

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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AND J. WHITE, SEPTEMBER 4, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, SEPTEMBER 4, 2007

AN ACT

1 Providing for the regulation of home construction contracts and
2 for the registration of certain home builders; prohibiting
3 certain acts; providing for penalties; establishing the Home
4 Builder Guaranty Fund; and providing for claims against the
5 fund.

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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the New Home
17 Construction Consumer Protection Act.

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Arbitration clause." A process in which a neutral
23 arbitrator or panel of neutral arbitrators is engaged by the
24 parties to settle a dispute between a home builder and a
25 consumer.

26 "Assurance of Voluntary Compliance." As defined in section 5
27 of the act of December 17, 1968 (P.L.1224, No.387), known as the
28 Unfair Trade Practices and Consumer Protection Law.

29 "Bureau." The Bureau of Consumer Protection in the Office of
30 Attorney General.

1 "Certificate." A certificate of registration as a home
2 builder, issued by the Bureau of Consumer Protection, which
3 contains a registration number assigned by the Bureau of
4 Consumer Protection.

5 "Consumer." A person who enters into a home construction
6 contract with a home builder. The term also includes a person
7 who has entered into a contract with a home builder to purchase
8 a new home but who has not yet settled on the purchase of the
9 new home.

10 "Fund." The Home Builder Guaranty Fund established in
11 section 15.

12 "Home builder."

13 (1) A person who enters into a home construction
14 contract with a consumer. The term includes an installer or
15 retailer of a mobile home or industrialized housing.

16 (2) The term does not include the following:

17 (i) A real estate developer who does not construct
18 homes.

19 (ii) A financial institution that lends funds for
20 the construction or purchase of residential dwellings in
21 this Commonwealth.

22 (iii) The manufacturer of industrialized housing or
23 mobile homes, unless the manufacturer also installs
24 mobile homes or industrialized housing.

25 "Home construction contract." An agreement between a home
26 builder and a consumer for the construction of a new home which
27 includes all agreements for labor, services and materials to be
28 furnished and performed under the contract.

29 "New home." A newly constructed residential dwelling unit
30 and the fixtures and structures that are made a part of the unit

1 at the time of construction. The term includes the following:

2 (1) A residential building as defined by the act of
3 November 10, 1999 (P.L.491, No.45), known as the Pennsylvania
4 Construction Code Act.

5 (2) Industrialized housing as defined by the act of May
6 11, 1972 (P.L.286, No.70), known as the Industrialized
7 Housing Act.

8 (3) A mobile home as defined by the act of November 24,
9 1976 (P.L.1176, No.261), known as the Mobile Home Park Rights
10 Act.

11 "Person." An individual, partnership, limited partnership,
12 limited liability company, joint venture or corporation.

13 "Special order material." Any material, product or equipment
14 that is not a stock item and must be specially ordered from the
15 factory or distributor and which is produced or processed for a
16 specific home construction contract. Special order materials are
17 not returnable by the home builder for a refund or credit and
18 have no usefulness for other home construction contracts because
19 they are specially ordered for a specific home construction
20 contract.

21 "Specifications." The plans, detailed drawings, lists of
22 materials, stated allowances or other methods customarily used
23 in the home building industry as a whole to describe with
24 particularity the work, workmanship, materials and quality of
25 materials for each new home.

26 Section 3. Registration of home builders.

27 (a) General rule.--No person shall hold himself out as a
28 home builder nor shall a person build a new home without first
29 registering with the bureau as provided for in this act.

30 (b) Public access to registration information.--The bureau

1 shall maintain a toll-free telephone number from which a
2 consumer can obtain information as to whether a home builder is
3 registered with the bureau pursuant to this act, as well as
4 information that may be obtained on the bureau's website.

5 (c) Confidentiality of personal information.--The bureau
6 shall create a policy for the disclosure of personal information
7 to the public. The bureau may not disclose to the public a home
8 builder's Social Security number, driver's license number or any
9 confidential information prohibited by law from being disclosed.

10 (d) No dual licenses.--A person registered or required to be
11 registered as a home builder under this act shall not be
12 eligible to obtain or renew a license under any of the
13 following:

14 (1) The act of December 12, 1980 (P.L.1179, No.219),
15 known as the Secondary Mortgage Loan Act.

16 (2) The act of December 22, 1989 (P.L.687, No.90), known
17 as the Mortgage Bankers and Brokers and Consumer Equity
18 Protection Act.

19 (e) Liability.--No business entity registered pursuant to
20 this act shall be relieved of responsibility under this act for
21 the conduct and acts of its agents, employees, officers or
22 directors, nor shall any person be relieved of responsibility
23 under this act by reason of his employment or relationship with
24 such business entity.

25 (f) Effects of unregistered status.--No unregistered home
26 builder shall have standing to sue, countersue or raise a
27 defense of nonpayment in any dispute arising from a home
28 construction contract. No unregistered home builder may file a
29 mechanic's lien with respect to the construction of a new home.

