

By: McClendon, Isett, Flynn, Deshotel,
Harper-Brown

H.B. No. 2295

Substitute the following for H.B. No. 2295:

By: Elkins

C.S.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(c) and (1), Property Code, are
6 amended to read as follows:

7 (c) If compliance with Subtitle D, Title 16, or the giving
8 of the notice under Subsections (a) and (b) within the period
9 prescribed by those subsections is impracticable because of the
10 necessity of initiating an action at an earlier date to prevent
11 expiration of the statute of limitations or if the complaint is
12 asserted as a counterclaim, compliance with Subtitle D, Title 16,
13 or the notice is not required. However, the action or counterclaim
14 shall specify in reasonable detail each construction defect that is
15 the subject of the complaint. If Subtitle D, Title 16, applies to
16 the complaint, simultaneously with the filing of an action by a
17 claimant, the claimant must submit a request under Section 428.001.
18 If Subtitle D, Title 16, does not apply, the inspection provided for
19 by Subsection (a) may be made not later than the 75th day after the
20 date of service of the suit, request for arbitration, or
21 counterclaim on the contractor, and the offer provided for by
22 Subsection (b) may be made not later than the 15th day after the
23 date the ~~[state-sponsored]~~ inspection ~~[and dispute resolution]~~
24 process under Chapter 428 is completed, if Subtitle D, Title 16,
25 applies, or not later than the 60th day after the date of service,
26 if Subtitle D, Title 16, does not apply. If, while an action
27 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 (1) If Subtitle D, Title 16, applies to the claim and the
5 contractor's offer of repair is accepted by the claimant, the
6 contractor, on completion of the repairs and in accordance with
7 Section 428.0041 ~~[at the contractor's expense]~~, shall engage the
8 third-party inspector who provided the recommendation regarding
9 the construction defect involved in the claim to inspect the
10 repairs and determine whether the residence, as repaired, complies
11 with the applicable limited statutory warranty and building and
12 performance standards adopted by the commission. ~~[The contractor~~
13 ~~is entitled to a reasonable period not to exceed 15 days to address~~
14 ~~minor cosmetic items that are necessary to fully complete the~~
15 ~~repairs.]~~ The determination of the third-party inspector of
16 whether the repairs comply with the applicable limited statutory
17 warranty and building and performance standards adopted by the
18 commission establishes a rebuttable presumption on that issue. A
19 party seeking to dispute, vacate, or overcome that presumption must
20 establish by clear and convincing evidence that the determination
21 is inconsistent with the applicable limited statutory warranty and
22 building and performance standards.

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

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

27 (1) the contractor's license ~~[certificate of~~

1 ~~registration~~] number from the Texas Residential Construction
2 Commission if the contractor is required to be licensed [~~register~~]
3 as a builder by [~~with~~] the commission;

4 (2) the address and telephone number at which the
5 owner may file a complaint with the Texas Residential Construction
6 Commission about the conduct of the contractor if the contractor is
7 required to be licensed [~~register~~] as a builder by [~~with~~] the
8 commission; and

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

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

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

19 Sec. 401.0011. PURPOSE; TEXAS RESIDENTIAL CONSTRUCTION
20 COMMISSION. (a) The Texas Residential Construction Commission
21 oversees persons required to be licensed by the commission to
22 ensure that those persons are responsible and accountable to the
23 homeowners with whom they contract.

24 (b) The commission's mission includes:

25 (1) educating builders and homeowners about all
26 aspects of the residential construction industry affecting the
27 building or remodeling of homes; and

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

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

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

11 (4) "Approved structural engineer" means a licensed
12 professional engineer approved by the commission to provide
13 services to the commission in connection with the state
14 [~~state-sponsored~~] inspection program [~~and dispute resolution~~
15 ~~process~~].

16 (11-a) "State inspection program" means the program
17 administered by the commission under Subtitle D under which homes
18 are inspected to determine whether alleged construction defects
19 exist and inspectors issue determinations and recommendations
20 regarding the alleged defects.

21 SECTION 7. Section 401.003(d), Property Code, is amended to
22 read as follows:

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

26 (1) the construction or supervision or management of
27 the construction of the home, material improvement, or improvement

1 sold by the nonprofit business entity is performed by a builder
2 licensed [~~registered~~] under this title;

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

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

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

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

14 (c) Except as provided by Subsection (d), a person [~~An~~
15 ~~individual~~] who builds a home, [or] a material improvement to a
16 home, or an improvement to the interior of an existing home when the
17 cost of the work exceeds \$10,000 and sells the home immediately
18 following completion of the building or remodeling and does not
19 live in the home for at least one year following completion of the
20 building or remodeling, is responsible as a builder under the
21 warranty obligation created by this title for work completed by the
22 person [~~individual~~]. Responsibility under this subsection
23 requires a person [~~does not automatically require an individual~~] to
24 obtain a license [~~register~~] under Section 416.001.

