
20 aspects of the residential construction industry affecting the
21 building or remodeling of homes; and

22 (2) facilitating resolution of disputes between
23 builders and homeowners regarding construction defects through the
24 state inspection program and through a voluntary mediation program.

25 SECTION 6. Section 401.002, Property Code, is amended by
26 amending Subdivisions (3) and (4) and adding Subdivision (11-a) to
27 read as follows:

1 (3) "Approved architect" means an architect licensed
2 by this state and approved by the commission to provide services to
3 the commission in connection with the state [~~state-sponsored~~]
4 inspection program [~~and dispute resolution process~~].

5 (4) "Approved structural engineer" means a licensed
6 professional engineer approved by the commission to provide
7 services to the commission in connection with the state
8 [~~state-sponsored~~] inspection program [~~and dispute resolution~~
9 ~~process~~].

10 (11-a) "State inspection program" means the program
11 administered by the commission under Subtitle D under which homes
12 are inspected to determine whether alleged construction defects
13 exist and inspectors issue determinations and recommendations
14 regarding the alleged defects.

15 SECTION 7. Section 401.003, Property Code, is amended by
16 amending Subsections (c) and (d) and adding Subsection (e) to read
17 as follows:

18 (c) The term does not include a [~~any~~] person who:

19 (1) has been issued a license by this state or an
20 agency of this state to practice a trade or profession related to or
21 affiliated with residential construction if the work being done by
22 the entity or individual to the home is solely for the purpose for
23 which the license was issued; [~~or~~]

24 (2) sells a new home and:

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

27 (B) holds a license issued under Chapter 1101,

Occupations Code, or is exempt from that chapter under Section 1101.005, Occupations Code;

(3) guarantees or co-makes a construction loan and is not otherwise a builder under Subsection (a); or

(4) constructs or makes improvements to not more than one home in a 12-month period.

(d) The term does not include a nonprofit business entity that is exempt from taxation under Section 501(c)(3), Internal Revenue Code, if:

(1) the construction or supervision or management of the construction of the home, material improvement, or improvement sold by the nonprofit business entity is performed by a builder licensed ~~registered~~ under this title;

(2) the builder contractually agrees to comply with the provisions of this title;

(3) the builder is contractually liable to the homeowner for the warranties and building and performance standards of this title; and

(4) the nonprofit business entity does not participate directly in the construction of the home, material improvement, or improvement.

(e) The term does not include a federally insured financial institution or a subsidiary or affiliate of the institution.

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

(c) Except as provided by Subsection (d), a person ~~An~~

1 ~~individual~~ who builds a home, ~~or~~ a material improvement to a
 2 home, or an improvement to the interior of an existing home when the
 3 cost of the work exceeds \$10,000 and sells the home immediately
 4 following completion of the building or remodeling and does not
 5 live in the home for at least one year following completion of the
 6 building or remodeling, is responsible as a builder under the
 7 warranty obligation created by this title for work completed by the
 8 person ~~[individual]~~. Responsibility under this subsection
 9 requires a person ~~[does not automatically require an individual]~~ to
 10 obtain a license ~~[register]~~ under Section 416.001.

11 (d) Notwithstanding Subsection (c), this title does not
 12 apply to an individual who:

13 (1) improves the individual's homestead by improving
 14 the interior of an existing home that is the individual's primary
 15 residence when the cost of the work exceeds \$10,000; and

16 (2) sells the home and does not live in the home for at
 17 least one year following the completion of the improvement.

18 SECTION 9. Section 401.006, Property Code, is amended to
 19 read as follows:

20 Sec. 401.006. SUNSET PROVISION. (a) The Texas Residential
 21 Construction Commission is subject to Chapter 325, Government Code
 22 (Texas Sunset Act). Unless continued in existence as provided by
 23 that chapter, the commission is abolished and this title expires
 24 September 1, 2015 ~~[2009]~~.

25 (b) The Sunset Advisory Commission shall conduct a
 26 special-purpose review of the Texas Residential Construction
 27 Commission as part of the Sunset Advisory Commission's review of

agencies for the 83rd Legislature. The Sunset Advisory Commission's report to the 83rd Legislature regarding the review must include an assessment of the Texas Residential Construction Commission's compliance with the mandates and requirements contained in legislation passed by the 81st and 82nd Legislatures and the agency's management practices and enforcement efforts to implement those changes to the statutes governing the agency enacted by those legislatures. This subsection expires September 1, 2013.

SECTION 10. Sections 401.007(a), (b), and (c), Property Code, are amended to read as follows:

(a) The ~~[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,]~~ may issue an emergency order, including an emergency order to cease and desist, to any person regardless of whether the person is a builder licensed under this title ~~[from the violation or an order to take affirmative action, or both]~~, to enforce a statute to which this chapter applies if the commission determines that an emergency exists requiring immediate action to protect the public health and safety or if the commission has reasonable cause to believe that a person is violating a statute to which this chapter applies. The commission may issue the emergency order without notice and hearing or with any notice and hearing the commission considers practicable under the circumstances ~~[compliance]~~. A person may appeal the order directly to district court in accordance with Chapter 2001, Government Code.

(b) The ~~[Before issuing an order under this section, the]~~
 commission shall set the time and place and give notice for a
hearing to affirm, modify, or set aside an emergency order that was
issued without a hearing ~~[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 an emergency ~~[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.

SECTION 11. Chapter 401, Property Code, is amended by
 adding Sections 401.008 and 401.009 to read as follows:

Sec. 401.008. REFERENCES TO REGISTRATION. Unless the
context clearly indicates otherwise, a reference in this title to a
registered builder means a licensed builder. A reference in this
title to a certificate of registration held by a builder under this
title means a license.

Sec. 401.009. VENUE FOR ARBITRATION. (a) An arbitration of
a dispute involving a construction defect shall be conducted in the

1 county in which the home alleged to contain the defect is located.

2 (b) The requirements of this section may not be waived by
3 contract.

4 SECTION 12. Sections 406.001(a) and (c), Property Code, are
5 amended to read as follows:

6 (a) The Texas Residential Construction Commission consists
7 of 11 [~~nine~~] members appointed by the governor with the advice and
8 consent of the senate as follows:

9 (1) four members must be builders who each hold a
10 license [~~certificate of registration~~] under Chapter 416;

11 (2) four [~~three~~] members must be representatives of
12 the general public;

13 (3) one member must be a licensed professional
14 engineer who practices in the area of residential construction;
15 [~~and~~]

16 (4) one member must be [~~either~~] a licensed architect
17 who practices in the area of residential construction; and

18 (5) one member must be [~~or~~] a building inspector who
19 meets the requirements set forth in Chapter 427 and practices in the
20 area of residential construction.

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

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

26 (2) is employed by or participates in the management
27 of a business entity or other organization regulated by or

1 receiving money from the commission;

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

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

10 SECTION 13. Section 406.002(a), Property Code, is amended
11 to read as follows:

12 (a) Commission members serve staggered six-year terms, with
13 three or four members' terms expiring February 1 of each
14 odd-numbered year. The terms of three of the builder
15 representatives must expire in different odd-numbered years. The
16 terms [~~term~~] of three [~~one~~] of the representatives of the general
17 public must expire in different [~~each~~] odd-numbered years [~~year~~].

18 SECTION 14. Section 408.001, Property Code, is amended to
19 read as follows:

20 Sec. 408.001. RULES. The commission shall adopt rules as
21 necessary for the implementation of this title, including rules:

22 (1) governing the state [~~state-sponsored~~] inspection
23 program [~~and dispute resolution process~~], including building and
24 performance standards, administrative regulations, and the conduct
25 of hearings under Subtitle D;

26 (2) establishing limited statutory warranty and
27 building and performance standards for residential construction;

(3) approving third-party warranty companies; and

(4) approving third-party inspectors.

SECTION 15. Sections 408.002(c) and (d), Property Code, are amended to read as follows:

(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

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

(d) The commission may not charge ~~[waive or reduce the fee for an inspection under Subtitle D for]~~ a homeowner a [who demonstrates an inability to pay the] fee in connection with a complaint, request, or other proceeding under Chapter 409 or Subtitle D.

SECTION 16. Chapter 408, Property Code, is amended by adding Sections 408.006 and 408.007 to read as follows:

Sec. 408.006. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Sec. 408.007. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop

1 and implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of commission rules; and

4 (2) appropriate alternative dispute resolution
5 procedures under Chapter 2009, Government Code, to assist in the
6 resolution of internal and external disputes under the commission's
7 jurisdiction.

8 (b) The commission's procedures relating to alternative
9 dispute resolution must conform, to the extent possible, to any
10 model guidelines issued by the State Office of Administrative
11 Hearings for the use of alternative dispute resolution by state
12 agencies.

13 (c) The commission shall designate a trained person to:

14 (1) coordinate the implementation of the policy
15 adopted under Subsection (a);

16 (2) serve as a resource for any training needed to
17 implement the procedures for negotiated rulemaking or alternative
18 dispute resolution; and

19 (3) collect data concerning the effectiveness of those
20 procedures, as implemented by the commission.

