

BILL ANALYSIS

Senate Research Center

H.B. 1038
By: Ritter, McClendon (Fraser)
Business & Commerce
5/7/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 78th Legislative Session (2003), H.B. 730 created the Texas Residential Construction Commission (TRCC). That legislation adopted performance standards and statutory warranties for residential construction, and established a state-sponsored inspection and dispute resolution process designed to assist consumers in resolving construction issues with homebuilders. Additionally, the legislation required, for the first time in history, the registration of homebuilders and remodelers with the state.

H.B. 1038 provides TRCC with more disciplinary powers, including the ability to discipline builders who do not register with TRCC, or who repeatedly fail to make an offer to repair or do not reasonably perform on an accepted offer to repair a building defect based on a third-party's recommendations or an appeal of the third-party inspector's recommendation. The bill gives TRCC the power to issue cease and desist orders against those violating the TRCC Act and proscribes a penalty of up to \$100,000 for violations involving the misappropriation of funds or engaging in statutory or common law fraud. The bill significantly expands the authority of TRCC in order to ensure that the state-sponsored inspection and dispute resolution process is working correctly to resolve disputes between the homebuilder and the homebuyer.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Residential Construction Commission in SECTION 27 (Section 416.013, Property Code) of this bill.

Rulemaking authority previously granted to the Texas Residential Construction Commission is modified in SECTION 45 and SECTION 49 (Sections 428.001 and 429.001, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 5, Property Code, by adding Section 5.016, as follows:

Sec. 5.016. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES. (a) Requires a seller of residential real property that is exempt from Title 16 (Texas Residential Construction Commission Act) under Section 401.005 (Exemptions) to give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) Requires a notice required by this section to be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. Authorizes the purchaser, if a contract is entered into without the seller providing the notice, to terminate the contract for

any reason on or before the seventh day after the date the purchaser receives the notice.

(c) Provides that this section does not apply to certain transfers.

SECTION 2. Amends Section 27.002(b), Property Code, read as follows:

(b) Provides that this chapter prevails, except as provided by this subsection, to the extent of conflict between this chapter and any other law, including Chapter 17 (Deceptive Trade Practices-Consumer Protection Act, Subchapter E), Business and Commerce Code, or a common law cause of action. Provides that Title 16 prevails, to the extent of conflict between this chapter and Title 16.

SECTION 3. Amends Section 27.004(d), Property Code, as follows:

(d) Requires the court or arbitration tribunal to abate, rather than dismiss, an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to comply with the requirements of Subtitle D (State-sponsored Inspection and Dispute Resolution Process; Statutory Warranty and Building and Performance Standards), Title 16, if applicable, failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). Makes conforming changes.

SECTION 4. Amends Section 41.007, Property Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Requires a contract described by Section 41.001(b)(3) to contain the contractor's certificate of registration number from the Texas Residential Construction Commission (commission) if the contractor is required to register as a builder with the commission, and the address and telephone number at which the owner may file a complaint with the commission about the conduct of the contractor if the contractor is required to register as a builder with the commission.

(c) Requires a provision of a contract described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration to be conspicuously printed or typed in a size equal to at least 14-point bold type or the computer equivalent, and provide a space immediately adjacent to the provision for the owner's signature to indicate acknowledgment of notice of the provision.

(d) Provides that a provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met and the owner signs the space acknowledging notice of the provision.

SECTION 5. Amends Subchapter K, Chapter 53, Property Code, by adding Section 53.2555, as follows:

Sec. 53.2555. CERTIFICATE OF REGISTRATION NUMBER. (a) Requires a contractor who is required to register as a builder with the commission to include, in a clear and conspicuous manner, the contractor's certificate of registration number on each residential construction contract.

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

SECTION 6. Amends Section 401.002(7), Property Code, to redefine "homeowner."

SECTION 7. Amends Section 162.003, Property Code, as follows:

Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. (a) Creates this subsection from existing text.