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

27 (1) improves the individual's homestead by improving

1 the interior of an existing home that is the individual's primary
2 residence when the cost of the work exceeds \$10,000; and

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

5 SECTION 9. Section 401.006, Property Code, is amended to
6 read as follows:

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

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

14 (a) The [~~If the~~] commission [~~has reasonable cause to believe~~
15 ~~that a person is violating a statute to which this chapter applies,~~
16 ~~the commission, in addition to any other authorized action,~~] may
17 issue an emergency order, including an emergency order to cease and
18 desist, to any person regardless of whether the person is a builder
19 licensed under this title [~~from the violation or an order to take~~
20 ~~affirmative action, or both~~], to enforce a statute to which this
21 chapter applies if the commission determines that an emergency
22 exists requiring immediate action to protect the public health and
23 safety or if the commission has reasonable cause to believe that a
24 person is violating a statute to which this chapter applies. The
25 commission may issue the emergency order without notice and hearing
26 or with any notice and hearing the commission considers practicable
27 under the circumstances [~~compliance~~]. A person may appeal the

1 order directly to district court in accordance with Chapter 2001,
2 Government Code.

3 (b) The [~~Before issuing an order under this section, the~~]
4 commission shall set the time and place and give notice for a
5 hearing to affirm, modify, or set aside an emergency order that was
6 issued without a hearing [~~of a hearing before a hearings officer~~].
7 The hearing is governed by Chapter 2001, Government Code. Based on
8 the findings of fact, conclusions of law, and recommendations of
9 the hearings officer, the commission by order may find whether a
10 violation has occurred.

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

21 SECTION 11. Chapter 401, Property Code, is amended by
22 adding Section 401.008 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

organization regulated by or receiving money from the commission;
or

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

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

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

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

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

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

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

(3) approving third-party warranty companies; and

(4) approving third-party inspectors.

SECTION 15. Section 408.002(c), Property Code, is 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

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

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 and implement a policy to encourage the use of:

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

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

(b) The commission's procedures relating to alternative

1 dispute resolution must conform, to the extent possible, to any
2 model guidelines issued by the State Office of Administrative
3 Hearings for the use of alternative dispute resolution by state
4 agencies.

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

6 (1) coordinate the implementation of the policy
7 adopted under Subsection (a);

8 (2) serve as a resource for any training needed to
9 implement the procedures for negotiated rulemaking or alternative
10 dispute resolution; and

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

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

15 (a) The commission shall prepare information of public
16 interest describing the functions of the commission, the provisions
17 of the limited statutory warranty and building and performance
18 standards, the state [~~state-sponsored~~] inspection program [~~and~~
19 ~~dispute resolution process~~], and the procedures by which complaints
20 or requests are filed with and resolved by the commission.

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

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

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

27 (2) provide in this state building services, including

1 accessible floor plans, to persons with mobility-related special
2 needs.

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

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

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

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

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

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

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

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

26 Sec. 416.001. LICENSE [~~REGISTRATION~~] REQUIRED; RULES;
27 OFFENSE. (a) Notwithstanding any other law, a [A] person may not

1 engage in business as a builder in this state or act as a builder
2 unless the person holds a license [~~certificate of registration~~]
3 under this chapter.

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

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

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

11 (3) security and insurance requirements;

12 (4) disciplinary actions; and

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

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

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

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

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

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

26 (e) Based on a commission investigation of an alleged
27 violation of Sections 418.001(14)-(20) [~~418.001(a)(14)-(20)~~], the

1 commission may require an applicant for renewal of a license
2 [~~certificate of registration~~] to disclose to the commission every
3 person with an ownership interest in the applicant's business as a
4 builder. This subsection does not apply to a publicly traded
5 company.

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

8 (a) The commission shall charge and collect:

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

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

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

16 SECTION 26. Section 416.005, Property Code, is amended to
17 read as follows:

18 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. (a) A
19 person may not receive an original license [~~a certificate of~~
20 ~~registration~~] under this chapter unless:

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

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

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

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

1 and

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

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

6 (1) limited statutory warranties;

7 (2) building and performance standards;

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

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

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

14 Sec. 416.0051. BOND REQUIREMENT. (a) In addition to the
15 requirements for the issuance of an original license under Section
16 416.005, before an original license may be issued, the person to
17 whom the license is to be issued must file with the commission a
18 surety bond approved by the commission that is:

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

20 (2) payable to the commission; and

21 (3) for the benefit of a party who suffers damages
22 arising from the license holder's violation of this title.

23 (b) The security required by this section must be maintained
24 by the license holder in the required amount as a condition of
25 licensure.