21 SECTION 17. Section 409.001(a), Property Code, is amended
22 to read as follows:

23 (a) The commission shall prepare information of public
24 interest describing the functions of the commission, the provisions
25 of the limited statutory warranty and building and performance
26 standards, the state [~~state-sponsored~~] inspection program [~~and~~
27 ~~dispute resolution process~~], and the procedures by which complaints

or requests are filed with and resolved by the commission.

SECTION 18. Section 409.0011(b), Property Code, is amended to read as follows:

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

(1) are licensed by ~~[registered with]~~ the commission; and

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

SECTION 19. Section 409.004, Property Code, is amended to read as follows:

Sec. 409.004. DIRECTORY OF BUILDERS AND CERTAIN INFORMATION REGARDING BUILDERS. (a) The commission shall make available to the public a list of each builder who holds a license ~~[certificate of registration]~~ issued under Chapter 416.

(b) The commission shall post information on the commission's Internet website regarding the number of complaints the commission receives during a calendar year regarding a builder that are justified, expressed as a percentage of the total number of homes registered by the builder during the calendar year. A complaint is justified if the complaint is closed and the commission has taken disciplinary action against the builder. The commission shall update annually the information required by this subsection.

SECTION 20. The heading to Subtitle C, Title 16, Property Code, is amended to read as follows:

SUBTITLE C. BUILDER LICENSING [~~REGISTRATION~~]

SECTION 21. The heading to Chapter 416, Property Code, is amended to read as follows:

CHAPTER 416. LICENSE [~~CERTIFICATE OF REGISTRATION~~]

SECTION 22. Section 416.001, Property Code, is amended to read as follows:

Sec. 416.001. LICENSE [~~REGISTRATION~~] REQUIRED; RULES; OFFENSE. (a) Notwithstanding any other law, a [A] person may not engage in business as a builder in this state or act as a builder unless the person holds a license [~~certificate of registration~~] under this chapter.

(b) The commission shall adopt all rules necessary to implement the licensing program under this chapter, including rules relating to:

(1) license eligibility, subject to the requirements of this chapter;

(2) renewal requirements, examination requirements, and continuing education requirements for license holders;

(3) security and insurance requirements;

(4) disciplinary actions; and

(5) any other issues as determined necessary by the commission.

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

SECTION 23. The heading to Section 416.002, Property Code, is amended to read as follows:

1 Sec. 416.002. LICENSE APPLICATION [~~FOR CERTIFICATE~~].

2 SECTION 24. Sections 416.002(a) and (e), Property Code, are
3 amended to read as follows:

4 (a) An applicant for an original or renewal license
5 [~~certificate of registration~~] must submit an application on a form
6 prescribed by the commission.

7 (e) Based on a commission investigation of an alleged
8 violation of Sections 418.001(13)-(19) [~~418.001(a)(14)-(20)~~], the
9 commission may require an applicant for renewal of a license
10 [~~certificate of registration~~] to disclose to the commission every
11 person with an ownership interest in the applicant's business as a
12 builder. This subsection does not apply to a publicly traded
13 company.

14 SECTION 25. Section 416.004(a), Property Code, is amended
15 to read as follows:

16 (a) The commission shall charge and collect:

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

19 (2) a fee for renewal of a license [~~certificate of~~
20 ~~registration~~] that does not exceed \$300; and

21 (3) a late fee that does not exceed the amount of the
22 fee due if payment of a license [~~registration~~] application or
23 renewal fee due under this title is late.

24 SECTION 26. Section 416.005, Property Code, is amended to
25 read as follows:

26 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. (a) A
27 person may not receive an original license [~~a certificate of~~

~~registration~~] under this chapter unless:

(1) the person, at the time of the application:

(A) is at least 18 years of age; and

(B) is a citizen of the United States or a lawfully admitted alien; ~~and~~

(2) the commission is satisfied with the person's honesty, trustworthiness, and integrity based on information supplied or discovered in connection with the person's application; and

(3) the person complies with Subsection (b).

(b) To receive an original license, the person must complete an eight-hour course, one hour of which must address ethics and two hours of which must address:

(1) limited statutory warranties;

(2) building and performance standards;

(3) requirements of the International Residential Code as adopted under Section 430.001; and

(4) other statutes and rules that apply to builders under this title.

SECTION 27. Chapter 416, Property Code, is amended by adding Section 416.0051 to read as follows:

Sec. 416.0051. BOND REQUIREMENT. (a) In addition to the requirements for the issuance of an original license under Section 416.005, before an original license may be issued, the person to whom the license is to be issued must file with the commission a surety bond approved by the commission that is:

(1) in the amount of \$25,000;

1 (2) payable to the commission; and
2 (3) for the benefit of a party who suffers damages
3 arising from the license holder's violation of this title.

4 (b) The security required by this section must be maintained
5 by the license holder in the required amount as a condition of
6 licensure.

7 SECTION 28. Section 416.006, Property Code, is amended to
8 read as follows:

9 Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR
10 BUSINESS ENTITIES. (a) To be eligible for an original or renewal
11 license [~~certificate of registration~~] under this chapter:

12 (1) a corporation, other than a nonprofit corporation,
13 must designate one of its officers as its agent for the purposes of
14 this chapter;

15 (2) a limited liability company must designate one of
16 its managers as its agent for the purposes of this chapter; [~~and~~]

17 (3) a partnership, limited partnership, or limited
18 liability partnership must designate one of its managing partners
19 as its agent for the purposes of this chapter; and

20 (4) a nonprofit corporation must designate one of its
21 officers or executive-level administrators as its agent for the
22 purposes of this chapter.

23 (b) A corporation, limited liability company, partnership,
24 limited partnership, or limited liability partnership is not
25 eligible to hold a license [~~be registered~~] under this chapter and
26 may not act as a builder unless the entity's designated agent is
27 individually licensed [~~registered~~] as a builder.

SECTION 29. Chapter 416, Property Code, is amended by adding Section 416.0061 to read as follows:

Sec. 416.0061. EXAMINATION. (a) Except as otherwise provided by this section and effective May 1, 2010, each applicant for an original individual license under this chapter must take a licensing examination prescribed by the commission. An applicant is entitled to take the examination prescribed by the commission if:

(1) the commission determines that the applicant meets the qualifications required by this chapter; and

(2) the applicant pays the fees required by the commission.

(b) Each examination administered under this section must be prepared by the commission or by a multistate contractor licensing association approved by the commission. The commission shall ensure that the examination is administered in various locations throughout the state.

(c) The examination must be designed to determine the fitness of the applicant to engage in business as a builder in this state.

(d) A person who, immediately before January 1, 2010, held a certificate of registration issued by the commission or who immediately before May 1, 2010, held a license issued by the commission is eligible for a license without satisfying the examination requirement of this section if the commission determines that the person's certificate or license was active and in good standing. If the person's certificate was not active or was

1 not in good standing as of December 31, 2009, or the person's
2 license was not active or was not in good standing as of August 31,
3 2011, the person is required to satisfy the examination
4 requirement. This subsection expires December 31, 2014.

5 SECTION 30. Section 416.007, Property Code, is amended to
6 read as follows:

7 Sec. 416.007. LICENSE ISSUANCE [~~OF CERTIFICATE~~]. (a) Not
8 later than the 15th day after the date the commission receives an
9 application from an applicant who meets the requirements of this
10 chapter, the commission shall issue an original or provisional
11 license, as appropriate, [a certificate of registration] to the
12 applicant. A builder who holds a provisional license may operate as
13 a builder under this chapter.

14 (b) Except as provided by Section 416.0071, the license [The
15 certificate of registration] remains in effect for the period
16 prescribed by the commission if the license [certificate] holder
17 complies with this chapter and pays the appropriate renewal fees.

18 (c) The commission shall issue one license [certificate of
19 registration] for each business entity licensed [registered] under
20 this chapter.

21 SECTION 31. Chapter 416, Property Code, is amended by
22 adding Section 416.0071 to read as follows:

23 Sec. 416.0071. PROVISIONAL LICENSE. (a) The commission
24 may grant a provisional license to an applicant for a license in
25 this state who:

26 (1) has been licensed or registered in good standing
27 to engage in business as a builder for at least two years in another

1 jurisdiction that has licensing or registration requirements
2 substantially equivalent to the requirements of this title;

3 (2) is currently licensed or registered in that
4 jurisdiction; and

5 (3) has passed a national or other examination
6 recognized by the commission.

7 (b) The commission shall issue a provisional license to a
8 person who satisfies the requirements of Section 416.005(a) but who
9 has not completed the course required by Section 416.005(b).

10 (c) A provisional license under Subsection (a) is valid for
11 six months from the date of issuance.

12 (d) A provisional license under Subsection (b) is valid for
13 30 days from the date of issuance. The commission shall issue an
14 original license to the holder of a provisional license under
15 Subsection (b) if the person completes the required course on or
16 before the 30th day after the date the provisional license was
17 issued.

