

1-1 By: Harris S.B. No. 1641
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 23, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 23, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to certain construction liens under the Texas Residential
1-9 Construction Commission Act; providing civil penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 420.002, Property Code, is amended to
1-12 read as follows:

1-13 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. (a) In a
1-14 contract for the construction of a new home or an improvement to an
1-15 existing home required to be registered under Section 426.003, the
1-16 contract is not enforceable against a homeowner unless the
1-17 contract:

1-18 (1) contains the builder's name and certificate of
1-19 registration number; and

1-20 (2) contains the notice required by Section 420.001.

1-21 (b) A builder may amend a contract that does not comply with
1-22 this section to add the required provisions to avoid additional
1-23 civil penalties.

1-24 (c) When a builder amends a contract under Subsection (b),
1-25 the builder and the homeowner may not alter any other term or
1-26 condition of the contract.

1-27 SECTION 2. Chapter 420, Property Code, is amended by adding
1-28 Sections 420.0025 and 420.0026 to read as follows:

1-29 Sec. 420.0025. CIVIL PENALTY: FAILURE TO COMPLY WITH
1-30 REQUIRED CONTRACT PROVISIONS. (a) A person who violates Section
1-31 420.002 is liable for a civil penalty in an amount of not less than
1-32 \$100 and not more than \$500 for each violation, not to exceed an
1-33 aggregate amount of \$5,000.

1-34 (b) Each day a violation of Section 420.002 continues
1-35 constitutes a separate violation for the purposes of this section.

1-36 (c) The attorney general may bring suit to recover a civil
1-37 penalty under this section.

1-38 (d) The amount of the civil penalty under this section must
1-39 be based on:

1-40 (1) the seriousness of the violation, including the
1-41 nature, circumstances, extent, and gravity of the violation;

1-42 (2) the history of previous violations;

1-43 (3) the amount necessary to deter a future violation;

1-44 (4) whether the violator demonstrated good faith,
1-45 including when applicable whether the violator made good faith
1-46 efforts to correct the violation; and

1-47 (5) any other matter that justice may require.

1-48 Sec. 420.0026. CERTAIN LIENS VALID. Notwithstanding
1-49 Section 420.002(a), a builder's failure to comply with Section
1-50 420.002 does not invalidate a lien of an entity that:

1-51 (1) provided third-party financing to a homeowner for
1-52 the construction of a new home or an improvement to an existing home
1-53 under a residential construction contract; or

1-54 (2) renewed and extended financing for a purpose
1-55 described by Subdivision (1).

1-56 SECTION 3. This Act takes effect September 1, 2009.

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