26 SECTION 28. Section 416.006, Property Code, is amended to
27 read as follows:

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

4 (1) a corporation, other than a nonprofit corporation,
5 must designate one of its officers as its agent for the purposes of
6 this chapter;

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

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

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

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

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

22 Sec. 416.0061. EXAMINATION. (a) Except as otherwise
23 provided by this section and effective September 1, 2011, each
24 applicant for an original individual license under this chapter
25 must take a licensing examination prescribed by the commission. An
26 applicant is entitled to take the examination prescribed by the
27 commission if:

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

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

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

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

13 (d) A person who, immediately before January 1, 2010, held a
14 certificate of registration issued by the commission or who
15 immediately before September 1, 2011, held a license issued by the
16 commission is eligible for a license without satisfying the
17 examination requirement of this section if the commission
18 determines that the person's certificate or license was active and
19 in good standing. If the person's certificate was not active or was
20 not in good standing as of December 31, 2009, or the person's
21 license was not active or was not in good standing as of August 31,
22 2011, the person is required to satisfy the examination
23 requirement. This subsection expires December 31, 2014.

24 SECTION 30. Section 416.007, Property Code, is amended to
25 read as follows:

26 Sec. 416.007. LICENSE ISSUANCE [~~OF CERTIFICATE~~]. (a) Not
27 later than the 15th day after the date the commission receives an

1 application from an applicant who meets the requirements of this
2 chapter, the commission shall issue an original or provisional
3 license, as appropriate, [a certificate of registration] to the
4 applicant. A builder who holds a provisional license may operate as
5 a builder under this chapter.

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

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

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

15 Sec. 416.0071. PROVISIONAL LICENSE. (a) The commission
16 may grant a provisional license to an applicant for a license in
17 this state who:

18 (1) has been licensed or registered in good standing
19 to engage in business as a builder for at least two years in another
20 jurisdiction that has licensing or registration requirements
21 substantially equivalent to the requirements of this title;

22 (2) is currently licensed or registered in that
23 jurisdiction; and

24 (3) has passed a national or other examination
25 recognized by the commission.

26 (b) The commission shall issue a provisional license to a
27 person who satisfies the requirements of Section 416.005(a) but who

1 has not completed the course required by Section 416.005(b).

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

4 (d) A provisional license under Subsection (b) is valid for
5 30 days from the date of issuance. The commission shall issue an
6 original license to the holder of a provisional license under
7 Subsection (b) if the person completes the required course on or
8 before the 30th day after the date the provisional license was
9 issued.

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

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

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

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

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

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

26 (b) The commission by rule may adopt a system under which
27 licenses [~~certificates of registration~~] expire on several dates

1 during the year. The commission shall adjust the date for payment
2 of renewal fees accordingly.

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

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

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

16 (b) Not later than the 30th day after the date a builder
17 moves from the address designated on the license [~~certificate of~~
18 ~~registration~~], the builder shall submit an application,
19 accompanied by the appropriate fee, for a license [~~certificate of~~
20 ~~registration~~] that designates the new location of the builder's
21 principal place of business. The commission shall issue a license
22 [~~certificate of registration~~] that designates the new location if
23 the new location complies with the requirements of this section.

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

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

SECTION 36. Sections 416.012(a), (c), (d), and (e), Property Code, are amended to read as follows:

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

(c) A builder who is licensed with the commission [~~registered before September 1, 2007, and all other builders who register for the first time on or after September 1, 2007, and satisfy the requirements of Subsection (b),~~] must complete 16 [~~five~~] hours of continuing education every two [~~five~~] years, one hour of which must address ethics and may not be completed by self-directed study.

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

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

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

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

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

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

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

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

10 (8) participating in the activities of a residential
11 or builder association, including serving on a committee of the
12 organization; and

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

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

18 SECTION 37. Section 417.003(a), Property Code, is amended
19 to read as follows:

20 (a) The commission shall charge and collect:

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

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

25 (3) a late fee that does not exceed the amount of the
26 fee due if payment of a certification [~~registration~~] or application
27 fee due under this title is late.

SECTION 38. 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 nonappealable court judgment;

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

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

(5) publishing a false or misleading advertisement;

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

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

(8) failure to pay a final nonappealable court

1 judgment arising from a construction defect or other transaction
2 between the person and a homeowner;

3 (9) failure to register a home as required by Section
4 426.003;

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

7 (11) failure to reimburse a homeowner the amount
8 ordered by the commission as provided by Section 428.004(d);

9 (12) engaging in statutory or common-law fraud or
10 misappropriation of funds, as determined by the commission after a
11 hearing under Section 418.003;

12 (13) a ~~[repeated]~~ failure to participate in the state
13 ~~[state-sponsored]~~ inspection program ~~[and dispute resolution~~
14 ~~process]~~ if required by this title;

15 (14) failure to obtain a license ~~[register as a~~
16 ~~builder]~~ as required under Chapter 416;

17 (15) using or attempting to use a license ~~[certificate~~
18 ~~of registration]~~ that has expired or that has been revoked;

19 (16) falsely representing that the person holds a
20 license ~~[certificate of registration]~~ issued under Chapter 416;

21 (17) acting as a builder using a name other than the
22 name or names disclosed to the commission;

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

27 (19) allowing the person's license ~~[certificate of~~

1 ~~registration~~] to be used by another person;

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

6 (21) a failure to reasonably perform on an accepted
7 offer to repair or a [~~repeated~~] failure to make an offer to repair
8 based on:

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

11 (B) the final holding of an appeal under Chapter
12 429;

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

15 (23) a failure to obtain a building permit required by
16 a political subdivision before constructing a new home or an
17 improvement to an existing home;

18 (24) abandoning, without justification, any home
19 improvement contract or new home construction project engaged in or
20 undertaken by the person, if found to have done so by a final,
21 nonappealable court judgment;

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

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

26 (27) a failure to substantially complete all the
27 obligations under an express contract for construction without

1 reasonable grounds for the failure, if found to have done so by a
2 final, nonappealable court judgment;

3 (28) a failure to comply with a commission rule
4 related to the duties and obligations of a third-party inspector
5 under Chapter 427; or

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

8 SECTION 39. Sections 418.002(a) and (c), Property Code, are
9 amended to read as follows:

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

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

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

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

19 (4) impose an administrative penalty under Chapter
20 419; or

21 (5) prohibit an individual from acting as a builder
22 under this title, from acting as a contractor, as defined by Section
23 27.001, or from owning or operating a company that supplies goods or
24 services to a builder or contractor for a period of time and under
25 conditions determined by the commission.

26 (c) For purposes of Section 418.001(12), the commission may
27 not conduct a hearing or revoke or suspend a license [~~registration~~]

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

4 SECTION 40. Section 418.004(c), Property Code, is amended
5 to read as follows:

6 (c) An appeal to a district court of a final decision of the
7 commission under this section regarding a revocation or suspension
8 of a license [~~registration~~] or certification is determined by
9 substantial evidence.

10 SECTION 41. Section 419.004, Property Code, is amended to
11 read as follows:

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

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

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

22 SECTION 42. Section 420.001, Property Code, is amended to
23 read as follows:

24 Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract
25 for the construction of a new home or an improvement to an existing
26 home required to be registered under Section 426.003, the contract
27 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 43. 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

1 is not enforceable against a homeowner unless the contract:

2 (1) contains the builder's name and license
3 ~~[certificate of registration]~~ number; and

4 (2) contains the notice required by Section 420.001.

5 SECTION 44. Section 420.003, Property Code, is amended to
6 read as follows:

7 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a)
8 In a contract for the construction of a new home or the improvement
9 of an existing home required to be registered under Section 426.003
10 and that contains a provision requiring the parties to submit a
11 dispute arising under the contract to binding arbitration, or in
12 any agreement related to the contract that requires the parties to
13 submit a dispute to arbitration, the provision requiring the
14 submission of a dispute to arbitration must be prominently
15 displayed in the document and conspicuously printed or typed in a
16 size equal to at least 12-point ~~[10-point]~~ bold type or the computer
17 equivalent.

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

1 initialed by each party to the agreement, stating that the party has
2 chosen to arbitrate a controversy that arises between the parties
3 after the date of the agreement.

4 (c) A party to a contract described by Subsection (a) may
5 not require any other party to the contract to agree to arbitration
6 as a condition of the contract.

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

10 SECTION 45. Subtitle C, Title 16, Property Code, is amended
11 by adding Chapter 421 to read as follows:

12 CHAPTER 421. HOMEOWNER RECOVERY FUND

13 Sec. 421.001. DEFINITIONS. In this chapter:

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

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

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

22 Sec. 421.003. FUND ESTABLISHED. The homeowner recovery
23 fund is established.

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

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

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

7 (d) If the balance in the fund on December 31 of a year is
8 more than \$5 million, the commission shall transfer the excess
9 amount from the fund to the comptroller for deposit into the general
10 revenue fund.

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

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

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

25 (1) obtains a court judgment against a builder for
26 damages arising from the violation for which execution is returned
27 without a satisfaction of the total amount of the judgment and

1 perfects a judgment lien for the unsatisfied amount;

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

7 (3) proves in accordance with rules adopted by the
8 commission that:

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

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

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

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

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

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

26 (2) \$75,000.

27 SECTION 46. The heading to Subtitle D, Title 16, Property

Code, is amended to read as follows:

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

SECTION 47. Section 426.003, Property Code, is amended by
amending Subsections (a) and (b) and adding Subsection (e) to read
as follows:

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

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

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

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

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

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

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

(3) [~~(C)~~] the date of issuance of a certificate of

occupancy or a certificate of completion.

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

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

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

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

SECTION 48. Section 426.004(a), Property Code, is amended to read as follows:

(a) A party who submits a request under this subtitle shall pay any amount required by the commission to offset ~~[cover]~~ the expense of the third-party inspector.

SECTION 49. Section 426.005, Property Code, is amended by amending Subsections (b) and (f) and adding Subsections (g), (h), (i), and (j) to read as follows:

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

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

(2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the

1 appeal, whichever is later.