18 SECTION 32. The heading to Section 416.008, Property Code,
19 is amended to read as follows:

20 Sec. 416.008. DENIAL OF LICENSE [~~REGISTRATION~~].

21 SECTION 33. Section 416.008(a), Property Code, is amended
22 to read as follows:

23 (a) If the commission denies an application for an original
24 license [~~certificate of registration~~] or a renewal application, the
25 commission shall give written notice to the applicant not later
26 than the 15th day after the date the commission receives the
27 application.

SECTION 34. Section 416.009, Property Code, is amended to read as follows:

Sec. 416.009. LICENSE EXPIRATION [~~OF CERTIFICATE~~]. (a) The commission may issue or renew a license, other than a provisional license, [~~certificate of registration~~] for a period that does not exceed 24 months.

(b) The commission by rule may adopt a system under which licenses [~~certificates of registration~~] expire on several dates during the year. The commission shall adjust the date for payment of renewal fees accordingly.

(c) In a year in which the expiration date for a license [~~certificate of registration~~] is changed, the renewal fee payable shall be prorated on a monthly basis so that the license [~~certificate~~] holder pays only that portion of the fee that is allocable to the number of months during which the license [~~certificate of registration~~] is valid. On renewal of the license [~~certificate of registration~~] on the new expiration date, the total renewal fee is payable.

SECTION 35. Sections 416.010(a), (b), (c), and (d), Property Code, are amended to read as follows:

(a) A builder shall maintain a fixed office location in this state. The address of the builder's principal place of business must be designated on the license [~~certificate of registration~~].

(b) Not later than the 30th day after the date a builder moves from the address designated on the license [~~certificate of registration~~], the builder shall submit an application, accompanied by the appropriate fee, for a license [~~certificate of~~]

1 ~~registration~~] that designates the new location of the builder's
2 principal place of business. The commission shall issue a license
3 ~~[certificate of registration]~~ that designates the new location if
4 the new location complies with the requirements of this section.

5 (c) If a builder operates under any name other than the name
6 that is set forth on the builder's license ~~[certificate of~~
7 ~~registration]~~, the builder shall, within 45 days of operating under
8 this other name, disclose this other name to the commission.

9 (d) This section does not require a builder to obtain a
10 license ~~[certificate of registration]~~ for each sales office.

11 SECTION 36. Section 416.011(a), Property Code, is amended
12 to read as follows:

13 (a) The commission shall establish rules and procedures for
14 a program through which a builder can be designated as a "Texas Star
15 Builder." A builder's participation in the program is voluntary
16 and is not a requirement for the issuance of a license ~~[certificate~~
17 ~~of registration]~~ required under this chapter.

18 SECTION 37. Sections 416.012(a), (c), (d), and (e),
19 Property Code, are amended to read as follows:

20 (a) The commission shall recognize or administer continuing
21 education programs for builders licensed ~~[registered]~~ by the
22 commission. A licensed ~~[registered]~~ builder must participate in
23 the programs to the extent required by this section to maintain the
24 builder's license ~~[registration]~~.

25 (c) A builder who is licensed with the commission
26 ~~[registered before September 1, 2007, and all other builders who~~
27 ~~register for the first time on or after September 1, 2007, and~~

1 ~~satisfy the requirements of Subsection (b),]~~ must complete 16
2 ~~[five]~~ hours of continuing education every two ~~[five]~~ years, one
3 hour of which must address ethics and may not be completed by
4 self-directed study.

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

9 (1) successfully completing or auditing a course
10 sponsored by an institution of higher education;

11 (2) successfully completing a course certified by a
12 professional or trade organization;

13 (3) attending a seminar, tutorial, short course,
14 correspondence course, videotaped course, or televised course on
15 the practice of residential construction;

16 (4) participating in an in-house course sponsored by a
17 corporation or other business entity;

18 (5) teaching a course described by Subdivisions
19 (1)-(4);

20 (6) publishing an article, paper, or book on the
21 practice of residential construction;

22 (7) making or attending a presentation at a meeting of
23 a residential or builder association or organization or writing a
24 paper presented at the meeting;

25 (8) participating in the activities of a residential
26 or builder association, including serving on a committee of the
27 organization; and

(9) engaging in self-directed study on the practice of residential construction.

(e) A licensed [~~registered~~] builder may not receive more than two continuing education credit hours during each two-year [~~five-year~~] period for engaging in self-directed study.

SECTION 38. Section 417.003(a), Property Code, is amended to read as follows:

(a) The commission shall charge and collect:

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

(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 certification [~~registration~~] or application fee due under this title is late.

SECTION 39. Section 418.001, Property Code, is amended to read as follows:

Sec. 418.001. GROUNDS 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 license, 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

1 nonappealable court judgment;

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

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

6 (5) publishing a false or misleading advertisement;

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

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

15 (8) failure to pay a final nonappealable court
16 judgment arising from a construction defect or other transaction
17 between the person and a homeowner;

18 (9) failure to register a home as required by Section
19 426.003;

20 (10) failure to remit the fee for registration of a
21 home under Section 426.003;

22 (11) ~~[failure to reimburse a homeowner the amount~~
23 ~~ordered by the commission as provided by Section 428.004(d),~~

24 ~~[-(12)-]~~ engaging in statutory or common-law fraud or
25 misappropriation of funds, as determined by the commission after a
26 hearing under Section 418.003;

27 (12) ~~[-(13)-]~~ a ~~[repeated]~~ failure to participate in the

1 state [~~state-sponsored~~] inspection program [~~and dispute resolution~~
2 ~~process~~] if required by this title;

3 (13) [~~(14)~~] failure to obtain a license [~~register as a~~
4 ~~builder~~] as required under Chapter 416;

5 (14) [~~(15)~~] using or attempting to use a license
6 [~~certificate of registration~~] that has expired or that has been
7 revoked;

8 (15) [~~(16)~~] falsely representing that the person
9 holds a license [~~certificate of registration~~] issued under Chapter
10 416;

11 (16) [~~(17)~~] acting as a builder using a name other
12 than the name or names disclosed to the commission;

13 (17) [~~(18)~~] aiding, abetting, or conspiring with a
14 person who does not hold a license [~~certificate of registration~~] to
15 evade the provisions of this title or rules adopted under this
16 title, if found by a final nonappealable court judgment;

17 (18) [~~(19)~~] allowing the person's license
18 [~~certificate of registration~~] to be used by another person;

19 (19) [~~(20)~~] acting as an agent, partner, or associate
20 of a person who does not hold a license [~~certificate of~~
21 ~~registration~~] with the intent to evade the provisions of this title
22 or rules adopted under this title;

23 (20) [~~(21)~~] a failure to reasonably perform on an
24 accepted offer to repair or a [~~repeated~~] failure to make an offer to
25 repair based on:

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

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

(21) ~~[(22)]~~ a ~~[repeated]~~ failure to respond to a commission request for information;

(22) ~~[(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;

(23) ~~[(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;

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

(25) ~~[(26)]~~ a failure to comply with the reporting requirements of Section 428.006;

(26) a failure to substantially complete all the obligations under an express contract for construction without reasonable grounds for the failure, if found to have done so by a final, nonappealable court judgment;

(27) a failure to comply with a commission rule related to the duties and obligations of a third-party inspector under Chapter 427;

(28) a failure to use a contract form adopted or approved by the commission under Section 420.004; or

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

SECTION 40. Sections 418.002(a) and (c), Property Code, are

1 amended to read as follows:

2 (a) On a determination that a ground for disciplinary action
3 under Section 418.001 exists, the commission may:

4 (1) revoke or suspend a license [~~registration~~] or
5 certification [~~in the event of repeated prior violations that have~~
6 ~~resulted in disciplinary action~~];

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

9 (3) formally or informally reprimand a licensed
10 [~~registered~~] or certified person; [~~or~~]

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

13 (5) prohibit a person or entity from acting as a
14 builder under this title, from acting as a contractor, as defined by
15 Section 27.001, or from owning or operating a company that supplies
16 goods or services to a builder or contractor for a period of time
17 and under conditions determined by the commission.

18 (c) For purposes of Section 418.001(11) [~~418.001(12)~~], the
19 commission may not conduct a hearing or revoke or suspend a license
20 [~~registration~~] or certification unless the determination of
21 statutory or common-law fraud or misappropriation of funds has been
22 made in a final nonappealable judgment by a court.

23 SECTION 41. Section 418.004(c), Property Code, is amended
24 to read as follows:

25 (c) An appeal to a district court of a final decision of the
26 commission under this section regarding a revocation or suspension
27 of a license [~~registration~~] or certification is determined by

substantial evidence.

SECTION 42. Section 419.002(c), Property Code, is amended to read as follows:

(c) A violation of Section 418.001(2) or (11) [~~(12)~~] is punishable by a penalty not to exceed \$100,000.

SECTION 43. Section 419.004, Property Code, is amended to read as follows:

Sec. 419.004. ENFORCEMENT OF PENALTY. If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

(1) refer the matter to the attorney general for collection of the penalty; or

(2) enforce any part of the order that specifies disciplinary action to be taken against the licensed [~~registered~~] or certified person if the licensed [~~registered~~] or certified person fails to pay the administrative penalty within the time prescribed.

