

By: McClendon

H.B. No. 2699

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of certain builders.

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

SECTION 1. The heading to Subtitle C, Title 16, Property Code, is amended to read as follows:

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

SECTION 2. The heading to Chapter 416, Property Code, is amended to read as follows:

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

SECTION 3. Section 416.001, Property Code, is amended to read as follows:

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

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

(1) license eligibility;

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

(3) security and insurance requirements;

(4) disciplinary actions; and

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

3 SECTION 4. The heading to Section 416.002, Property Code,
4 is amended to read as follows:

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

6 SECTION 5. Sections 416.002(a) and (e), Property Code, are
7 amended to read as follows:

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

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

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

19 (a) The commission shall charge and collect:

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

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

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

27 SECTION 7. Chapter 416, Property Code, is amended by adding

1 Section 416.0041 to read as follows:

2 Sec. 416.0041. SECURITY REQUIREMENTS. (a) As a guarantee
3 that a builder will meet the builder's obligations under this
4 subtitle, each licensed builder shall maintain with the commission
5 a bond or other security accepted by the commission.

6 (b) A bond posted as security must:

7 (1) be issued by an insurer authorized to engage in the
8 business of insurance in this state;

9 (2) be continuous;

10 (3) be cancelable by the surety only after at least 90
11 days' notice to the commission; and

12 (4) recognize that the obligation continues for the
13 terms of the contracts written by the builder while the bond is in
14 force.

15 (c) Any security provided under this section in a form other
16 than a bond must be convertible to cash by the commission for the
17 benefit of persons who contract with the builder in this state,
18 without resort to the courts, if the commission determines that the
19 builder is in default of the builder's financial obligations to
20 those contract holders. Any amount remaining after all contract
21 holders' claims are paid must be returned to the builder not later
22 than the 120th day after the date the last outstanding contract
23 expires.

24 SECTION 8. Section 416.005, Property Code, is amended to
25 read as follows:

26 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
27 may not receive a license [~~certificate of registration~~] under this

1 chapter unless:

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

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

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

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

9 SECTION 9. Section 416.006, Property Code, is amended to
10 read as follows:

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

14 (1) a corporation must designate one of its officers
15 as its agent for the purposes of this chapter;

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

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

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

26 SECTION 10. Chapter 416, Property Code, is amended by
27 adding Section 416.0061 to read as follows:

1 Sec. 416.0061. EXAMINATION. (a) Except as otherwise
2 provided by this section and effective September 1, 2011, each
3 applicant for an individual license under this chapter must take a
4 licensing examination prescribed by the commission. An applicant
5 is entitled to take the examination prescribed by the commission
6 if:

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

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

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

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

19 (d) A person who, immediately before September 1, 2009, held
20 a certificate of registration issued by the commission is eligible
21 for a license without satisfying the examination requirement of
22 this section if the commission determines that the person's
23 certificate was active and in good standing. If the person's
24 certificate was not active or was not in good standing as of August
25 31, 2009, the person is required to satisfy the examination
26 requirement. This subsection expires December 31, 2014.

27 SECTION 11. Section 416.007, Property Code, is amended to

1 read as follows:

2 Sec. 416.007. LICENSE ISSUANCE [~~OF CERTIFICATE~~]. (a) Not
3 later than the 15th day after the date the commission receives an
4 application from an applicant who meets the requirements of this
5 chapter, the commission shall issue a license [~~certificate of~~
6 ~~registration~~] to the applicant.

7 (b) The license [~~certificate of registration~~] remains in
8 effect for the period prescribed by the commission if the license
9 [~~certificate~~] holder complies with this chapter and pays the
10 appropriate renewal fees.

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

14 SECTION 12. Chapter 416, Property Code, is amended by
15 adding Section 416.0071 to read as follows:

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

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

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

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

27 (b) A provisional license under this section is valid for

1 six months from the date of issuance.

2 SECTION 13. The heading to Section 416.008, Property Code,
3 is amended to read as follows:

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

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

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

12 SECTION 15. Section 416.009, Property Code, is amended to
13 read as follows:

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

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

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

1 renewal fee is payable.

2 SECTION 16. Sections 416.010(a), (b), (c), and (d),
3 Property Code, are amended to read as follows:

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

7 (b) Not later than the 30th day after the date a builder
8 moves from the address designated on the license [~~certificate of~~
9 ~~registration~~], the builder shall submit an application,
10 accompanied by the appropriate fee, for a license [~~certificate of~~
11 ~~registration~~] that designates the new location of the builder's
12 principal place of business. The commission shall issue a license
13 [~~certificate of registration~~] that designates the new location if
14 the new location complies with the requirements of this section.

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

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

21 SECTION 17. Section 416.011(a), Property Code, is amended
22 to read as follows:

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

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

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

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

13 (c) A licensed builder who has satisfied [~~is registered~~
14 ~~before September 1, 2007, and all other builders who register for~~
15 ~~the first time on or after September 1, 2007, and satisfy~~] the
16 requirements of Subsection (b)[~~7~~] must thereafter complete five
17 hours of continuing education every five years, one hour of which
18 must address ethics.

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

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

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

27 (3) attending a seminar, tutorial, short course,

1 correspondence course, videotaped course, or televised course on
2 the practice of residential construction;

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

5 (5) teaching a course described by Subdivisions
6 (1)-(4);

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

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

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

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

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

20 SECTION 19. Chapter 401, Property Code, is amended by
21 adding Section 401.008 to read as follows:

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

27 SECTION 20. The Texas Residential Construction Commission

1 shall adopt rules as required by Chapter 416, Property Code, as
2 amended by this Act, not later than December 1, 2009.

3 SECTION 21. A person is not required to hold a license under
4 Chapter 416, Property Code, as amended by this Act, until January 1,
5 2010.

6 SECTION 22. Except as otherwise provided by this Act, this
7 Act takes effect September 1, 2009.