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

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

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

9 (g) Except as provided by Subsection (h), an action
10 described by Subsection (a) may be initiated by the homeowner or
11 builder:

12 (1) for a dispute involving workmanship and materials,
13 on or after the 76th day after the date the request for a state
14 inspection is submitted, except as provided by Subdivision (3);

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

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

22 (h) If a homeowner or builder causes a delay of more than
23 five days in the completion of the inspection process under the
24 state inspection program or any appeal under the program, the time
25 required under Subsection (g) to initiate an action against the
26 homeowner or builder who causes the delay is extended by the number
27 of days of the delay.

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

3 (1) the expiration of the applicable statute of
4 limitations; or

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

7 (j) Once a final, unappealable recommendation or a ruling on
8 an appeal of a recommendation is issued under this subtitle, a
9 homeowner or builder may file an action described by Subsection
10 (a). A homeowner is not required to delay the filing of an action to
11 allow the builder an opportunity to make an offer of settlement or
12 repair under Sections 27.004(b) and (c) or an election to purchase
13 the residence under Section 27.0042. The filing of an action by the
14 homeowner does not affect a builder's right to make an offer of
15 settlement or repair in the time provided by Section 27.004(b) or an
16 election to purchase the residence in the time provided by Section
17 27.0042.

18 SECTION 50. Section 426.006, Property Code, is amended to
19 read as follows:

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

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

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

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

14 SECTION 51. Section 426.007, Property Code, is amended to
15 read as follows:

16 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
17 who submits a request for ~~[state-sponsored]~~ inspection under
18 Section 428.001 ~~[and dispute resolution]~~ or responds to a request
19 made under that section ~~[Chapter 428]~~ must disclose in the request
20 or response the name of any expert who, before the request is
21 submitted, inspected the home on behalf of the requestor or
22 respondent in connection with the construction defect alleged in
23 the request or response. If an expert's name is known to the
24 requestor or respondent at the time of the request or response and
25 is not disclosed as required by this section, the requestor or
26 respondent may not designate the person as an expert or use
27 materials prepared by that person in:

1 (1) the [~~state-sponsored~~] inspection [~~and dispute~~
2 ~~resolution~~] process arising out of the request; or

3 (2) any action arising out of the construction defect
4 that is the subject of the request or response.

5 SECTION 52. Sections 427.001(c), (c-1), and (d), Property
6 Code, are amended to read as follows:

7 (c) A third-party inspector who inspects an issue involving
8 a structural matter [~~or involving workmanship, materials, and a~~
9 ~~structural matter~~] must:

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

12 (2) have a minimum of five years' experience in
13 residential construction.

14 (c-1) For an inspection request with an issue [A third-party
15 inspector who inspects an issue] involving a structural matter and
16 an unrelated issue involving workmanship and materials matters, the
17 commission must assign a third-party inspector who meets [must
18 meet] the requirements of Subsections (b) and (c) or assign two
19 third-party inspectors, one who meets the requirements of
20 Subsection (b) and one who meets the requirements of Subsection
21 (c), to work in conjunction with one another to inspect the alleged
22 defects.

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

25 (1) initial training regarding the state
26 [~~state-sponsored~~] inspection program [~~and dispute resolution~~
27 ~~process~~] and this subtitle; and

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

SECTION 53. Section 427.002(a), Property Code, is amended to read as follows:

(a) The commission shall employ state inspectors to:

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

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

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

SECTION 54. The heading to Chapter 428, Property Code, is amended to read as follows:

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

SECTION 55. Section 428.001(a), Property Code, is amended to read as follows:

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

SECTION 56. Chapter 428, Property Code, is amended by adding Section 428.0011 to read as follows:

Sec. 428.0011. PROCESSING AND PRIORITIZING OF REQUESTS.

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

5 (b) In adopting rules under this section, the commission
6 shall consider:

7 (1) appropriate ways to expedite inspections under the
8 state inspection program under emergency circumstances, including
9 cases involving issues of habitability;

10 (2) appropriate handling of complex case material and
11 whether different handling is appropriate for requests involving a
12 structural defect and requests involving workmanship and
13 materials; and

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

15 SECTION 57. Section 428.002(a), Property Code, is amended
16 to read as follows:

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

26 SECTION 58. Section 428.003, Property Code, is amended to
27 read as follows:

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

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

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

22 (2) owns or controls, directly or indirectly, more
23 than a 10 percent interest in a business entity or other
24 organization owned by or receiving money from the interested
25 homeowner or builder; or

26 (3) uses or receives a substantial amount of goods,
27 services, or money from the interested homeowner or builder [~~one~~

1 ~~time for each request submitted].~~

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

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

11 SECTION 59. Section 428.004, Property Code, is amended by
12 amending Subsections (b) and (c) and adding Subsections (g), (h),
13 and (i) to read as follows:

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

25 (c) The third-party inspector's recommendation must ~~[+]~~
26 ~~[(1) address only the construction defect, based on~~
27 ~~the applicable warranty and building and performance standards, and~~

1 ~~[(2)]~~ designate a method or manner of repair, if any.
2 At the option of the third-party inspector, the recommendation may
3 identify any construction defects discovered by the third-party
4 inspector that are not included in the request for inspection that
5 involve a violation of any applicable building and performance
6 standard that if left unrepaired may threaten the health or safety
7 of the occupants of the home or that involve a violation of a
8 building code applicable to the construction. A third-party
9 inspector has no duty to inspect the home for construction defects
10 that are not included in the request for inspection.

