

By: McClendon

H.B. No. 1686

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the registration and regulation of homebuilders and
3 residential construction and improvements; providing penalties.

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

5 SECTION 1. Subchapter Z, Chapter 214, Local Government
6 Code, is amended by adding Section 214.906 to read as follows:

7 Sec. 214.906. CERTIFICATE OF REGISTRATION NUMBER REQUIRED
8 FOR RESIDENTIAL CONSTRUCTION PERMIT. A municipality may not issue a
9 permit that authorizes the construction of a new single-family
10 house or duplex or the improvement of an existing single-family
11 house or duplex by a builder who is required to hold a certificate
12 of registration issued by the Texas Residential Construction
13 Commission unless the builder provides the builder's certificate of
14 registration number to the municipality.

15 SECTION 2. Section 41.007(a), Property Code, is amended to
16 read as follows:

17 (a) A contract described by Section 41.001(b)(3) must
18 contain:

19 (1) the contractor's certificate of registration
20 number from the Texas Residential Construction Commission if the
21 contractor is required to register as a builder with the
22 commission;

23 (2) the address and telephone number at which the
24 owner of the homestead may file a complaint with the Texas

1 Residential Construction Commission about the conduct of the
2 contractor if the contractor is required to register as a builder
3 with the commission; and

4 (3) the following warning conspicuously printed,
5 stamped, or typed in a size equal to at least 10-point bold type or
6 computer equivalent, next to the owner's signature line on the
7 contract:

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

13 SECTION 3. Subchapter K, Chapter 53, Property Code, is
14 amended by adding Section 53.2555 to read as follows:

15 Sec. 53.2555. CERTIFICATE OF REGISTRATION NUMBER. (a) A
16 contractor who is required to register as a builder with the Texas
17 Residential Construction Commission shall include, in a clear and
18 conspicuous manner, the contractor's certificate of registration
19 number on each residential construction contract.

20 (b) The failure of a contractor to comply with Subsection
21 (a) makes void any mechanic's or materialman's lien by the
22 contractor or a subcontractor.

23 SECTION 4. Section 162.003, Property Code, is amended to
24 read as follows:

25 Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. (a) An
26 artisan, laborer, mechanic, contractor, subcontractor, or
27 materialman who labors or who furnishes labor or material for the

1 construction or repair of an improvement on specific real property
2 in this state is a beneficiary of any trust funds paid or received
3 in connection with the improvement.

4 (b) A property owner is a beneficiary of trust funds paid in
5 connection with a residential construction contract to the extent
6 that the amount of money paid by the property owner exceeds the
7 value of work performed by persons described by Subsection (a) for
8 the property owner under the contract.

9 SECTION 5. Section 162.006(a), Property Code, is amended to
10 read as follows:

11 (a) A contractor who enters into a written contract with a
12 property owner to construct improvements to a residential homestead
13 for an amount exceeding \$2,500 [~~\$5,000~~] shall deposit the trust
14 funds in a construction account in a financial institution.

15 SECTION 6. Section 401.002(7), Property Code, is amended to
16 read as follows:

17 (7) "Homeowner" means a person who owns a home or who
18 contracts for the construction of a new home or an improvement to an
19 existing home. The term includes a subrogee or assignee of that [~~a~~]
20 person [~~who owns a home~~].

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

23 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
24 "builder" means any business entity or individual who, for a fixed
25 price, commission, fee, wage, or other compensation, constructs or
26 supervises or manages the construction of:

27 (1) a new home; or

1 (2) [~~a material improvement to a home, other than an~~
2 ~~improvement solely to replace or repair a roof of an existing home,~~
3 ~~or~~

4 ~~(3)~~ an improvement to [~~the interior of~~] an existing
5 home when the cost of the work exceeds \$2,500 [~~\$20,000~~].