(b) Provides that a homeowner, as defined by Section 401.002, is a beneficiary of trust funds paid in connection with a residential construction contract governed by Title 16 and held for the purpose of satisfying the cost of materials and workmanship for labor and materials provided by persons described by Subsection (a) for the homeowner under the contract.

SECTION 8. Amends Section 162.006(a), Property Code, as follows:

(a) Requires a contractor who enters into a written contract with a property owner or homeowner, as defined by Section 401.002, to construct improvements to residential property, rather than a homestead, for an amount exceeding \$5,000 to deposit the trust funds in a construction account in a financial institution.

SECTION 9. Amends Section 401.002, Property Code, by adding Subdivisions (7-a) and (8-a), to define "improvement to the interior of an existing home" and "material improvement."

SECTION 10. Amends Section 401.003, Property Code, as follows:

Sec. 401.003. DEFINITION OF BUILDER. (a) Redefines "builder."

(b) Provides that the term includes a subsidiary of the builder, in addition to certain other persons.

(c) Provides that the term does not include any person who sells a new home and does not construct or supervise or manage the construction of the home, and holds a license issued under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, or is exempt from that chapter under Section 1101.005, Occupations Code. Makes nonsubstantive changes.

SECTION 11. Amends Section 401.005, Property Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that this title does not apply to an interior designer registered under Chapter 1053 (Interior Designers), Occupations Code, among other persons.

(c) Provides that an individual who builds a home or a material improvement to a home and sells the home immediately following completion of the building or remodeling and does not live in the home for at least one year following completion of the building or remodeling is liable as a builder under the warranty obligation created by this title for work completed by the individual. Provides that liability under this subsection does not automatically require an individual to register under Section 416.001 (Registration Required).

SECTION 12. Amends Chapter 401, Property Code, by adding Section 401.007, as follows:

Sec. 401.007. INJUNCTION; APPEAL. (a) Authorizes the commission, if it has reasonable cause to believe that a person is violating a statute to which this chapter applies, to issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance. Authorizes a person to appeal the order directly to district court in accordance with Chapter 2001 (Administrative Procedure), Government Code.

(b) Requires the commission to set and give notice of a hearing before a hearings officer before issuing an order under this section. Provides that the hearing is governed by Chapter 2001, Government Code. Authorizes the commission by order to find whether a violation has occurred based on the findings of fact, conclusions of law, and recommendations of the hearings officer.

(c) Authorizes the commission, after providing notice and an opportunity to appear for a hearing, to impose against a person who violates a cease and desist

order an administrative penalty in an amount not to exceed \$1,000 for each day of violation. Authorizes the attorney general or the commission to institute in district court a suit for injunctive relief and to collect an administrative penalty in addition to any other remedy provided by law. Provides that a bond is not required of the commission with respect to injunctive relief granted under this section. Authorizes the court to enter as proper an order awarding a preliminary or final injunction in the action.

(d) Requires a suit under this section to be brought in Travis County.

(e) Authorizes the attorney general and the commission to recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) Requires a party to file a petition initiating judicial review not later than the 30th day after the date of the issuance of the decision if a party seeks review of the order by the commission.

SECTION 13. Amends Section 406.001, Property Code, by adding Subsections (c), (d), (e), and (f), and amending Subsection (a), as follows:

(a) Provides that the commission consists of nine members appointed by the governor with the advice and consent of the senate and requires three members to be representatives of the general public, each of whom has demonstrated a continued interest in consumer protection.

(c) Prohibits a person from being a public member of the commission under certain circumstances.

(d) Prohibits a person from being a member of the commission and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) under certain circumstances.

(e) Prohibits certain persons from being a member of the commission or acting as general counsel to the commission.

(f) Defines "Texas trade association."

SECTION 14. Amends Section 406.004(b), Property Code, as follows:

(b) Prohibits a person from being a member of the commission and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments under certain circumstances.

SECTION 15. Amends Section 408.002, Property Code, as follows:

Sec. 408.002. FEES. (a) Creates this subsection from existing text.

(b) Authorizes the commission to charge a late fee for late payment of any fee due to the commission. Authorizes the late fee to be any amount that does not exceed the amount of the fee due.