SECTION 44. The heading to Chapter 420, Property Code, is amended to read as follows:

CHAPTER 420. REGULATION OF BUILDING CONTRACTS AND TRANSFERS OF TITLE FROM BUILDER [~~CONTRACT PROVISIONS~~]

SECTION 45. Section 420.001, Property Code, is amended to read as follows:

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

1 or the computer equivalent that gives the telephone number of the
2 commission and states:

3 STATE LAW REQUIRES THAT A PERSON HOLD A LICENSE [~~CERTIFICATE~~
4 ~~OF REGISTRATION~~] FROM THE TEXAS RESIDENTIAL CONSTRUCTION
5 COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE
6 PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING
7 HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND
8 THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING
9 LABOR AND MATERIALS).

10 YOU MAY CONTACT THE COMMISSION AT [insert commission's
11 telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID
12 LICENSE [~~CERTIFICATE OF REGISTRATION~~]. THE COMMISSION HAS
13 INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING
14 SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF
15 COMPLAINTS.

16 THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE
17 PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED
18 IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT.
19 IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY
20 CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN
21 HOW TO PROCEED UNDER THE STATE [~~STATE-SPONSORED~~] INSPECTION PROGRAM
22 [~~AND DISPUTE RESOLUTION PROCESS~~].

23 SECTION 46. Section 420.002, Property Code, is amended to
24 read as follows:

25 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract
26 for the construction of a new home or an improvement to an existing
27 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 license
~~[certificate of registration]~~ number; and

(2) contains the notice required by Section 420.001.

SECTION 47. Section 420.003, Property Code, is amended to
read as follows:

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, or in
any agreement related to the contract that requires the parties to
submit a dispute to arbitration, the provision requiring the
submission of a dispute to arbitration must be prominently
displayed in the document and conspicuously printed or typed in a
size equal to at least 12-point ~~[10-point]~~ bold type or the computer
equivalent.

(b) A written arbitration agreement to arbitrate a
controversy that exists at the time of the agreement that is entered
into in connection with a contract described by Subsection (a) must
include a statement, initialed by each party to the agreement,
stating that the party has chosen to arbitrate a controversy that
exists at the time of the agreement. A written arbitration
agreement to arbitrate a controversy that arises between the
parties after the date of the agreement that is a provision of a
contract described by Subsection (a), or an agreement entered into
in connection with the contract, must include a statement,

initialed by each party to the agreement, stating that the party has chosen to arbitrate a controversy that arises between the parties after the date of the agreement. A written arbitration agreement must also contain a second statement, immediately following the other statement required by this subsection, that is conspicuously printed or typed in at least 12-point bold-faced type or the computer equivalent and initialed by the homeowner that states that the homeowner knowingly and voluntarily waives the homeowner's right to a trial by jury of all disputes by signing the agreement.

(c) A contract provision or agreement described by this section [Subsection (a)] is not enforceable against the homeowner unless the requirements of this section [Subsection (a)] are met.

SECTION 48. Chapter 420, Property Code, is amended by adding Section 420.004 to read as follows:

Sec. 420.004. STANDARD CONTRACT FORMS. (a) The commission shall adopt rules in the public's best interest that require builders to use contract forms prepared with the assistance of the Texas Real Estate Broker-Lawyer Committee and adopted by the commission for the sale or construction of a new home.

(b) The commission may not prohibit a builder from using a contract form for the sale or construction of a new home that is:

- (1) prepared by the purchaser; or
- (2) prepared by an attorney and required by the purchaser.

(c) A contract form adopted by the commission must comply with this chapter, except that the commission may not adopt a contract form that includes a provision that requires the parties

1 to submit a dispute arising under the contract to binding
2 arbitration.

3 (d) A builder may use the builder's own contract form if the
4 builder has submitted the form to the commission and the commission
5 has approved the builder's use of the form. The commission shall
6 approve or disapprove a contract form submitted under this
7 subsection on or before the 30th day after the date the form is
8 submitted.

9 (e) In considering whether to approve a builder's contract
10 form under Subsection (d), the commission shall approve the form
11 only if the commission determines that the contract form is in the
12 public's best interest and consistent with the criteria used by the
13 commission to adopt standard forms under Subsection (a).

14 SECTION 49. Chapter 420, Property Code, is amended by
15 adding Section 420.005 to read as follows:

16 Sec. 420.005. FULL DISCLOSURE OF RESALE BY BUILDER. (a)
17 Before a contract may be executed or money exchanged between a
18 builder and a buyer for purchase of a home that, because of one or
19 more construction defects, the builder repurchased from a previous
20 buyer from the builder, the builder must provide to the buyer a
21 document that fully discloses the nature of and the builder's
22 remediation of each of those construction defects.

23 (b) In addition to a disclosure of the nature of each
24 construction defect and the remediation work performed, the
25 disclosure under Subsection (a) must include information relating
26 to:

27 (1) any products installed in the home relating to the

1 remediation;

2 (2) care and component warranties of those products;

3 (3) building standards used in performing the
4 remediation; and

5 (4) any risks and hazards of the home.

6 SECTION 50. Chapter 420, Property Code, is amended by
7 adding Section 420.006 to read as follows:

8 Sec. 420.006. CONSTRUCTION DOCUMENTS. A builder who
9 constructs a new home must provide a copy of the plat and the
10 blueprints used in the construction of the home:

11 (1) at the time the construction is completed, to the
12 person who contracted with the builder for the construction of the
13 home; or

14 (2) at the time title to the home is transferred by the
15 builder, to the person who purchases the home from the builder.

16 SECTION 51. Subtitle C, Title 16, Property Code, is amended
17 by adding Chapter 421 to read as follows:

18 CHAPTER 421. HOMEOWNER RECOVERY FUND

19 Sec. 421.001. DEFINITIONS. In this chapter:

20 (1) "Fund" means the homeowner recovery fund.

21 (2) "Fund account" means the account established for
22 the deposit of money held by the fund.

23 Sec. 421.002. LEGISLATIVE INTENT. The legislature intends
24 that the fund serve as a resource of last resort for homeowners who
25 are unable to collect damages from a builder arising from the
26 builder's violation of this title or to get a confirmed
27 construction defect repaired by a builder.

1 Sec. 421.003. FUND ESTABLISHED. The homeowner recovery
2 fund is established.

3 Sec. 421.004. ACCOUNT. (a) The fund account is established
4 with the Texas Treasury Safekeeping Trust Company in accordance
5 with procedures adopted by the comptroller. The comptroller shall
6 account for the deposited money separately from all other money.

7 (b) The comptroller shall annually transfer to the credit of
8 the fund account 10 percent of each administrative penalty
9 collected under Chapter 419.

10 (c) Notwithstanding Sections 404.071 and 404.106,
11 Government Code, the pro rata portion of interest earned by the
12 trust company from money in the fund shall be allocated to the fund.

13 (d) The commission shall notify the comptroller of the
14 existence of money to be credited to the fund account under this
15 section. The commissioner must enter an order to transfer amounts
16 from the fund account.

17 (e) The comptroller shall transfer to the credit of the fund
18 account any money collected by the commission during state fiscal
19 year 2010 that exceeds the commission's direct and indirect
20 operating costs. This subsection expires September 1, 2011.

21 Sec. 421.005. CLAIM FOR PAYMENT FROM ACCOUNT. (a) A
22 homeowner who participates in the state inspection process in
23 connection with a request filed under Section 428.001 or engages in
24 mediation under Section 428A.004 and sustains damages arising from
25 a builder's violation of this title is entitled to payment from the
26 fund if the homeowner:

27 (1) obtains a court judgment against a builder for

1 damages arising from the violation for which execution is returned
2 without a satisfaction of the total amount of the judgment and
3 perfects a judgment lien for the unsatisfied amount;

4 (2) in a bankruptcy proceeding involving the builder,
5 proves a claim against the builder for damages arising from the
6 builder's violation of this title that is disallowed or rendered
7 uncollectible by an order or other final ruling of the bankruptcy
8 court; or

9 (3) proves in accordance with rules adopted by the
10 commission that:

11 (A) the homeowner sustained damages arising from
12 the builder's violation of this title, including court costs and
13 reasonable attorney's fees, of not more than \$10,000;

14 (B) the builder has not offered to repair or has
15 failed to repair the construction defect or otherwise resolve the
16 dispute arising from the construction defect; and

17 (C) the damages are uncollectible from the
18 builder without pursuing a civil action against the builder.

19 (b) After receiving a request for payment from the fund
20 under Subsection (a)(3), the commission shall hold a hearing to
21 determine whether the person who makes the request is entitled to
22 payment and, if so, the amount of the payment to which the person is
23 entitled.

24 (c) A person entitled to payment under this section may
25 collect only the lesser of:

26 (1) the amount of actual damages awarded or proven
27 that the person was unable to collect from the builder; or

1 (2) \$175,000.