6 (b) The term includes:

7 (1) an owner, officer, director, shareholder,
8 partner, affiliate, subsidiary, or employee of the builder;

9 (2) a risk retention group governed by Article 21.54,
10 Insurance Code, that insures all or any part of a builder's
11 liability for the cost to repair a residential construction defect;
12 [~~and~~]

13 (3) a third-party warranty company and its
14 administrator;

15 (4) a person who negotiates on behalf of a builder a
16 contract for the construction of a new home or an improvement to an
17 existing home; and

18 (5) a person who solicits or attempts to procure on
19 behalf of a builder a contract for the construction of a new home or
20 an improvement to an existing home.

21 (c) The term does not include any business entity or
22 individual who:

23 (1) has been issued a license by this state or an
24 agency or political subdivision of this state to practice a trade or
25 profession related to or affiliated with residential construction
26 if the work being done by the entity or individual to the home is
27 solely for the purpose for which the license was issued;

1 (2) is an employee of a builder who holds a certificate
2 of registration issued under Chapter 416;

3 (3) is an employee of the federal government, the
4 state, or a political subdivision of the state and performs
5 construction work within the scope of the person's employment;

6 (4) is a student enrolled in a vocational school
7 program in which the student works under the direct supervision of a
8 builder who holds a certificate of registration under Chapter 416
9 or another person who is licensed by the state or a political
10 subdivision of the state;

11 (5) is a public utility performing construction,
12 maintenance, or development work incidental to the utility's own
13 business; or

14 (6) furnishes materials, supplies, or equipment for a
15 residential construction project and does not construct or
16 supervise or manage the construction of a new home or an improvement
17 to an existing home.

18 SECTION 8. Section 408.002, Property Code, is amended to
19 read as follows:

20 Sec. 408.002. FEES. (a) Except as provided by Subsection
21 (b), the [The] commission shall adopt fees as required by this title
22 in amounts that are reasonable and necessary to provide sufficient
23 revenue to cover the costs of administering this title.

24 (b) The commission may not charge a homeowner a fee for:

25 (1) filing a complaint with the commission;

26 (2) receiving a state-sponsored inspection or
27 participating in a dispute resolution process under Subtitle D;

1 (3) participating in arbitration under Subtitle E; or
2 (4) receiving information from the commission under
3 Chapter 409.

4 SECTION 9. Section 409.003, Property Code, is amended by
5 adding Subsection (d) to read as follows:

6 (d) The commission shall make available to the public
7 information about each complaint that resulted in disciplinary
8 action by the commission.

9 SECTION 10. Chapter 409, Property Code, is amended by
10 adding Section 409.004 to read as follows:

11 Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall
12 make available to the public a list of each builder who holds a
13 certificate of registration issued under Chapter 416.

14 SECTION 11. Section 416.002(a), Property Code, is amended
15 to read as follows:

16 (a) An applicant for an original or renewal certificate of
17 registration must submit:

18 (1) an application on a form prescribed by the
19 commission;

20 (2) evidence of financial responsibility as required
21 by commission rule under Section 416.003;

22 (3) an outline of the organization of the applicant's
23 contracting business or the applicant's duties if the applicant is
24 a solo practitioner;

25 (4) information about any outstanding judgment
26 against the applicant resulting from home improvement contracting
27 or construction work;

1 (5) information about any pending litigation that the
2 applicant is involved in resulting from home improvement
3 contracting or construction work;

4 (6) information about any past-due franchise tax owed
5 by the applicant to the comptroller; and

6 (7) all fees required by the commission at the time of
7 application.

8 SECTION 12. Chapter 416, Property Code, is amended by
9 adding Section 416.003 to read as follows:

10 Sec. 416.003. FINANCIAL RESPONSIBILITY. The commission
11 shall adopt rules requiring each certificate holder to obtain
12 bonding and insurance coverage. In adopting the rules, the
13 commission shall require the certificate holder to obtain:

14 (1) insurance for personal injury in an amount not
15 less than \$100,000 per occurrence and \$300,000 aggregate;

16 (2) insurance for property damage caused by the
17 builder in an amount not less than \$50,000; and

18 (3) a general obligation bond for the benefit of any
19 person damaged by the breach of a home improvement contract in an
20 amount not less than \$50,000.