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

16 (h) The commission shall remove a final report, including a
17 request form or other case material relating to the final report,
18 from the commission's Internet website if:

19 (1) the builder has made repairs substantially
20 equivalent to those required by the findings of the final report
21 confirming the defect; and

22 (2) the commission has confirmed with the homeowner
23 and a third-party inspector who has inspected the repairs that the
24 builder has made those repairs.

25 (i) A final report removed by the commission under
26 Subsection (h) is not public information subject to disclosure
27 under Chapter 552, Government Code.

SECTION 60. Chapter 428, Property Code, is amended by adding Sections 428.0041 and 428.006 to read as follows:

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

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

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

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

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

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

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

1 employee; or

2 (2) a builder's repair of a construction defect be
3 inspected by a third-party inspector or a state inspector or other
4 commission employee, regardless of whether the repair is inspected
5 for the purposes of Subsection (a) by the third-party inspector who
6 issued a recommendation regarding the construction defect or by a
7 state inspector.

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

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

11 Sec. 428.006. BUILDER REPORTING REQUIRED. (a) A builder
12 involved in the inspection process or mediation under this subtitle
13 shall file with the commission, on a form prescribed by the
14 commission, information relating to any activity related to the
15 dispute, including a settlement, repair effort, mediation,
16 arbitration, or litigation, that occurs after:

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

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

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

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

26 (1) the name of the builder;

27 (2) the name and address of the homeowner and the

1 property involved in the inspection process or mediation;

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

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

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

8 (A) whether any alleged defects affirmed by a
9 final, nonappealable report were excluded from the offer of repair;
10 and

11 (B) whether the homeowner accepted any or all of
12 the repairs offered;

13 (6) if repairs were offered and accepted:

14 (A) whether the repairs were made; and

15 (B) whether the repairs resulted in the
16 satisfaction of all issues between the parties as a result of the
17 residential construction project;

18 (7) if repairs were made, whether the builder engaged
19 the services of the third-party inspector who performed the
20 inspection under this subtitle to inspect the repairs;

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

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

27 (10) if the parties are involved in an arbitration

proceeding, whether the arbitration is required as a provision of a contract between the parties.

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

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

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

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

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

(e) A builder's failure to comply with this section or to complete the required form honestly is grounds for denial of the builder's license renewal application under Chapter 416.

SECTION 61. Subtitle D, Title 16, Property Code, is amended by adding Chapter 428A to read as follows:

CHAPTER 428A. OFFICE OF OMBUDSMAN; VOLUNTARY MEDIATION

Sec. 428A.001. OFFICE OF OMBUDSMAN. The office of the ombudsman is established at the commission to assist the commission, builders, and homeowners following the completion of the state inspection process and to engage in other activities as

1 provided by this chapter.

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

4 Sec. 428A.003. POWERS AND DUTIES. (a) The ombudsman shall:

5 (1) provide information and, subject to Subsection
6 (b), advice to homeowners and builders engaged in defect repairs
7 after the completion of the state inspection process to assist them
8 in understanding the post-inspection process;

9 (2) assist homeowners and builders in locating
10 mediation services, if requested, for the purposes of Section
11 428A.004; and

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

14 (b) The ombudsman may not provide legal advice to homeowners
15 and builders.

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

17 Sec. 428A.004. VOLUNTARY MEDIATION. (a) The commission by
18 rule shall establish procedures for a builder and homeowner to
19 engage in a third-party mediation, as described by Section 154.023,
20 Civil Practice and Remedies Code, performed by a third-party
21 mediator not employed by the commission, of a dispute involving a
22 construction defect as an alternative to the inspection process
23 under this subtitle, if the homeowner, before the expiration of the
24 time to submit a request for inspection under Section 426.006, and
25 before a third-party inspection has been performed, submits a
26 statement to the commission and the builder, in the form prescribed
27 by the commission, that the homeowner is requesting mediation as an

1 alternative to the state inspection process. If a homeowner
2 requests mediation under this section, a builder is required to
3 participate in mediation in good faith, as determined by the
4 mediator.

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

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

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

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

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

16 (i) the expiration of the mediation period;
17 or

18 (ii) the execution of an agreement as a
19 result of the mediation.

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

26 (d) A builder's failure to comply with an agreement executed
27 by the parties as a result of a mediation under this section is

1 grounds for disciplinary action under Chapter 418, including the
2 imposition of an administrative penalty under Chapter 419.

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

5 (f) For purposes of Chapter 27, good faith participation in
6 mediation under this section, as determined by the mediator, for
7 the mediation period established by this section constitutes a
8 final, nonappealable determination under this subtitle and
9 completion of the state inspection process, and a written agreement
10 to mediate submitted by the parties under this section constitutes
11 a request under Section 428.001. For the purposes of Section
12 27.004(1), if the builder makes a repair pursuant to an offer under
13 Section 27.004(b), the builder may engage any third-party inspector
14 to inspect the repair and determine whether the residence, as
15 repaired, complies with the applicable limited statutory warranty
16 and building and performance standards.