(c) Authorizes the commission to charge a reasonable fee for a homeowner to submit a request for state-sponsored inspection under Subtitle D, providing public information requested under Chapter 552 (Public Information), Government Code, excluding information requested from the commission under Section

409.001 (Public Interest Information), or producing, mailing, and distributing special printed materials and publications generated in bulk by the commission for use and distribution by builders.

(d) Provides that fees paid to the commission under Subsections (b) and (c) are nonrefundable.

(e) Authorizes the commission to waive or reduce the fee for an inspection under Subtitle D for a homeowner who demonstrates an inability to pay the fee.

SECTION 16. Amends Section 408.003, Property Code, by adding Subsection (c), to authorize the commission to procure and distribute to consumers informational materials and promotional items that contain commission contact details and outreach information.

SECTION 17. Amends Chapter 408, Property Code, by adding Section 408.005, as follows:

Sec. 408.005. COLLECTION OF AMOUNTS DUE. Authorizes the commission to seek reimbursement of any amounts due to the commission and restitution for any dishonored payment instrument presented for payment to the commission.

SECTION 18. Amends Chapter 409, Property Code, by adding Section 409.0011, as follows:

Sec. 409.0011. BUILDER LIST. (a) Defines "volume builder."

(b) Requires the commission to create and make accessible to the public an electronic list and a hard-copy list of builders who are registered with the commission, and provide in this state building services, including accessible floor plans, to persons with mobility-related special needs.

(c) Requires the electronic list required under Subsection (b) to provide, if available, a link to the builder's website, and contact information for the builder, including the municipalities where the builder provides building services described by Subsection (b)(2).

(d) Requires the commission to contact all volume builders in this state who do not provide building services to persons with mobility-related special needs as described by Subsection (b)(2) and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs.

(e) Requires the commission to certify the builder's floor plans designed for persons with mobility-related special needs before a volume builder is included on the electronic or hard-copy list described by Subsection (b). Requires the commission to establish rules, procedures, and fees necessary to certify floor plans as required by this subsection.

(f) Requires the Veterans' Land Board to make accessible to the public on its Internet website and in hard-copy format the electronic list required under Subsection (b).

SECTION 19. Amends Section 409.003, Property Code, by adding Subsections (d), (e), and (f), as follows:

(d) Requires the commission to make available to the public information about each complaint that resulted in disciplinary action by the commission.

(e) Prohibits the commission from disclosing the address of any individual home registered with the commission when making information available to the public under this title, except as necessary to implement this title.

(f) Prohibits the commission from disclosing the address of an individual home registered with the commission on the commission's Internet website, or in connection with an open records request under Chapter 552, Government Code, notwithstanding Subsections (d) and (e).

SECTION 20. Amends Chapter 409, Property Code, by adding Section 409.004, as follows:

Sec. 409.004. DIRECTORY OF BUILDERS. Requires the commission to make available to the public a list of each builder who holds a certificate of registration issued under Chapter 416 (Certificate of Registration).

SECTION 21. Amends Section 416.001, Property Code, as follows:

Sec. 416.001. REGISTRATION REQUIRED. (a) Creates this subsection from existing text.

(b) Provides that a person commits an offense if the person violates Subsection (a). Provides that an offense under this section is a Class A misdemeanor.

SECTION 22. Amends Section 416.002, Property Code, by adding Subsection (e), as follows:

(e) Authorizes the commission, based on a commission investigation of an alleged violation of Sections 418.001(a)(14)-(20) (relating to actions subject to disciplinary action), to require an applicant for renewal of a certificate of registration to disclose to the commission every person with a financial or management interest in the applicant's business as a builder. Provides that this subsection does not apply to a publicly traded company.

SECTION 23. Amends Section 416.004, Property Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Requires the commission to charge and collect a late fee that does not exceed the amount of the fee due if payment of a registration application or renewal fee due under this title is late.

(c) Provides that all fees paid to the commission under this section are nonrefundable.