21 SECTION 13. Section 416.004, Property Code, is amended to
22 read as follows:

23 Sec. 416.004. FEES. (a) The commission shall charge and
24 collect:

25 (1) a filing fee for an application for an original
26 certificate of registration of at least [~~that does not exceed~~]
27 \$500; and

1 (2) a fee for renewal of a certificate of registration
2 of at least [~~that does not exceed~~] \$300.

3 (b) The commission shall establish a fee schedule that takes
4 into consideration the unit volume or dollar volume of potential
5 applicants. The commission may increase the fees charged under
6 Subsection (a) to raise money to provide improved service to the
7 public in connection with investigations of complaints of
8 construction defects filed by homeowners under this title.

9 (c) The fees in Subsection (a) apply to each builder,
10 including each corporation, limited liability company,
11 partnership, limited partnership, limited liability partnership,
12 and subsidiary.

13 SECTION 14. Chapter 416, Property Code, is amended by
14 adding Section 416.012 to read as follows:

15 Sec. 416.012. REGISTRATION REQUIRED TO ENFORCE CONTRACT. A
16 builder may not sue to collect fees or damages under a contract with
17 a homeowner unless the builder, at the time the builder entered into
18 the contract and performed work under the contract for the
19 homeowner, held a certificate of registration issued under this
20 chapter.

21 SECTION 15. Section 418.001, Property Code, is amended to
22 read as follows:

23 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person is
24 subject to disciplinary action under this chapter for:

25 (1) fraud or deceit in obtaining a registration or
26 certification under this subtitle;

27 (2) misappropriation of trust funds in the practice of

1 residential construction, including a violation of Section
2 162.031;

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

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

7 (5) publishing a false or misleading advertisement;

8 (6) failure to honor, within a reasonable time, a
9 check issued to the commission after the commission has sent by
10 certified mail a request for payment to the person's last known
11 business address, according to commission records;

12 (7) failure to pay an administrative penalty assessed
13 by the commission under Chapter 419;

14 (8) nonpayment of a final nonappealable judgment
15 arising from a construction defect or other transaction between the
16 person and a homeowner;

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

19 (10) failure to remit the fee for registration of a
20 home under Section 426.003; [~~or~~]

21 (11) failure to reimburse a homeowner the amount
22 ordered by the commission as provided in Section 428.004(d);

23 (12) failure to obtain a permit required by a
24 political subdivision before constructing a new home or an
25 improvement to an existing home;

26 (13) performing inadequate or incomplete work or
27 performing work in a poor and unworkmanlike manner;

1 (14) engaging in fraud or bad faith in a transaction
2 with a homeowner;

3 (15) violating this title or a rule adopted under this
4 title;

5 (16) abandoning or wilfully failing to perform,
6 without justification, any home improvement contract or
7 residential construction project engaged in or undertaken by the
8 person, or deviating from or disregarding plans or specifications
9 in any material respect without the consent of the homeowner;

10 (17) making a substantial misrepresentation in the
11 procurement of a contract, or making any false promise of a
12 character likely to influence, persuade, or induce another person
13 regarding a contract;

14 (18) engaging in fraud in the execution of, or in the
15 alteration of, any contract, mortgage, promissory note, or other
16 document incident to a construction transaction;

17 (19) using or attempting to use a certificate of
18 registration that has expired or that has been revoked;

19 (20) falsely representing that the person holds a
20 certificate of registration issued under Chapter 416;

21 (21) entering into a home improvement contract with
22 the intent to damage the property of a consumer;

23 (22) working on the property of a consumer without the
24 consumer's prior authorization;

25 (23) misrepresenting that the contractor or another
26 person is an employee or agent of the federal government, the state,
27 or a political subdivision of the state;

1 (24) misrepresenting that the supplier or another
2 person is an employee or agent of a public or private utility;

3 (25) advertising in any manner that a person holds a
4 certificate of registration issued under Chapter 416 unless the
5 advertisement includes an accurate reference to the person's
6 current certificate of registration number in a manner prescribed
7 by the commission;