17 SECTION 62. Sections 430.001(b), (d), and (e), Property
18 Code, are amended to read as follows:

19 (b) The warranty periods shall be:

20 (1) two years [~~one year~~] for workmanship and
21 materials;

22 (2) four [~~two~~] years for plumbing, electrical,
23 heating, and air-conditioning delivery systems; and

24 (3) 10 years for major structural components of the
25 home.

26 (d) The International Residential Code for One- and
27 Two-Family Dwellings that applies to nonelectrical aspects of

1 residential construction for the purposes of the limited statutory
2 warranties and building and performance standards adopted under
3 this section is:

4 (1) for residential construction located in a
5 municipality or the extraterritorial jurisdiction of a
6 municipality, the version of the International Residential Code
7 applicable to nonelectrical aspects of residential construction in
8 the municipality under Section 214.212, Local Government Code; and

9 (2) for residential construction located in an
10 unincorporated area not in the extraterritorial jurisdiction of a
11 municipality, the version of the International Residential Code
12 adopted by the commission by rule ~~[applicable to nonelectrical~~
13 ~~aspects of residential construction in the municipality that is the~~
14 ~~county seat of the county in which the construction is located; and~~

15 ~~[(3) for residential construction located in an~~
16 ~~unincorporated area in a county that does not contain an~~
17 ~~incorporated area, the version of the International Residential~~
18 ~~Code that existed on May 1, 2001].~~

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

22 (1) for residential construction located in a
23 municipality or the extraterritorial jurisdiction of a
24 municipality, the version of the National Electrical Code
25 applicable to electrical aspects of residential construction in the
26 municipality under Section 214.214, Local Government Code; and

27 (2) for residential construction located in an

1 unincorporated area not in the extraterritorial jurisdiction of a
2 municipality, the version of the National Electrical Code adopted
3 by the commission by rule [~~applicable to electrical aspects of~~
4 ~~residential construction in the municipality that is the county~~
5 ~~seat of the county in which the construction is located, and~~
6 [~~(3) for residential construction located in an~~
7 ~~unincorporated area in a county that does not contain an~~
8 ~~incorporated area, the version of the National Electrical Code that~~
9 ~~existed on May 1, 2001]~~.

10 SECTION 63. Sections 430.005(b) and (c), Property Code, are
11 amended to read as follows:

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

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

20 SECTION 64. Chapter 430, Property Code, is amended by
21 adding Sections 430.012 and 430.013 to read as follows:

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

26 (b) The pamphlet must include information describing:

27 (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 65. 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 66. The following provisions of the Property Code
22 are repealed:

- 23 (1) Section 401.002(12);
24 (2) Section 416.011;
25 (3) Section 416.012(b);
26 (4) Section 418.002(d);
27 (5) Section 428.001(c); and

1 (6) Subtitle E, Title 16.

2 SECTION 67. The Sunset Advisory Commission's report to the
3 84th Legislature shall evaluate:

4 (1) the Texas Residential Construction Commission's
5 overall performance; and

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

9 SECTION 68. Promptly after this Act takes effect, the
10 governor shall appoint the two additional members to the Texas
11 Residential Construction Commission as required by Section
12 406.001, Property Code, as amended by this Act. In appointing those
13 members, the governor shall appoint one person to a term expiring
14 February 1, 2011, and one to a term expiring February 1, 2013.

15 SECTION 69. The Texas Residential Construction Commission
16 shall adopt rules as required by Chapter 416, Property Code, as
17 amended by this Act, not later than December 1, 2009. A person is
18 not required to hold a license under Section 401.005(c) or Chapter
19 416, Property Code, as amended by this Act, until January 1, 2010.

20 SECTION 70. Not later than December 1, 2009, the Texas
21 Residential Construction Commission shall adopt rules and
22 prescribe forms under Sections 428.0011 and 428.006, Property Code,
23 as added by this Act.

24 SECTION 71. Not later than December 1, 2009, the Texas
25 Residential Construction Commission shall hire an ombudsman as
26 provided by Chapter 428A, Property Code, as added by this Act.

27 SECTION 72. Not later than December 1, 2009, the Texas

1 Residential Construction Commission shall adopt statutory
2 warranties and building and performance standards under Section
3 430.001, Property Code, as amended by this Act. Except as provided
4 by this section, the warranties and building and performance
5 standards adopted by the commission under this section apply only
6 to residential construction commenced on or after January 1, 2010.
7 Residential construction commenced before January 1, 2010, or
8 commenced on or after January 1, 2010, under a contract entered into
9 before that date, is governed by the statutory warranties and
10 building and performance standards applicable to the construction
11 immediately before the adoption of the statutory warranties and
12 building and performance standards under this section.