2 SECTION 52. The heading to Subtitle D, Title 16, Property
3 Code, is amended to read as follows:

4 SUBTITLE D. STATE [~~STATE-SPONSORED~~] INSPECTION PROGRAM [~~AND~~
5 ~~DISPUTE RESOLUTION PROCESS~~]; STATUTORY WARRANTY AND BUILDING AND
6 PERFORMANCE STANDARDS

7 SECTION 53. Section 426.003, Property Code, is amended by
8 amending Subsections (a) and (b) and adding Subsections (e) and (f)
9 to read as follows:

10 (a) A builder shall register a new home with the commission
11 on or before the 15th day of the month following the month in which
12 the transfer of title from the builder to the homeowner occurs.
13 [~~The registration must include the information required by the~~
14 ~~commission by rule and be accompanied by the fee required by~~
15 ~~Subsection (c).~~]

16 (b) A builder who enters a transaction governed by this
17 title, other than the transfer of title of a new home from the
18 builder to the seller, shall register the home involved in the
19 transaction with the commission[~~. The registration must:~~

20 [~~(1) include the information required by the~~
21 ~~commission by rule,~~

22 [~~(2) be accompanied by the fee required by Subsection~~
23 ~~(c), and~~

24 [~~(3) be delivered to the commission~~] not later than
25 the 15th day after the earlier of:

26 (1) [~~(A)~~] the date of the substantial completion of
27 the home or other residential construction project;

1 (2) [~~(B)~~] the date the new home is occupied; or

2 (3) [~~(C)~~] the date of issuance of a certificate of
3 occupancy or a certificate of completion.

4 (e) A builder who registers a home or a residential
5 construction project under Subsection (a) or (b) shall:

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

8 (2) state whether the registration concerns a new
9 home, a material improvement to an existing home, or an improvement
10 to the interior of an existing home when the cost of the work
11 exceeds \$10,000; and

12 (3) pay the fee required by Subsection (c).

13 (f) Notwithstanding Subsections (a) and (b), a builder is
14 not required to comply with this subtitle after completing
15 construction of a partially completed home owned by a mortgagee or a
16 beneficiary under a deed of trust who acquired the partially
17 completed home:

18 (1) at a sale conducted under a power of sale under a
19 deed of trust or a court-ordered foreclosure; or

20 (2) by a deed in lieu of foreclosure.

21 SECTION 54. The heading to Section 426.004, Property Code,
22 is amended to read as follows:

23 Sec. 426.004. EXPENSES [~~FEES~~].

24 SECTION 55. Section 426.004(a), Property Code, is amended
25 to read as follows:

26 (a) A builder [~~party~~] who is involved in a dispute for which
27 a request is submitted [~~submits a request~~] under this subtitle

1 shall pay any amount required by the commission to offset ~~[cover]~~
2 the expense of the third-party inspector.

3 SECTION 56. Section 426.005, Property Code, is amended by
4 amending Subsections (b) and (f) and adding Subsections (g), (h),
5 (i), and (j) to read as follows:

6 (b) Except as provided by Subsections (g) and (h), an ~~[An]~~
7 action described by Subsection (a) must be filed:

8 (1) on or before the expiration of any applicable
9 statute of limitations or by the 45th day after the date the
10 third-party inspector issues the inspector's recommendation,
11 whichever is later; or

12 (2) if the recommendation is appealed, on or before
13 the expiration of any applicable statute of limitations or by the
14 45th day after the date the commission issues its ruling on the
15 appeal, whichever is later.

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

18 (1) at the time a homeowner and a builder enter into a
19 contract covered by this title the builder was not licensed
20 ~~[registered]~~; or

21 (2) the license ~~[certificate of registration]~~ of the
22 builder has been revoked.

23 (g) Except as provided by Subsection (h), an action
24 described by Subsection (a) may be initiated by the homeowner or
25 builder:

26 (1) for a dispute involving workmanship and materials,
27 on or after the 76th day after the date the request for a state

1 inspection is submitted, except as provided by Subdivision (3);

2 (2) for a dispute involving a structural matter, on or
3 after the 91st day after the date the request for a state inspection
4 is submitted, except as provided by Subdivision (3); or

5 (3) if the third-party inspector's recommendation is
6 appealed and a ruling on the appeal is not issued in the time
7 prescribed by Section 429.001, on or after the day after the date
8 the panel is required to issue the ruling under that section.

9 (h) If a homeowner or builder causes a delay of more than
10 five days in the completion of the inspection process under the
11 state inspection program or any appeal under the program, the time
12 required under Subsection (g) to initiate an action against the
13 homeowner or builder who causes the delay is extended by the number
14 of days of the delay.

15 (i) An action filed under Subsection (g) must be filed on or
16 before the later of:

17 (1) the expiration of the applicable statute of
18 limitations; or

19 (2) the 45th day after the first date on which
20 Subsection (g) authorizes the filing of the action.

21 (j) Once a final, unappealable recommendation or a ruling on
22 an appeal of a recommendation is issued under this subtitle, a
23 homeowner or builder may file an action described by Subsection
24 (a). A homeowner is not required to delay the filing of an action to
25 allow the builder an opportunity to make an offer of settlement or
26 repair under Sections 27.004(b) and (c) or an election to purchase
27 the residence under Section 27.0042. The filing of an action by the

1 homeowner does not affect a builder's right to make an offer of
2 settlement or repair in the time provided by Section 27.004(b) or an
3 election to purchase the residence in the time provided by Section
4 27.0042.

5 SECTION 57. Section 426.006, Property Code, is amended to
6 read as follows:

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

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

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

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

SECTION 58. 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 under Section 428.001 ~~[and dispute resolution]~~ or responds to a request made under that section ~~[Chapter 428]~~ must disclose in the request or response the name of any expert 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 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 59. Sections 427.001(c), (c-1), and (d), Property Code, are amended to read as follows:

(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 years' experience in residential construction.

1 (c-1) For an inspection request with an issue [~~A third-party~~
2 ~~inspector who inspects an issue~~] involving a structural matter and
3 an unrelated issue involving workmanship and materials matters, the
4 commission must assign a third-party inspector who meets [~~must~~
5 ~~meet~~] the requirements of Subsections (b) and (c) or assign two
6 third-party inspectors, one who meets the requirements of
7 Subsection (b) and one who meets the requirements of Subsection
8 (c), to work in conjunction with one another to inspect the alleged
9 defects.

10 (d) Each third-party inspector must receive, in accordance
11 with commission rules:

12 (1) initial training regarding the state
13 [~~state-sponsored~~] inspection program [~~and dispute resolution~~
14 ~~process~~] and this subtitle; and

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

17 SECTION 60. Section 427.002(a), Property Code, is amended
18 to read as follows:

19 (a) The commission shall employ state inspectors to:

20 (1) review on an appeals panel the recommendations of
21 third-party inspectors;

22 (2) provide consultation to third-party inspectors;
23 and

24 (3) administer the state [~~state-sponsored~~] inspection
25 program [~~and dispute resolution process~~].

26 SECTION 61. The heading to Chapter 428, Property Code, is
27 amended to read as follows:

1 CHAPTER 428. STATE [~~STATE-SPONSORED~~] INSPECTION PROGRAM [~~AND~~
2 ~~DISPUTE RESOLUTION PROCESS~~]

3 SECTION 62. Sections 428.001(a) and (b), Property Code, are
4 amended to read as follows:

5 (a) If a dispute between a homeowner and a builder arises
6 out of an alleged construction defect, the homeowner or the builder
7 may submit to the commission a written request for
8 [~~state-sponsored~~] inspection under this subtitle [~~and dispute~~
9 ~~resolution~~]. If the builder files a request under this section, the
10 homeowner may submit a request for mediation as provided by Section
11 428A.004.

12 (b) The request must:

13 (1) specify in reasonable detail each alleged
14 construction defect that is a subject of the request;

15 (2) state the amount of any known out-of-pocket
16 expenses and engineering or consulting fees incurred by the
17 homeowner in connection with each alleged construction defect;

18 (3) include any evidence that depicts the nature and
19 cause of each alleged construction defect and the nature and extent
20 of repairs necessary to remedy the construction defect, including,
21 if available, expert reports, photographs, and videotapes, if that
22 evidence would be discoverable under Rule 192, Texas Rules of Civil
23 Procedure;

24 (4) be accompanied by the fees required under Section
25 426.004, if applicable; and

26 (5) state the name of any person who has, on behalf of
27 the requestor, inspected the home in connection with an alleged

1 construction defect.

2 SECTION 63. Chapter 428, Property Code, is amended by
3 adding Section 428.0011 to read as follows:

4 Sec. 428.0011. PROCESSING AND PRIORITIZING OF REQUESTS.

5 (a) The commission shall adopt rules for processing requests under
6 this chapter that include guidelines for prioritizing the handling
7 of the requests and allocating agency staff and other resources in
8 the most efficient manner to address the requests.

9 (b) In adopting rules under this section, the commission
10 shall consider:

11 (1) appropriate ways to expedite inspections under the
12 state inspection program under emergency circumstances, including
13 cases involving issues of habitability;

14 (2) appropriate handling of complex case material and
15 whether different handling is appropriate for requests involving a
16 structural defect and requests involving workmanship and
17 materials; and

18 (3) the most efficient ways to use agency staff.