8 (26) creating or confirming a consumer's impression
9 that is false and that the builder does not believe to be true;

10 (27) making a promise to perform work that the person
11 does not intend to perform or that the person knows will not be
12 performed;

13 (28) entering into a contract with a homeowner in
14 which the total sales price exceeds the value of the work performed
15 under the contract by more than 25 percent;

16 (29) acting as a builder using a name other than the
17 name listed on the person's certificate of registration;

18 (30) aiding, abetting, or conspiring with a person who
19 does not hold a certificate of registration to evade the provisions
20 of this title or rules adopted under this title;

21 (31) allowing the person's certificate of registration
22 to be used by another person;

23 (32) acting as an agent, partner, or associate of a
24 person who does not hold a certificate of registration with the
25 intent to evade the provisions of this title or rules adopted under
26 this title;

27 (33) demanding or receiving payment for a residential

1 construction project before the contract is signed;
2 (34) failing to pay all required taxes;
3 (35) violating Section 53.2555;
4 (36) violating Section 53.256; or
5 (37) violating Chapter 17, Business & Commerce Code,
6 Title 4 or 5, Labor Code, or federal or state tax law in the course
7 of acting as a builder.

8 SECTION 16. Chapter 418, Property Code, is amended by
9 adding Section 418.005 to read as follows:

10 Sec. 418.005. DISCIPLINARY ACTION FOR CONDUCT OF OTHERS. A
11 builder is subject to disciplinary action under this chapter for a
12 violation of this title by an employee, agent, or partner of the
13 builder, unless the commission determines that:

14 (1) the person who committed the violation was an
15 employee acting outside the scope of the person's employment; or

16 (2) the builder tried and was unable to prevent the
17 violation.

18 SECTION 17. The heading to Chapter 419, Property Code, is
19 amended to read as follows:

20 CHAPTER 419. PENALTIES AND ENFORCEMENT PROVISIONS [~~ADMINISTRATIVE~~
21 ~~PENALTY~~]

22 SECTION 18. Chapter 419, Property Code, is amended by
23 adding Section 419.005 to read as follows:

24 Sec. 419.005. CRIMINAL PENALTY. (a) A person commits an
25 offense if the person violates Section 416.001.

26 (b) An offense under this section is a Class B misdemeanor.

27 SECTION 19. Chapter 419, Property Code, is amended by

1 adding Section 419.006 to read as follows:

2 Sec. 419.006. INJUNCTIVE RELIEF. (a) If a builder commits
3 a violation of this title or a commission rule and the violation
4 poses a serious threat of substantial or irreparable harm to
5 another person, the attorney general shall initiate a suit for:

6 (1) an injunction against the conduct;

7 (2) an order for the satisfactory completion of the
8 residential construction project, as appropriate; or

9 (3) restitution.

10 (b) In seeking injunctive relief under this section, the
11 attorney general is not required to allege or prove that an adequate
12 remedy at law does not exist.

13 (c) A suit under this section shall be brought in a district
14 court in:

15 (1) Travis County; or

16 (2) the county in which the alleged violation
17 occurred.

18 SECTION 20. Chapter 419, Property Code, is amended by
19 adding Section 419.007 to read as follows:

20 Sec. 419.007. PRIVATE CAUSE OF ACTION. (a) In addition to
21 any other available remedies, a homeowner may bring a cause of
22 action against a builder who violates this title or a rule adopted
23 under this title to recover:

24 (1) \$1,000 for each violation;

25 (2) actual damages;

26 (3) consequential damages;

27 (4) punitive damages;

1 (5) court costs; and

2 (6) reasonable attorney's fees.

3 (b) A builder is liable under this section for a violation
4 of this title committed by an employee, agent, or partner of the
5 builder, unless the court determines that:

6 (1) the person who committed the violation was an
7 employee acting outside the scope of the person's employment; or

8 (2) the builder tried and was unable to prevent the
9 violation.

