

By: Harris

S.B. No. 1641

A BILL TO BE ENTITLED

AN ACT

relating to certain construction liens under the Texas Residential Construction Commission Act; providing civil penalties.

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

SECTION 1. Section 420.002, Property Code, is amended to read as follows:

Sec. 420.002. REQUIRED CONTRACT PROVISIONS. (a) In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract is not enforceable against a homeowner unless the contract:

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

(2) contains the notice required by Section 420.001.

(b) A builder may amend a contract that does not comply with this section to add the required provisions to avoid additional civil penalties.

(c) When a builder amends a contract under Subsection (b), the builder and the homeowner may not alter any other term or condition of the contract.

SECTION 2. Chapter 420, Property Code, is amended by adding Sections 420.0025 and 420.0026 to read as follows:

Sec. 420.0025. CIVIL PENALTY: FAILURE TO COMPLY WITH REQUIRED CONTRACT PROVISIONS. (a) A person who violates Section

1 420.002 is liable for a civil penalty in an amount of not less than
2 \$100 and not more than \$500 for each violation, not to exceed an
3 aggregate amount of \$5,000.

4 (b) Each day a violation of Section 420.002 continues
5 constitutes a separate violation for the purposes of this section.

6 (c) The attorney general may bring suit to recover a civil
7 penalty under this section.

8 (d) The amount of the civil penalty under this section must
9 be based on:

10 (1) the seriousness of the violation, including the
11 nature, circumstances, extent, and gravity of the violation;

12 (2) the history of previous violations;

13 (3) the amount necessary to deter a future violation;

14 (4) whether the violator demonstrated good faith,
15 including when applicable whether the violator made good faith
16 efforts to correct the violation; and

17 (5) any other matter that justice may require.

18 Sec. 420.0026. CERTAIN LIENS VALID. Notwithstanding
19 Section 420.002(a), a builder's failure to comply with Section
20 420.002 does not invalidate a lien of an entity that:

21 (1) provided third-party financing to a homeowner for
22 the construction of a new home or an improvement to an existing home
23 under a residential construction contract; or

24 (2) renewed and extended financing for a purpose
25 described by Subdivision (1).

26 SECTION 3. This Act takes effect September 1, 2009.