19 SECTION 64. Section 428.002(a), Property Code, is amended
20 to read as follows:

21 (a) At ~~[In addition to the right of inspection provided by~~
22 ~~Section 428.001(c), at]~~ any time before the conclusion of the
23 ~~[state-sponsored] inspection [and dispute resolution]~~ process
24 under this subtitle and on the builder's written request, the
25 builder shall be given reasonable opportunity to inspect the home
26 that is the subject of the request or have the home inspected to
27 determine the nature and cause of the construction defect and the

1 nature and extent of repairs necessary to remedy the construction
2 defect.

3 SECTION 65. Section 428.003, Property Code, is amended to
4 read as follows:

5 Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR;
6 ADMINISTRATIVE PENALTY. (a) On or before the 10th ~~[30th]~~ day after
7 the date the commission receives a request, the commission shall
8 appoint the next available third-party inspector from the
9 applicable lists of third-party inspectors maintained by the
10 commission under Subsection (d) ~~[(e)]~~. If, in accordance with
11 guidelines adopted under Section 428.0011, the executive director
12 determines the circumstances involved in a request constitute an
13 emergency, the executive director may assign a state inspector or
14 other commission employee that the executive director determines is
15 qualified to conduct the inspection and issue a recommendation in
16 accordance with the requirements for inspections and
17 recommendations by a third-party inspector.

18 (b) The commission shall establish rules and regulations
19 that require ~~[allow the homeowner and the builder to each have the~~
20 ~~right to strike the appointment of]~~ a third-party inspector to
21 decline an appointment and disclose to the commission that a
22 conflict of interest exists if the third-party inspector:

23 (1) is employed by or participates in the management
24 of a business entity or other organization owned by or receiving
25 money from the interested homeowner or builder;

26 (2) owns or controls, directly or indirectly, more
27 than a 10 percent interest in a business entity or other

1 organization owned by or receiving money from the interested
2 homeowner or builder; or

3 (3) uses or receives a substantial amount of goods,
4 services, or money from the interested homeowner or builder [~~one~~
5 ~~time for each request submitted~~].

6 (c) The commission may impose an administrative penalty on
7 or remove from the list of available third-party inspectors a
8 third-party inspector who knowingly fails to decline an appointment
9 and disclose a conflict of interest in accordance with Subsection
10 (b).

11 (d) The commission shall adopt rules that allow for the
12 commission to maintain a list of available third-party inspectors
13 for the various regions of the state, as required to satisfy the
14 provisions of this title.

15 SECTION 66. Section 428.004, Property Code, is amended by
16 amending Subsections (b) and (c) and adding Subsections (g), (h),
17 and (i) to read as follows:

18 (b) If the dispute involves a structural matter in the home,
19 the commission shall appoint a [~~an approved engineer to be the~~]
20 third-party inspector qualified under Section 427.001 to inspect
21 for structural defects. The third-party inspector shall inspect
22 the home not later than the 30th day after the date the request is
23 submitted and issue a recommendation not later than the 45th [~~60th~~]
24 day after the date the third-party inspector receives the
25 assignment from the commission, unless additional time is requested
26 by the third-party inspector or a party to the dispute. The
27 commission shall adopt rules governing the extension of time under

1 this subsection.

2 (c) The third-party inspector's recommendation must~~[-~~

3 ~~[(1) address only the construction defect, based on~~
4 ~~the applicable warranty and building and performance standards, and~~

5 ~~[(2)]~~ designate a method or manner of repair, if any.

6 At the option of the third-party inspector, the recommendation may
7 identify any construction defects discovered by the third-party
8 inspector that are not included in the request for inspection that
9 involve a violation of any applicable building and performance
10 standard that if left unrepaired may threaten the health or safety
11 of the occupants of the home or that involve a violation of a
12 building code applicable to the construction. A third-party
13 inspector has no duty to inspect the home for construction defects
14 that are not included in the request for inspection.

15 (g) A final report made available to the public on the
16 commission's Internet website may not include the name of the
17 homeowner and must indicate whether the builder offered to make
18 repairs as recommended by the final report or otherwise resolved
19 the dispute with the homeowner.

20 (h) A final report made available to the public on the
21 commission's Internet website may not include the name or street
22 address of the homeowner and must indicate:

23 (1) whether the builder has resolved the dispute with
24 the homeowner by:

25 (A) making repairs substantially equivalent to
26 those required by the findings of the final report confirming the
27 defect, as confirmed by the homeowner and a third-party inspector

1 who has inspected the repairs; or

2 (B) has otherwise resolved the dispute with the
3 homeowner; or

4 (2) whether the builder has not resolved the dispute
5 with the homeowner. If the builder has not resolved the dispute
6 with the homeowner, the report shall indicate whether the builder
7 offered to make repairs as recommended by the final report.

8 (i) All final reports and all information contained therein
9 are public records.

10 SECTION 67. Chapter 428, Property Code, is amended by
11 adding Sections 428.0041 and 428.006 to read as follows:

12 Sec. 428.0041. INSPECTION OF CONSTRUCTION DEFECT OR REPAIR;
13 TIME FOR COMPLETION OF CERTAIN REPAIRS. (a) A builder who, for the
14 purposes of Section 27.004(1) or otherwise, completes repairs of a
15 construction defect shall, at the builder's expense, engage an
16 inspector to inspect the repairs and determine whether the home, as
17 repaired, complies with the applicable limited statutory warranty
18 and building and performance standards adopted by the commission.
19 The builder shall engage the third-party inspector who issued a
20 recommendation regarding the construction defect to perform the
21 inspection unless otherwise provided by commission rules adopted
22 under this section.

23 (b) An inspection of repairs under Subsection (a), other
24 than minor cosmetic repairs described by Subsection (c), must be
25 completed not later than:

26 (1) the 30th day after the date the repairs are
27 completed for a dispute involving workmanship and materials; and

1 (2) the 45th day after the date the repairs are
2 completed for a dispute that involves a structural matter.

3 (c) The builder is entitled to a reasonable period not to
4 exceed 15 days to address minor cosmetic items that are necessary to
5 fully complete the repairs.

6 (d) The commission may for good cause require that:

7 (1) an alleged construction defect that has been
8 inspected by a third-party inspector be inspected again by another
9 third-party inspector or a state inspector or other commission
10 employee; or

11 (2) a builder's repair of a construction defect be
12 inspected by a third-party inspector or a state inspector or other
13 commission employee, regardless of whether the repair is inspected
14 for the purposes of Subsection (a) by the third-party inspector who
15 issued a recommendation regarding the construction defect or by a
16 state inspector.

17 (e) The commission may charge the builder a fee for an
18 inspection conducted under Subsection (d).

19 (f) A homeowner may refuse an inspection under this section.

20 Sec. 428.006. BUILDER REPORTING REQUIRED. (a) A builder
21 involved in the inspection process or mediation under this subtitle
22 shall file with the commission, on a form prescribed by the
23 commission, information relating to any activity related to the
24 dispute, including a settlement, repair effort, mediation,
25 arbitration, or litigation, that occurs after:

26 (1) a third-party inspector's report issued under this
27 chapter becomes final and nonappealable; or

1 (2) mediation is requested under Section 428A.004.

2 (b) A builder shall file a form not later than the 21st day
3 after the report becomes final and nonappealable or the builder
4 receives a request for mediation under Section 428A.004.

5 (c) In addition to any other information the commission
6 determines is appropriate to request, the form prescribed under
7 this section must request the following information:

8 (1) the name of the builder;

9 (2) the name and address of the homeowner and the
10 property involved in the inspection process or mediation;

11 (3) any inspection or other request number assigned by
12 the commission;

13 (4) whether any repairs or other types of compensation
14 were offered by the builder to the homeowner for any construction
15 defects affirmed by a final, nonappealable report;

16 (5) if repairs were offered by the builder:

17 (A) whether any alleged defects affirmed by a
18 final, nonappealable report were excluded from the offer of repair;
19 and

20 (B) whether the homeowner accepted any or all of
21 the repairs offered;

22 (6) if repairs were offered and accepted:

23 (A) whether the repairs were made; and

24 (B) whether the repairs resulted in the
25 satisfaction of all issues between the parties as a result of the
26 residential construction project;

27 (7) if repairs were made, whether the builder engaged

1 the services of the third-party inspector who performed the
2 inspection under this subtitle to inspect the repairs;

3 (8) if repairs were not offered or an offer for repair
4 was not accepted, whether either of the parties pursued any further
5 legal proceedings related to the dispute between the parties;

6 (9) if either party has pursued further legal
7 proceedings, whether the parties are in mediation or involved in
8 arbitration or a civil lawsuit; and

9 (10) if the parties are involved in an arbitration
10 proceeding, whether the arbitration is required as a provision of a
11 contract between the parties.

12 (d) If the parties have not resolved their dispute at the
13 time the builder files the initial form under Subsection (b), the
14 builder must update the status of the information requested or
15 provided on the form not later than the 21st day after the
16 occurrence of one of the following events:

17 (1) repairs offered by the builder are accepted and
18 performed and, once performed, reinspected in accordance with
19 Sections 27.004(1) and 428.0041 and accepted by the homeowner as
20 resolving all issues in the dispute;

21 (2) any legal proceedings described by Subsection
22 (c)(9) are final;

23 (3) the builder repurchases the home under Section
24 27.0042; or

25 (4) any other resolution of the dispute between the
26 parties is finalized.