10 SECTION 21. Subtitle C, Title 16, Property Code, is amended
11 by adding Chapter 420 to read as follows:

12 CHAPTER 420. BUILDER RECOVERY FUND

13 Sec. 420.001. DEFINITION. In this chapter, "fund" means the
14 builder recovery fund.

15 Sec. 420.002. RECOVERY FUND. The commission shall maintain
16 a builder recovery fund to reimburse aggrieved persons who suffer
17 actual damages from a builder's act in violation of this title or a
18 rule adopted under this title. An aggrieved person may recover from
19 the fund based on the act of any person who is a builder at the time
20 the act occurs, regardless of whether the person holds a
21 certificate of registration issued under Chapter 416 at the time
22 the act occurs.

23 Sec. 420.003. PAYMENTS INTO FUND. (a) In addition to any
24 other fees required by this chapter, a person who applies for a
25 certificate of registration under Chapter 416 shall pay a fee in an
26 amount determined by commission rule and not less than \$50. The
27 commission shall deposit the fee to the credit of the fund before

1 issuing the certificate of registration.

2 (b) If the balance in the fund at any time is less than
3 \$250,000, each builder shall pay at the next license renewal, in
4 addition to the renewal fee, a fee that is equal to the lesser of \$50
5 or a pro rata share of the amount necessary to obtain a balance in
6 the fund of \$350,000. The commission shall deposit the additional
7 fee to the credit of the fund.

8 (c) To ensure the availability of a sufficient amount of
9 money to pay anticipated claims on the fund, the commission by rule
10 may provide for the collection of assessments at different times
11 and under conditions other than those specified by this chapter.

12 Sec. 420.004. MANAGEMENT OF FUND. (a) The commission shall
13 hold money credited to the fund in trust to carry out the purpose of
14 the fund.

15 (b) Money credited to the fund may be invested in the same
16 manner as money of the Employees Retirement System of Texas, except
17 that an investment may not be made that would impair the liquidity
18 necessary to make payments from the fund as required by this
19 chapter.

20 (c) Interest from the investments shall be deposited to the
21 credit of the fund.

22 Sec. 420.005. DEADLINE FOR ACTION; NOTICE TO COMMISSION.

23 (a) An action for a judgment that may result in an order for payment
24 from the fund may not be brought after the second anniversary of the
25 date the cause of action accrues.

26 (b) When an aggrieved person brings an action for a judgment
27 that may result in an order for payment from the fund, the builder

1 against whom the action is brought shall notify the commission in
2 writing of the action.

3 Sec. 420.006. CLAIM FOR PAYMENT FROM FUND. (a) An aggrieved
4 person who obtains a court judgment against a builder for a
5 violation of this title may, after final judgment is entered,
6 execution returned nulla bona, and a judgment lien perfected, file
7 a verified claim in the court that entered the judgment.

8 (b) After the 20th day after the date the aggrieved person
9 gives written notice to the commission and judgment debtor, the
10 person may apply to the court that entered the judgment for an order
11 for payment from the fund of the amount unpaid on the judgment. The
12 court shall proceed promptly on the application.

13 Sec. 420.007. ISSUES AT HEARING. At the hearing on the
14 application for payment from the fund, the aggrieved person must
15 show:

16 (1) that the judgment is based on facts allowing
17 recovery under this chapter;

18 (2) that the person is not:

19 (A) the spouse of the judgment debtor or the
20 personal representative of the spouse; or

21 (B) a builder;

22 (3) that, according to the best information available,
23 the judgment debtor does not have sufficient attachable assets in
24 this or another state to satisfy the judgment;

25 (4) the amount that may be realized from the sale of
26 assets liable to be sold or applied to satisfy the judgment; and

27 (5) the balance remaining due on the judgment after

1 application of the amount under Subdivision (4).

2 Sec. 420.008. COMMISSION RESPONSE. (a) On receipt of
3 notice under Section 420.006, the commission may notify the
4 attorney general of the commission's desire to enter an appearance,
5 file a response, appear at the hearing, defend the action, or take
6 any other action the commission considers appropriate.