(d) Provides that the fees in Subsection (a) apply to each builder, including each sole proprietor, corporation, limited liability company, partnership, limited partnership, limited liability partnership, and subsidiary.

SECTION 24. Amends Sections 416.008(d) and (e), Property Code, as follows:

(d) Authorizes the hearing officer to grant a motion for continuance of the hearing on the request of the commission or the applicant, rather than authorizing the hearing to be continued from time to time with the consent of the applicant.

(e) Requires the hearing to be held before a hearings officer appointed by the commission. Requires the hearings officer to enter an appropriate order after the hearing. Deletes existing text providing that the order of the hearings officer under this subsection is a final decision.

SECTION 25. Amends Section 416.010, Property Code, by adding Subsection (e), as follows:

(e) Authorizes a builder to designate a United States Postal Service postal box for use in correspondence. Prohibits the builder from using the box as the builder's principal place of business for purposes of this section.

SECTION 26. Amends Section 416.011(d), Property Code, to provide that the certification issued by the commission as a "Texas Star Builder" is valid for at most one year and renewable on a date to be determined at the commission's discretion, rather than requiring that the

certification be for the same period of time as the builder's registration under this chapter (Certificate of Registration).

SECTION 27. Amends Chapter 416, Property Code, by adding Sections 416.012 and 416.013, as follows:

Sec. 416.012. **REGISTRATION REQUIRED TO ENFORCE CONTRACT.** Prohibits a builder from suing to enforce a residential construction contract with a homeowner or collect fees or damages under a contract with a homeowner unless the builder, at the time the builder entered into the contract and performed work under the contract for the homeowner, held a certificate of registration issued under this chapter.

Sec. 416.013. **CONTINUING EDUCATION.** (a) Requires a builder to complete five hours of continuing education, one hour of which must address ethics, during the first year a builder is registered with the commission.

(b) Requires a builder, after satisfying the requirements of Subsection (a), to complete five hours of continuing education, one hour of which must address ethics, once every five years.

(c) Requires continuing education courses that satisfy the requirements of this section to address the International Residential Code for One- and Two-Family Dwellings adopted under Section 430.001 (Limited Statutory Warranties and Building and Performance Standards) and state laws and rules that apply to builders under this chapter.

(d) Requires the commission by rule to approve continuing education courses, course content, and course providers. Provides that this subsection does not prohibit the commission from providing continuing education courses for a reasonable fee.

SECTION 28. Amends Section 417.003, Property Code, as follows:

Sec. 417.003. **FEES.** (a) Creates this subsection from existing text. Requires the commission to charge and collect a late fee that does not exceed the amount of the fee due if payment of a registration or application fee due under this title is late.

(b) Provides that all fees paid to the commission under this section are nonrefundable.

SECTION 29. Amends Sections 418.001 and 418.002, Property Code, as follows:

Sec. 418.001. **FOUNDATIONS FOR DISCIPLINARY ACTION.** (a) Creates this subsection from existing text. Provides that a person, including a builder, 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 certain actions.

(b) Prohibits the commission, for the purposes of Subsection (a)(12), from revoking a registration or certification unless the determination of statutory or common law fraud or misappropriation of funds has been made in a final nonappealable judgment by a court.

Sec. 418.002. **DISCIPLINARY POWERS OF COMMISSION.** (a) Creates this subsection from existing text. Authorizes the commission, on a determination that a ground for disciplinary action under Section 418.001 exists, to impose an administrative penalty under Chapter 419 (Administrative Penalty), except as provided by Subsection (b).

(b) Requires the commission to consider the factors described by Section 419.002(b) before taking disciplinary action under this chapter.

SECTION 30. Amends Section 418.004, Property Code, by adding Subsection (c), to provide that an appeal to a district court of a final decision of the commission under this section regarding a revocation or suspension of a registration or certification is determined by a preponderance of the evidence.