27 (e) A builder's failure to comply with this section or to

1 complete the required form honestly is grounds for denial of the
2 builder's license renewal application under Chapter 416.

3 SECTION 68. Subtitle D, Title 16, Property Code, is amended
4 by adding Chapter 428A to read as follows:

5 CHAPTER 428A. OFFICE OF OMBUDSMAN; VOLUNTARY MEDIATION

6 Sec. 428A.001. OFFICE OF OMBUDSMAN. The office of the
7 ombudsman is established at the commission to assist the
8 commission, builders, and homeowners following the completion of
9 the state inspection process and to engage in other activities as
10 provided by this chapter.

11 Sec. 428A.002. QUALIFICATIONS. The commission shall hire a
12 licensed attorney to act as ombudsman.

13 Sec. 428A.003. POWERS AND DUTIES. (a) The ombudsman shall:
14 (1) provide information and, subject to Subsection
15 (b), advice to homeowners and builders engaged in defect repairs
16 after the completion of the state inspection process to assist them
17 in understanding the post-inspection process;

18 (2) assist homeowners and builders in locating
19 mediation services, if requested, for the purposes of Section
20 428A.004; and

21 (3) submit comments to the commission on rules and
22 other policy changes being considered by the commission.

23 (b) The ombudsman may not provide legal advice to homeowners
24 and builders.

25 (c) The ombudsman shall report directly to the commission.

26 Sec. 428A.004. VOLUNTARY MEDIATION. (a) The commission by
27 rule shall establish procedures for a builder and homeowner to

engage in a third-party mediation, as described by Section 154.023,
Civil Practice and Remedies Code, performed by a third-party
mediator not employed by the commission, of a dispute involving a
construction defect as an alternative to the inspection process
under this subtitle, if the homeowner, before the expiration of the
time to submit a request for inspection under Section 426.006, and
before a third-party inspection has been performed, submits a
statement to the commission and the builder, in the form prescribed
by the commission, that the homeowner is requesting mediation as an
alternative to the state inspection process. If a homeowner
requests mediation under this section, a builder is required to
participate in mediation in good faith, as determined by the
mediator. The mediation must be completed on or before the
expiration of the mediation period prescribed by Subsection (c)
and, unless otherwise agreed by the parties, be conducted in the
county in which the home is located.

(b) Notwithstanding any other law, if the homeowner
requests mediation under this section, an action described by
Section 426.005(a):

(1) may not be filed before the expiration of the
mediation period unless an agreement is executed as a result of the
mediation that is breached before the end of the mediation period;
and

(2) must be filed on or before the later of:

(A) the expiration of any applicable statute of
limitations; or

(B) the 45th day after the earlier of:

1 (i) the expiration of the mediation period;
2 or
3 (ii) the execution of an agreement as a
4 result of the mediation.

5 (c) For the purposes of this section, the mediation period
6 expires on the 90th day after the date the homeowner submits a
7 statement of intent to engage in mediation under this section. A
8 homeowner or builder may, in accordance with Subsection (b), file
9 an action described by Section 426.005(a) if no agreement is
10 reached before the expiration of the mediation period.

11 (d) A builder's failure to comply with an agreement executed
12 by the parties as a result of a mediation under this section is
13 grounds for disciplinary action under Chapter 418, including the
14 imposition of an administrative penalty under Chapter 419.

15 (e) The parties to a mediation under this section shall
16 split the fees of the third-party mediator equally.

17 (f) For purposes of Chapter 27, good faith participation in
18 mediation under this section, as determined by the mediator, for
19 the mediation period established by this section constitutes a
20 final, nonappealable determination under this subtitle and
21 completion of the state inspection process, and a written agreement
22 to mediate submitted by the parties under this section constitutes
23 a request under Section 428.001. For the purposes of Section
24 27.004(1), if the builder makes a repair pursuant to an offer under
25 Section 27.004(b), the builder may engage any third-party inspector
26 to inspect the repair and determine whether the residence, as
27 repaired, complies with the applicable limited statutory warranty

1 and building and performance standards.

2 SECTION 69. Sections 430.001(b), (d), and (e), Property
3 Code, are amended to read as follows:

4 (b) The warranty periods shall be:

5 (1) two years [~~one year~~] for workmanship and
6 materials;

7 (2) two years for plumbing, electrical, heating, and
8 air-conditioning delivery systems; and

9 (3) 10 years for major structural components of the
10 home.

11 (d) The International Residential Code for One- and
12 Two-Family Dwellings that applies to nonelectrical aspects of
13 residential construction for the purposes of the limited statutory
14 warranties and building and performance standards adopted under
15 this section is:

16 (1) for residential construction located in a
17 municipality or the extraterritorial jurisdiction of a
18 municipality, the version of the International Residential Code
19 applicable to nonelectrical aspects of residential construction in
20 the municipality under Section 214.212, Local Government Code; and

21 (2) for residential construction located in an
22 unincorporated area not in the extraterritorial jurisdiction of a
23 municipality, the version of the International Residential Code
24 adopted by the commission by rule [~~applicable to nonelectrical~~
25 ~~aspects of residential construction in the municipality that is the~~
26 ~~county seat of the county in which the construction is located, and~~

27 [~~(3) for residential construction located in an~~

~~1 unincorporated area in a county that does not contain an
2 incorporated area, the version of the International Residential
3 Code that existed on May 1, 2001].~~

4 (e) The National Electrical Code for One- and Two-Family
5 Dwellings that applies to electrical aspects of residential
6 construction for the purposes of this section is:

7 (1) for residential construction located in a
8 municipality or the extraterritorial jurisdiction of a
9 municipality, the version of the National Electrical Code
10 applicable to electrical aspects of residential construction in the
11 municipality under Section 214.214, Local Government Code; and

12 (2) for residential construction located in an
13 unincorporated area not in the extraterritorial jurisdiction of a
14 municipality, the version of the National Electrical Code adopted
15 by the commission by rule ~~[applicable to electrical aspects of~~
16 ~~residential construction in the municipality that is the county~~
17 ~~seat of the county in which the construction is located, and~~

18 ~~[(3) for residential construction located in an~~
19 ~~unincorporated area in a county that does not contain an~~
20 ~~incorporated area, the version of the National Electrical Code that~~
21 ~~existed on May 1, 2001].~~

22 SECTION 70. Section 430.001, Property Code, is amended by
23 adding Subsection (b-1) to read as follows:

24 (b-1) A builder shall assign to the homeowner, without
25 recourse, the manufacturer's warranty for all manufactured
26 products that are covered by a manufacturer's warranty. Any rights
27 that inure to the homeowner provided under a manufacturer's

warranty are the obligation of the manufacturer. The builder does not assume any of the obligations of the manufacturer resulting from a manufacturer's warranty, but shall coordinate with the manufacturer, suppliers, or agents to achieve compliance with the performance standard. If the manufacturer does not comply with the manufacturer's warranty within a reasonable period of time, the builder shall make the affected condition comply with the performance standard and shall be subrogated to the homeowner's claims against the manufacturer.

SECTION 71. Sections 430.005(b) and (c), Property Code, are amended to read as follows:

(b) This section does not exempt a builder in an area described by Subsection (a) from the builder licensing and home 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 construction project in an area described by Subsection (a) is subject to the state ~~[state-sponsored]~~ inspection program ~~[and dispute-resolution process]~~ described by this subtitle.

SECTION 72. Chapter 430, Property Code, is amended by adding Sections 430.012 and 430.013 to read as follows:

Sec. 430.012. HOMEOWNER INFORMATION PAMPHLET. (a) The commission shall produce a homeowner information pamphlet to provide homeowners with basic information about the commission and the state inspection program.

(b) The pamphlet must include information describing:

(1) the commission's jurisdiction;

1 (2) the state inspection program;
2 (3) statutory warranties;
3 (4) building and performance standards; and
4 (5) how the items listed in Subdivisions (1) through
5 (4) apply to a new or newly remodeled home.

6 (c) The commission shall make the pamphlet available
7 through the commission's Internet website and in a hard-copy
8 format.

9 (d) An escrow officer, as defined by Section 2501.003,
10 Insurance Code, or an attorney performing closing services in which
11 title insurance is not obtained, at a closing in which title to a
12 new home is transferred shall provide the pamphlet produced by the
13 commission under Subsection (a) to the person purchasing the new
14 home.

15 (e) The commission shall provide the pamphlet to a homeowner
16 after registration of the home under Section 426.003(b).

17 Sec. 430.013. WARRANTIES AND PERFORMANCE STANDARDS
18 ADVISORY COMMITTEE. (a) The commission shall appoint a Warranties
19 and Performance Standards Advisory Committee.

20 (b) The committee may:

21 (1) regularly review and evaluate the residential
22 construction performance standards adopted by the commission;

23 (2) review and evaluate proposed changes to the
24 performance standards made either by the public or internally by
25 the commission; and

26 (3) make recommendations to the commission.