7 (b) The commission and the attorney general may act under
8 Subsection (a) only to:

9 (1) protect the fund from spurious or unjust claims;
10 or

11 (2) ensure compliance with the requirements for
12 recovery under this chapter.

13 (c) The commission may relitigate in the hearing any
14 material and relevant issue that was determined in the action that
15 resulted in the judgment in favor of the aggrieved person.

16 Sec. 420.009. COURT ORDER FOR PAYMENT. The court shall
17 order the commission to pay from the fund the amount the court finds
18 payable on the claim under this chapter if at the hearing the court
19 is satisfied:

20 (1) of the truth of each matter the aggrieved person is
21 required by Section 420.007 to show; and

22 (2) that the aggrieved person has satisfied each
23 requirement of Sections 420.006 and 420.007.

24 Sec. 420.010. PAYMENT LIMITS; ATTORNEY'S FEES. (a)
25 Payments from the fund for claims, including attorney's fees,
26 interest, and court costs, arising out of a single transaction may
27 not exceed a total equal to the greater of \$50,000 or five percent

1 of the recovery fund balance, regardless of the number of
2 claimants.

3 (b) Payments from the fund for claims based on judgments
4 against a single builder may not exceed a total of \$100,000 in any
5 year until the builder has reimbursed the fund for all amounts paid.

6 (c) If the court finds that the total amount of claims
7 against a builder exceeds the limitations contained in this
8 section, the court shall proportionally reduce the amount payable
9 on each claim.

10 (d) A person receiving payment from the fund is entitled to
11 reasonable attorney's fees in the amount determined by the court,
12 subject to the limitation prescribed by this section.

13 Sec. 420.011. APPLICATION OF JUDGMENT RECOVERY. An
14 aggrieved person who receives a recovery on a judgment against a
15 single defendant before receiving a payment from the fund must
16 apply the recovery first to actual damages.

17 Sec. 420.012. SUBROGATION. (a) The commission is
18 subrogated to all rights of a judgment creditor to the extent of an
19 amount paid from the fund, and the judgment creditor shall assign to
20 the commission all right, title, and interest in the judgment up to
21 that amount.

22 (b) The commission has priority for repayment from any
23 subsequent recovery on the judgment.

24 (c) The commission has priority for recovery from the
25 judgment debtor's general obligation bond for the amount owed by
26 the judgment debtor to the fund.

27 (d) The commission shall deposit any amount recovered on the

1 judgment to the credit of the fund.

2 Sec. 420.013. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This
3 chapter does not limit the commission's authority to take
4 disciplinary action against a builder for a violation of this
5 chapter or a commission rule.

6 (b) A builder's repayment of all amounts owed to the fund
7 does not affect another disciplinary proceeding brought under this
8 title.

9 Sec. 420.014. WAIVER OF RIGHTS. An aggrieved person who
10 does not comply with this chapter waives the person's rights under
11 this chapter.

12 Sec. 420.015. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS.

13 (a) Each builder shall provide notice of the availability of
14 payment from the fund for aggrieved persons:

15 (1) on a written contract for the builder's services;

16 (2) on a brochure that the builder distributes;

17 (3) on a sign prominently displayed in the builder's
18 place of business;

19 (4) in a bill or receipt for the builder's services;

20 and

21 (5) in a prominent display on the Internet website of a
22 person regulated under this chapter.

23 (b) The notice must include:

24 (1) the commission's name, mailing address, and
25 telephone number; and

26 (2) any other information required by commission rule.

27 SECTION 22. Subtitle C, Title 16, Property Code, is amended

1 by adding Chapter 421 to read as follows:

2 CHAPTER 421. BUILDING CONTRACT PROVISIONS

3 Sec. 421.001. REQUIRED WRITTEN DISCLOSURE. Before
4 beginning work on a project to construct a new home or an
5 improvement to an existing home when the cost of the work exceeds
6 \$2,500, a builder must provide a notice to the homeowner in at least
7 14-point bold type that gives the telephone number of the
8 commission and states:

9 STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF
10 REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF
11 THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON
12 CONTRACTS TO CONSTRUCT AN IMPROVEMENT TO AN EXISTING HOME AND THE
13 TOTAL COST OF THE IMPROVEMENT IS \$2,500 OR MORE (INCLUDING LABOR AND
14 MATERIALS).