SECTION 31. Amends Chapter 418, Property Code, by adding Section 418.005, as follows:

Sec. 418.005. JOINT AND SEVERAL LIABILITY OF BUILDER AND AGENT. (a) Authorizes the commission to simultaneously take administrative action under this chapter against a builder, and a person who is designated as the builder's agent under Section 416.006, or who owns or controls a majority ownership interest in the builder.

(b) Provides that a builder and a person who is designated as a builder's agent under Section 416.006 (Additional Eligibility Requirements for Business Entities) or who owns or controls a majority ownership interest in the builder are jointly and severally liable for any amounts due to the commission under this title.

SECTION 32. Amends Section 419.001, Property Code, as follows:

Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. Deletes existing text authorizing the commission, as part of the commission's order, to impose an administrative penalty on a registered or certified person who violates this title or a rule adopted or order issued by the commission under this title in a contested case involving disciplinary action.

SECTION 33. Amends Section 419.002, Property Code, by adding Subsection (c) and amending Subsections (a) and (b), as follows:

(a) Prohibits an administrative penalty imposed under this chapter from exceeding \$10,000, rather than \$5,000, for each violation, except as provided by Subsection (c).

(b) Requires the hearings officer or commission, in determining the amount of an administrative penalty, to consider the deterrent effect on others in the industry, and the economic harm to the homeowner.

(c) Provides that a violation of Section 418.001(a)(2) or (12) is punishable by a penalty not to exceed \$100,000.

SECTION 34. Amends Subtitle C, Title 16, Property Code, by adding Chapter 420, as follows:

CHAPTER 420. BUILDING CONTRACT PROVISIONS

Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. Requires a builder to provide a notice with a certain statement to the homeowner in at least 14-point bold type that gives the telephone number of the commission before beginning work on a project to construct a new home or an improvement to an existing home when the cost of the work exceeds \$10,000.

Sec. 420.002. REQUIRED CONTRACT PROVISIONS. Provides that a contract for the construction of a new home or an improvement to an existing home when the cost of the work exceeds \$10,000 is not enforceable against a homeowner unless the contract contains the builder's name, physical address, and certificate of registration number, and contains the notice required by Section 420.001.

Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a) Requires a provision in a contract for the construction of a new home, or the improvement of an existing home in which the value of the work exceeds \$10,000, that requires the parties to submit a dispute arising under the contract to binding arbitration to be conspicuously printed or typed in a size equal to at least 14-point bold type or the computer equivalent,

and provide a space immediately adjacent to the provision for the homeowner's signature to indicate acceptance of the provision.

(b) Provides that a provision described by Subsection (a) is not enforceable against the homeowner unless the requirements of Subsection (a) are met and the homeowner signs the space accepting the provision.

SECTION 35. Amends Section 426.003(b), Property Code, as follows:

(b) Requires a builder who enters into a contract for the construction of a new home or an improvement to an existing home in which the value of the work exceeds \$20,000, rather than a transaction governed by this title, other than the transfer of title of a new home from the builder to the seller, to register the home involved in the transaction with the commission. Requires the registration to be delivered to the commission not later than the 15th day after the earlier of certain dates.

SECTION 36. Amends Chapter 419, Property Code, by adding Section 419.0031, as follows:

Sec. 419.0031. INTEREST ON UNPAID PENALTY. Provides that interest accrues on an unpaid administrative penalty at a rate of 18 percent compounded annually beginning on the day after the date specified for payment under Section 419.003 (Payment of Penalty).

SECTION 37. Amends Section 426.001(a), Property Code, to provide that this subtitle applies to a dispute between a builder and a homeowner if a request is submitted to the commission not later than the 30th day after, rather than on or before, the 10th anniversary of certain dates.

SECTION 38. Amends Section 426.004, Property Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the commission, if the transfer of the title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions between the builder and homeowner was entered into before January 1, 2004, to register the home and the builder, rather than the person who submits a request involving the home, to pay the registration fee required by Section 426.003 (Registration of Homes). Deletes existing text providing that payment of the registration fee is in addition to the inspection expenses required by this section.

(d) Authorizes the commission to reimburse an inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the amount collected under this section.