27 (c) The commission by rule shall establish:

1 (1) the number of committee members;
2 (2) qualifications for appointment to the committee;
3 (3) the terms of service of committee members; and
4 (4) the duties and operating procedures of the
5 committee.

6 (d) A member of the committee serves at the will of the
7 commission.

8 (e) A member is not entitled to compensation for service on
9 the committee but is entitled to reimbursement for reasonable
10 travel expenses the member incurs in performing committee duties.

11 SECTION 73. Section 446.004, Property Code, is amended to
12 read as follows:

13 Sec. 446.004. FEE INSPECTOR. A fee inspector must be either
14 a licensed engineer, a registered architect, a professional
15 inspector licensed by the Texas Real Estate Commission, a plumbing
16 inspector employed by a municipality and licensed by the Texas
17 State Board of Plumbing Examiners, a building inspector employed by
18 a political subdivision, or a third-party inspector qualified under
19 Section 427.001(b). A builder may use the same or a different fee
20 inspector for inspections required under this chapter.

21 SECTION 74. Section 59.011(a), Finance Code, is amended to
22 read as follows:

23 (a) For purposes of Chapter 27, Property Code, and Title 16,
24 Property Code, a federally insured financial institution, or a
25 subsidiary or affiliate of the institution, regulated under this
26 code is not a builder.

27 SECTION 75. The following provisions of the Property Code

1 are repealed:

2 (1) Section 5.016, as added by Chapter 843, Acts of the
3 80th Legislature, Regular Session, 2007;

4 (2) Section 401.002(12);

5 (3) Section 416.012(b);

6 (4) Section 418.002(d);

7 (5) Sections 426.004(b) and (c);

8 (6) Section 428.001(c); and

9 (7) Sections 428.004(d) and (e).

10 SECTION 76. The Sunset Advisory Commission's report to the
11 84th Legislature shall evaluate:

12 (1) the Texas Residential Construction Commission's
13 overall performance; and

14 (2) the ability of the Texas Residential Construction
15 Commission to implement the changes in law made by this Act and
16 management actions recommended by the 81st Legislature.

17 SECTION 77. Promptly after this Act takes effect, the
18 governor shall appoint the two additional members to the Texas
19 Residential Construction Commission as required by Section
20 406.001, Property Code, as amended by this Act. In appointing those
21 members, the governor shall appoint one person to a term expiring
22 February 1, 2011, and one to a term expiring February 1, 2013.

23 SECTION 78. The Texas Residential Construction Commission
24 shall adopt rules as required by Chapter 416, Property Code, as
25 amended by this Act, not later than December 1, 2009. A person is
26 not required to hold a license under Section 401.005(c) or Chapter
27 416, Property Code, as amended by this Act, until January 1, 2010.

1 SECTION 79. Not later than December 1, 2009, the Texas
2 Residential Construction Commission shall adopt rules and
3 prescribe forms under Sections 428.0011 and 428.006, Property Code,
4 as added by this Act.

5 SECTION 80. Not later than December 1, 2009, the Texas
6 Residential Construction Commission shall hire an ombudsman as
7 provided by Chapter 428A, Property Code, as added by this Act.

8 SECTION 81. Not later than December 1, 2009, the Texas
9 Residential Construction Commission shall adopt statutory
10 warranties and building and performance standards under Section
11 430.001, Property Code, as amended by this Act. Except as provided
12 by this section, the warranties and building and performance
13 standards adopted by the commission under this section apply only
14 to residential construction commenced on or after January 1, 2010.
15 Residential construction commenced before January 1, 2010, or
16 commenced on or after January 1, 2010, under a contract entered into
17 before that date, is governed by the statutory warranties and
18 building and performance standards applicable to the construction
19 immediately before the adoption of the statutory warranties and
20 building and performance standards under this section.

21 SECTION 82. (a) The terms of the current members of the
22 Warranties and Performance Standards Advisory Committee expire on
23 the date on which the new Warranties and Performance Standards
24 Advisory Committee is appointed under Section 430.013, Property
25 Code, as added by this Act.

26 (b) The changes in law made by Section 430.013, Property
27 Code, as added by this Act, to the compensation of the members of

1 the Warranties and Performance Standards Advisory Committee apply
2 only to members appointed on or after the effective date of this
3 Act.

4 SECTION 83. (a) Section 401.005, Property Code, as amended
5 by this Act, applies only to a home, material improvement to a home,
6 or improvement to the interior of a home, the building or remodeling
7 of which commences on or after the effective date of this Act. A
8 home, material improvement to a home, or improvement to the
9 interior of a home described by Section 401.005, Property Code, as
10 amended by this Act, the building or remodeling of which is
11 commenced before the effective date of this Act is subject to the
12 warranty obligation applicable to the home, material improvement to
13 the home, or improvement to the interior of the home immediately
14 before the effective date of this Act.

15 (b) Section 401.007, Property Code, as amended by this Act,
16 applies only to an order regarding an emergency or a violation of a
17 statute to which Chapter 401, Property Code, applies that occurs on
18 or after the effective date of this Act. An order regarding an
19 emergency or a violation of a statute that occurred before the
20 effective date of this Act is governed by the law in effect at the
21 time the emergency or violation occurred, and that law is continued
22 in effect for that purpose.

23 (c) Section 416.001, Property Code, as amended by this Act,
24 applies only to an offense committed on or after the effective date
25 of this Act. An offense committed before the effective date of this
26 Act is governed by the law in effect at the time the offense was
27 committed, and the former law is continued in effect for that

1 purpose. For the purposes of this section, an offense was committed
2 before the effective date of this Act if any element of the offense
3 occurred before that date.

4 (d) Section 416.005, Property Code, as amended by this Act,
5 applies only to a person licensed by the Texas Residential
6 Construction Commission as a builder for the first time on or after
7 January 1, 2010. A person registered with the commission as a
8 builder before January 1, 2010, is governed by the law in effect at
9 the time the person registered, and that law is continued in effect
10 for that purpose.

11 (e) Section 416.006(a), Property Code, as amended by this
12 Act, applies only to a license issued for the first time on or after
13 January 1, 2010. A certificate of registration issued before
14 January 1, 2010, is governed by the law in effect immediately before
15 the effective date of this Act, and that law is continued in effect
16 for that purpose.

17 (f) Sections 416.012(c) and (e), Property Code, as amended
18 by this Act, and the repeal by this Act of Section 416.012(b),
19 Property Code, apply only to a renewal of a license by a builder on
20 or after September 1, 2011. The renewal of a license by a builder
21 before September 1, 2011, is governed by the law in effect
22 immediately before the effective date of this Act, and that law is
23 continued in effect for that purpose.

24 (g) Sections 418.001 and 418.002, Property Code, as amended
25 by this Act, apply only to a ground for disciplinary action that
26 occurs on or after the effective date of this Act. A ground for
27 disciplinary action that occurs before the effective date of this

1 Act is governed by the law in effect at the time the ground for
2 disciplinary action occurred, and that law is continued in effect
3 for that purpose.

4 (h) Section 420.006, Property Code, as added by this Act,
5 applies only to a contract entered into or a transfer of title made
6 on or after the effective date of this Act. A contract entered into
7 or a transfer of title made before the effective date of this Act is
8 governed by the law in effect immediately before the effective date
9 of this Act, and that law is continued in effect for that purpose.

10 (i) Section 426.003, Property Code, as amended by this Act,
11 applies only to a registration of a home that occurs on or after the
12 effective date of this Act. A registration of a home that occurs
13 before the effective date of this Act is governed by the law in
14 effect immediately before the effective date of this Act, and that
15 law is continued in effect for that purpose.

16 (j) Sections 408.002, 426.004, 426.005, 428.002, 428.003,
17 and 428.004, Property Code, as amended by this Act, apply only to a
18 request for a state inspection filed on or after the effective date
19 of this Act. A request filed before the effective date of this Act
20 is governed by the law in effect immediately before the effective
21 date of this Act, and that law is continued in effect for that
22 purpose.

23 (k) Section 27.004(1), Property Code, as amended by this
24 Act, and Section 428.0041(a), Property Code, as added by this Act,
25 apply only to inspection of a repair completed by a builder on or
26 after the effective date of this Act. Inspection of a repair
27 completed by a builder before the effective date of this Act is

1 governed by the law in effect immediately before the effective date
2 of this Act, and that law is continued in effect for that purpose.

3 SECTION 84. The Texas Residential Construction Commission
4 shall adopt contract forms as required by Section 420.004, Property
5 Code, as added by this Act, not later than January 1, 2010. A
6 builder is not required to use a form adopted under Section 420.004,
7 Property Code, as added by this Act, before the 91st day after the
8 date on which the forms are adopted under that section.

9 SECTION 85. Section 420.005, Property Code, as added by
10 this Act, applies only to a contract executed by a builder and a
11 buyer as described by Section 420.005, Property Code, as added by
12 this Act, on or after the effective date of this Act. A contract
13 executed before the effective date of this Act is covered by the law
14 in effect when the contract was executed, and the former law is
15 continued in effect for that purpose.

16 SECTION 86. This Act takes effect September 1, 2009.