15 BUILDERS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE
16 PUBLIC. YOU MAY CONTACT THE COMMISSION AT [insert commission's
17 telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID
18 CERTIFICATE OF REGISTRATION. THE COMMISSION HAS COMPLETE
19 INFORMATION ON THE HISTORY OF BUILDERS, INCLUDING ANY SUSPENSION,
20 REVOCATION, COMPLAINT, AND RESOLUTION OF COMPLAINT.

21 IF YOU HAVE A COMPLAINT AGAINST A BUILDER, YOU MAY CONTACT THE
22 TOLL-FREE TELEPHONE NUMBER TO OBTAIN A COMPLAINT FORM AND FURTHER
23 INFORMATION.

24 IF THE BUILDER FAILED TO COMPLETE THE WORK OR PERFORMED POOR
25 QUALITY WORK, YOU MAY FILE A CLAIM WITH THE RECOVERY FUND BY
26 CONTACTING THE TOLL-FREE TELEPHONE NUMBER. YOU MUST FILE ALL CLAIMS
27 AGAINST THE FUND WITHIN TWO YEARS OF THE DATE THE BUILDER ABANDONED

1 THE PROJECT OR PERFORMED THE POOR QUALITY WORK.

2 Sec. 421.002. REQUIRED CONTRACT PROVISIONS. A contract for
3 the construction of a new home or an improvement to an existing home
4 when the cost of the work exceeds \$2,500 is not enforceable against
5 a homeowner unless the contract:

6 (1) is in writing and legible;

7 (2) is signed by the homeowner and by the builder;

8 (3) contains the entire agreement between the
9 homeowner and the builder;

10 (4) contains the date of the transaction;

11 (5) is entered into with a builder who holds a
12 certificate of registration issued under Chapter 416;

13 (6) contains the builder's name, physical address, and
14 certificate of registration number;

15 (7) contains the approximate starting date and
16 completion date for the work under the contract;

17 (8) contains the notice required by Section 421.001;

18 (9) includes a description of the work to be performed
19 and the materials to be used and a set of specifications that cannot
20 be changed without the written approval of the homeowner;

21 (10) includes the total sales price due under the
22 contract or the procedure by which the final price will be
23 determined;

24 (11) includes the amount of any down payment, which
25 may not exceed one-third of the total contract price;

26 (12) includes a schedule of any progress payments
27 required, including the amount of each payment and the state of

1 completion of the work when the payment is due;

2 (13) includes a statement that on satisfactory payment
3 being made for any portion of the work performed, the builder will,
4 before any further payment is made, provide to the homeowner a full
5 and unconditional release from any claim or mechanic's lien for
6 that portion of the work;

7 (14) includes a notice in at least 14-point bold type
8 that the homeowner should not sign the contract if there are any
9 blanks and that the homeowner is entitled to a copy of the contract
10 at the time the homeowner signs it;

11 (15) includes a notice of a consumer's right to cancel
12 the transaction, if a right to cancel applies to the transaction;

13 (16) includes a description of any collateral taken to
14 secure the contract;

15 (17) advises the homeowner that it is the
16 responsibility of the builder to obtain all necessary permits to
17 perform the work;

18 (18) complies with all applicable state or federal
19 credit laws if the contract includes financing for the work to be
20 performed; and

21 (19) includes a statement that any trustee in
22 bankruptcy, receiver, or successor in interest of the contract is
23 subject to all claims and defenses that the homeowner could assert
24 against the builder.