SECTION 39. Amends Section 426.005, Property Code, by adding Subsection (f) and amending Subsection (a), as follows:

(a) Requires a builder to comply with this subtitle before initiating an action for damages or other relief arising from an alleged construction defect.

(f) Provides that a homeowner is not required to comply with this subtitle if, at the time of a homeowner's requests for an inspection, the builder is not registered or the certificate of registration of the builder has been revoked or is inactive.

SECTION 40. Amends Section 426.006, Property Code, as follows:

Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE RESOLUTION. (a) Requires the state-sponsored inspection and dispute resolution process to be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 90th, rather than the 30th, day after the date the applicable warranty period expires for an alleged defect discovered during an applicable warranty period.

(b) Requires the state-sponsored inspection and dispute resolution process to be requested on or before and not later than certain dates if the alleged defect would violate the statutory warranty of habitability and was not discoverable by a reasonable, prudent inspection or examination of the home or improvement within the applicable warranty period.

SECTION 41. Amends Section 426.007, Property Code, as follows:

Sec. 426.007. **ADMISSIBILITY OF CERTAIN EVIDENCE.** Requires a person who submits a request for state-sponsored inspection and dispute resolution or responds to a request under Chapter 428 to disclose in the request or response the name of any person who, before the request is submitted, inspected the home on behalf of the requestor or respondent in connection with the construction defect alleged in the request or response. Makes conforming changes.

SECTION 42. Amends Section 426.008, Property Code, by adding Subsection (c), to require a recommendation or ruling, for the purposes of admissibility of a third-party inspector's recommendation or a ruling by a panel of state inspectors, to be considered a business record under Rule 902, Texas Rules of Evidence.

SECTION 43. Amends Section 427.001, Property Code, by amending Subsections (b), (c), and (d) and adding Subsection (c-1), as follows:

(b) Requires a third-party inspector who inspects an issue involving workmanship and materials to have a minimum of three years, rather than five years, experience in the residential construction industry.

(c) Requires a third-party inspector who inspects an issue involving a structural matter or involving workmanship, materials, and a structural matter to have a minimum of five years, rather than 10 years, experience in residential construction.

(c-1) Requires a third-party inspector who inspects an issue involving a structural matter and an unrelated issue involving workmanship and materials matters to meet the requirements of Subsections (b) and (c).

(d) Requires each third-party inspector, rather than each third-party inspector who inspects an issue involving a structural matter, to receive, in accordance with commission rules initial training regarding the state-sponsored inspection and dispute resolution process and this subtitle and annual continuing education in the inspector's area of practice.

SECTION 44. Amends Chapter 427, Property Code, by adding Section 427.003, as follows:

Sec. 427.003. **NO CIVIL LIABILITY.** (a) Provides that a person who performs services for the commission as a third-party inspector or a state inspector who does not act with wanton and wilful disregard for the rights, safety, or property of another is not liable for civil damages for any act or omission within the course and scope of carrying out the person's duties or functions as a third-party inspector or state inspector.

(b) Provides that this section does not apply to an intentional act of misconduct or gross negligence.

SECTION 45. Amends Sections 428.001(d) and (g), Property Code, as follows:

(d) Requires a person to send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute, at the time a person submits a request under this section.

(g) Deletes existing text requiring the commission by rule to provide a means to submit a request electronically.

SECTION 46. Amends Section 428.003(a), Property Code, to require the commission to appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under Subsection (c) on or before the 30th day, rather than 15th day, after the date the commission receives a request.

SECTION 47. Amends Section 428.004, Property Code, by adding Subsections (e) and (f) and amending Subsection (a), as follows:

(a) Makes a conforming change.

(e) Prohibits the commission from requiring a builder to reimburse fees or inspection expenses under this section if, before the inspection, the builder offered to make repairs or have repairs made substantially equivalent to those required by the findings of the final report confirming the defect requiring repair.

(f) Prohibits the agency from reporting the finding against the builder if, before or after the inspection, the builder has made or offered to make repairs substantially equivalent to those required by the findings of the final report confirming the defect.