13 SECTION 73. (a) The terms of the current members of the
14 Warranties and Performance Standards Advisory Committee expire on
15 the date on which the new Warranties and Performance Standards
16 Advisory Committee is appointed under Section 430.013, Property
17 Code, as added by this Act.

18 (b) The changes in law made by Section 430.013, Property
19 Code, as added by this Act, to the compensation of the members of
20 the Warranties and Performance Standards Advisory Committee apply
21 only to members appointed on or after the effective date of this
22 Act.

23 SECTION 74. (a) Section 401.005, Property Code, as amended
24 by this Act, applies only to a home, material improvement to a home,
25 or improvement to the interior of a home, the building or remodeling
26 of which commences on or after the effective date of this Act. A
27 home, material improvement to a home, or improvement to the

1 interior of a home described by Section 401.005, Property Code, as
2 amended by this Act, the building or remodeling of which is
3 commenced before the effective date of this Act is subject to the
4 warranty obligation applicable to the home, material improvement to
5 the home, or improvement to the interior of the home immediately
6 before the effective date of this Act.

7 (b) Section 401.007, Property Code, as amended by this Act,
8 applies only to an order regarding an emergency or a violation of a
9 statute to which Chapter 401, Property Code, applies that occurs on
10 or after the effective date of this Act. An order regarding an
11 emergency or a violation of a statute that occurred before the
12 effective date of this Act is governed by the law in effect at the
13 time the emergency or violation occurred, and that law is continued
14 in effect for that purpose.

15 (c) Section 416.001, Property Code, as amended by this Act,
16 applies only to an offense committed on or after the effective date
17 of this Act. An offense committed before the effective date of this
18 Act is governed by the law in effect at the time the offense was
19 committed, and the former law is continued in effect for that
20 purpose. For the purposes of this section, an offense was committed
21 before the effective date of this Act if any element of the offense
22 occurred before that date.

23 (d) Section 416.005, Property Code, as amended by this Act,
24 applies only to a person licensed by the Texas Residential
25 Construction Commission as a builder for the first time on or after
26 January 1, 2010. A person registered with the commission as a
27 builder before January 1, 2010, is governed by the law in effect at

1 the time the person registered, and that law is continued in effect
2 for that purpose.

3 (e) Section 416.006(a), Property Code, as amended by this
4 Act, applies only to a license issued for the first time on or after
5 January 1, 2010. A certificate of registration issued before
6 January 1, 2010, is governed by the law in effect immediately before
7 the effective date of this Act, and that law is continued in effect
8 for that purpose.

9 (f) Sections 416.012(c) and (e), Property Code, as amended
10 by this Act, and the repeal by this Act of Section 416.012(b),
11 Property Code, apply only to a renewal of a license by a builder on
12 or after September 1, 2011. The renewal of a license by a builder
13 before September 1, 2011, is governed by the law in effect
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

16 (g) Sections 418.001 and 418.002, Property Code, as amended
17 by this Act, apply only to a ground for disciplinary action that
18 occurs on or after the effective date of this Act. A ground for
19 disciplinary action that occurs before the effective date of this
20 Act is governed by the law in effect at the time the ground for
21 disciplinary action occurred, and that law is continued in effect
22 for that purpose.

23 (h) Section 426.003, Property Code, as amended by this Act,
24 applies only to a registration of a home that occurs on or after the
25 effective date of this Act. A registration of a home that occurs
26 before the effective date of this Act is governed by the law in
27 effect immediately before the effective date of this Act, and that

1 law is continued in effect for that purpose.

2 (i) Sections 426.004, 426.005, 428.003, and 428.004,
3 Property Code, as amended by this Act, apply only to a request for a
4 state inspection filed on or after the effective date of this Act.
5 A request filed before the effective date of this Act is governed by
6 the law in effect immediately before the effective date of this Act,
7 and that law is continued in effect for that purpose.

8 (j) Section 27.004(1), Property Code, as amended by this
9 Act, and Section 428.0041(a), Property Code, as added by this Act,
10 apply only to inspection of a repair completed by a builder on or
11 after the effective date of this Act. Inspection of a repair
12 completed by a builder before the effective date of this Act is
13 governed by the law in effect immediately before the effective date
14 of this Act, and that law is continued in effect for that purpose.

15 (k) The repeal by this Act of Section 436.003, Property
16 Code, applies only to an arbitration initiated on or after the
17 effective date of this Act. An arbitration initiated before the
18 effective date of this Act is governed by the law applicable to the
19 arbitration immediately before the effective date of this Act, and
20 that law is continued in effect for that purpose.

21 (l) The repeal by this Act of Chapter 437, Property Code,
22 applies only to an arbitration award filed on or after the effective
23 date of this Act. An award filed before the effective date of this
24 Act is governed by the law in effect immediately before that date,
25 and that law is continued in effect for that purpose.

26 (m) The repeal by this Act of Chapter 438, Property Code,
27 applies only to an arbitration award issued on or after the

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

4 SECTION 75. This Act takes effect September 1, 2009.