25 Sec. 421.003. PROHIBITED CONTRACT PROVISIONS. Each of the
26 following provisions is void and unenforceable if included in a
27 contract for the construction of a new home or the improvement of an

1 existing home when the cost of the work exceeds \$2,500:

2 (1) a hold harmless clause;

3 (2) a waiver of the requirements of a health, safety,
4 or building code or ordinance;

5 (3) a confession of judgment clause;

6 (4) a waiver of any right to a jury trial in any action
7 brought by or against the homeowner;

8 (5) a clause in which the homeowner relieves the
9 builder from liability for any legal or equitable remedy that the
10 homeowner may have against the builder under the contract or other
11 instrument;

12 (6) a mandatory arbitration clause;

13 (7) a provision relieving the builder from liability
14 for acts committed by the builder or the builder's agent in the
15 collection of any payment or in the repossession of any goods;

16 (8) a provision in which the homeowner agrees not to
17 assert any claim or defense arising out of the contract;

18 (9) a provision stating that the builder may be
19 awarded attorney's fees and costs; and

20 (10) a waiver of any provision of this title.

21 SECTION 23. Section 426.004, Property Code, is amended to
22 read as follows:

23 Sec. 426.004. FEES. (a) A builder [~~party~~] who submits a
24 request under this subtitle shall pay any amount required by the
25 commission to cover the expense of the third-party inspector.

26 (b) [~~The commission shall adopt rules permitting a waiver or~~
27 ~~reduction of the inspection expenses for homeowners demonstrating a~~

1 ~~financial inability to pay the expenses.~~

2 ~~[(c)]~~ If the transfer of the title of the home from the
3 builder to the initial homeowner occurred before January 1, 2004,
4 or if the contract for improvements or additions between the
5 builder and homeowner was entered into before January 1, 2004, a
6 builder ~~[the person]~~ who submits a request involving the home shall
7 pay, in addition to the inspection expenses required by this
8 section, the registration fee required by Section 426.003.

9 SECTION 24. Section 428.004(d), Property Code, is amended
10 to read as follows:

11 (d) Except as provided by this subsection, the third-party
12 inspector's recommendation may not include payment of any monetary
13 consideration. If the inspector finds for a homeowner ~~[the party]~~
14 who submitted the request, the commission may order the builder
15 ~~[other party]~~ to reimburse all or part of the fees and inspection
16 expenses paid by the requestor under Section 426.004.

17 SECTION 25. The changes in law made by this Act to Section
18 416.002, Property Code, apply only to an application for a
19 certificate of registration filed with the Texas Residential
20 Construction Commission on or after the effective date of this Act.
21 An application filed before that date is governed by the law in
22 effect when the application is filed, and the former law is
23 continued in effect for that purpose.

24 SECTION 26. Section 416.012, Property Code, as added by
25 this Act, applies only to work performed by a builder on or after
26 the effective date of this Act. Work performed by a builder before
27 that date is governed by the law in effect when the work is

1 performed, and the former law is continued in effect for that
2 purpose.

3 SECTION 27. The changes in law made by this Act by the
4 amendment of Section 418.001, Property Code, and the enactment of
5 Chapter 420 and Sections 418.005, 419.006, and 419.007, Property
6 Code, apply only to conduct that occurs on or after the effective
7 date of this Act. Conduct that occurs before that date is governed
8 by the law in effect when the conduct occurs, and the former law is
9 continued in effect for that purpose.

10 SECTION 28. Section 214.906, Local Government Code, as
11 added by this Act, applies only to an application for a construction
12 permit filed with a municipality on or after the effective date of
13 this Act. An application filed before that date is governed by the
14 law in effect when the application is filed, and the former law is
15 continued in effect for that purpose.

16 SECTION 29. The changes in law made by this Act by the
17 enactment of Section 53.2555, Property Code, and the amendment of
18 Sections 41.007(a) and 162.006(a), Property Code, apply only to a
19 contract entered into on or after the effective date of this Act. A
20 contract entered into before the effective date of this Act is
21 governed by the law in effect when the contract is entered into, and
22 the former law is continued in effect for that purpose.

23 SECTION 30. (a) Except as provided by Subsection (b) of this
24 section, this Act takes effect September 1, 2007.

25 (b) The changes in law made by this Act to Section 401.003,
26 Property Code, take effect January 1, 2008.