SECTION 48. Amends Chapter 428, Property Code, by adding Section 428.006, as follows:

Sec. 428.006. RESPONSE TO REQUEST. (a) Authorizes a party to the dispute who did not file the request, including a third-party warranty company to submit a written response to the allegations specified in the request and present evidence in support of the response not later than the 15th day after the date the person received a copy of the request under Section 428.001(d) (relating to the sending of a request for resolution) if a request for state-sponsored inspection and dispute resolution is filed under this chapter and accepted by the commission.

(b) Requires a third-party inspector, if the response alleges the existence of a construction defect not alleged in the original request, to inspect and issue a determination regarding that defect and any other defect alleged in the response.

SECTION 49. Amends Section 429.001(c), Property Code, as follows:

(c) Requires the panel appointed to review the recommendation of a third-party inspector to review the recommendation for compliance with this title as required by rules adopted by the commission. Deletes existing text requiring the panel to review the recommendation without a hearing unless a hearing is otherwise required by rules adopted by the commission

SECTION 50. Amends Chapter 430, Property Code, by adding Section 430.0015, as follows:

Sec. 430.0015. USE OF CERTAIN MATERIALS PROHIBITED. Requires the commission, in adopting building and performance standards under Section 430.001 (Limited Statutory Warranties and Building Performance Standards), to require the use of graded rebar in accordance with the requirements of the building code in effect in the political subdivision in which the residential construction occurs.

SECTION 51. Amends Section 430.005, Property Code, as follows:

Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. (a) Creates this subsection from existing text.

(b) Provides that this section does not exempt a builder in an area described by Subsection (a) from the registration requirements imposed by this title, including the requirements of Sections 416.001 (Registration Required) and 426.003 (Registration of Home).

(c) Provides that an allegation of a postconstruction defect in a construction project in an area described by Subsection (a) is subject to the state-sponsored inspection and dispute resolution process described by this subtitle.

SECTION 52. Amends Section 430.006, Property Code, as follows:

Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. Provides that the only warranties that exist for residential construction or residential improvements are warranties created by other statutes expressly referring to residential construction or residential improvements and warranties that apply to an area described by Section 430.005(a) as described by that section.

SECTION 53. Amends Subchapter Z, Chapter 214, Local Government Code, adding Section 214.906, as follows:

Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. Prohibits a municipality from issuing a building permit to a builder, as defined by Section 401.003 (Definition of Builder), Property Code, for construction described by Section 401.003(a) of that code, unless the municipality has determined that the builder is registered with the Texas Residential Construction Commission under Chapter 416 of that code or is exempt from registration under Section 401.005 (Exemptions), Property Code. Requires a municipality to verify that the builder's registration number is both current and valid and make a record of that registration number.

SECTION 54. (a) Requires the House Committee on State Affairs to conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16, Property Code. Requires the speaker of the house of representatives to appoint two additional members of the house of representatives who have expressed an interest in this issue as voting adjunct members of the committee for the purpose of participating in the study.

(b) Requires the committee to investigate potential methods for payments into the fund, procedures for managing the fund, and methods for making claims to the fund, and similar funds created by other states and jurisdictions of the United States and the relative successes or failures of those funds.

(c) Requires the committee to submit to the speaker of the house of representatives and the members of the house of representatives the results of the study, and any recommendations for statutory changes resulting from the findings of the study, not later than September 1, 2008.

(d) Provides that this section expires October 1, 2008.

SECTION 55. (a) Provides that this Act applies only to an application for a building permit or certification as a builder or a Texas Star Builder, or a request for state-sponsored inspection and dispute resolution that are filed on or after the effective date of this Act.

(b) Provides that an application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 56. Makes application of Section 416.001, Property Code, as added by this Act, prospective.

SECTION 57. Makes application of Section 416.012, Property Code, as added by this Act, prospective.

SECTION 58. Makes application of Section 419.0031, Property Code, as added by this Act, prospective.

SECTION 59. Makes application of Section 418.001, Property Code, as amended by this Act, prospective.

SECTION 60. Effective date: September 1, 2007.