30 Section 4. Procedures for registration as a home builder.

1 (a) Application.--

2 (1) A person shall apply to the bureau in writing, or
3 electronically via a secure Internet connection, if permitted
4 by the bureau, on a form provided by the bureau. The
5 application shall include the following information:

6 (i) For an individual applicant, all of the
7 following:

8 (A) Name.

9 (B) Date of birth.

10 (C) Home address and home telephone number.

11 (D) Driver's license number or an identification
12 card issued by the state in which the individual
13 resides.

14 (E) Business name, address and telephone number.

15 (F) Federal employer identification number, if
16 available.

17 (G) Social Security number.

18 (H) All prior business names and addresses of
19 home construction businesses operated by the
20 individual.

21 (ii) For a general partnership applicant, all of the
22 following:

23 (A) Name of each partner.

24 (B) Date of birth of each partner.

25 (C) Home address and home telephone number of
26 each partner.

27 (D) Driver's license number or an identification
28 card issued by the state in which the partner
29 resides, of each partner.

30 (E) Partnership name, address and telephone

1 number.

2 (F) Federal employer identification number, if
3 available.

4 (G) Social Security number of each partner.

5 (H) All prior business names and addresses of
6 home construction businesses operated by each
7 partner.

8 (iii) For a corporation, limited liability company
9 or limited partnership, all of the following:

10 (A) Name of each officer, manager and general
11 partner.

12 (B) Date of birth of each officer, manager and
13 general partner.

14 (C) Home address and home telephone number of
15 each officer, manager and general partner.

16 (D) Driver's license number or an identification
17 card issued by the state in which the individual
18 resides, of each officer, manager and general
19 partner.

20 (E) Entity's name, address and telephone number.

21 (F) Federal employer identification number, if
22 available.

23 (G) Social Security number of each officer,
24 manager and general partner.

25 (H) The name of each director or each individual
26 holding greater than a 5% interest in the entity.

27 (iv) For an out-of-State corporation, limited
28 liability or limited partnership, the name and address of
29 the entity's resident agent or registered office provider
30 within this Commonwealth and any registration number or

1 license number issued to the entity by its home state or
2 political subdivision of such other state, if applicable.

3 (v) For a joint venture applicant, the name, address
4 and telephone number of the joint venture, as well as the
5 name, address and telephone number of each party to the
6 joint venture. When the parties to a joint venture
7 include business entities, the information required from
8 such entities pursuant to subsection (b) shall also be
9 provided.

10 (vi) A complete description of the nature of the
11 contracting business of the applicant.

12 (vii) A statement whether:

13 (A) The individual or individuals making
14 application, even if doing so as part of a business
15 entity application, has ever been convicted of a
16 criminal offense related to a home building
17 transaction, fraud, theft, a crime of deception or a
18 crime involving fraudulent business practices, as
19 well as a statement whether the applicant has ever
20 filed a petition in bankruptcy or within the last ten
21 years received a final civil judgment entered against
22 the applicant or businesses in which the applicant
23 held an interest that was related to a home building
24 transaction.

25 (B) The applicant's certificate or a similar
26 certificate or license issued by any other state or
27 political subdivision thereof has ever been revoked
28 or suspended pursuant to an order issued by a court
29 of competent jurisdiction and, if so, the current
30 status of the certificate or similar certificate or

1 license. The statement required by this clause shall
2 include the same information with respect to any
3 other business in which the person making application
4 has or has ever had an interest.

5 (viii) Whether within the last ten years the
6 applicant has ever been suspended or debarred from
7 participating in any Federal, State or local program
8 through which public hearing or other assistance is
9 provided to consumers for home building.

10 (ix) Proof of general liability insurance covering
11 personal injury and property damage caused by the work of
12 a home builder.

13 (2) Information requested in paragraph (1)(i), (ii),
14 (iii), (iv) and (v) shall be for a ten-year period, prior to
15 the time of registration. The applicant shall provide
16 information prior to the last ten years or as further
17 clarification of the information provided, if the bureau
18 requests such information.

19 (b) Reporting of multiple registrations or licensures.--Any
20 registered home builder in this Commonwealth who is registered
21 or licensed as a home builder in any other state or political
22 subdivision thereof shall report this information to the bureau
23 on the initial and each biennial renewal application. Any
24 disciplinary action taken in such other jurisdiction shall be
25 reported to the bureau on the initial registration application
26 or, if such action occurred subsequent to submission of an
27 initial application, on the biennial registration application or
28 within 90 days of final disposition of the action, whichever is
29 sooner. Multiple registrations or licensures shall be noted by
30 the bureau on the home builder's registration, and such state or

1 political subdivision thereof shall be notified by the bureau of
2 any disciplinary actions taken against the home builder in this
3 Commonwealth.

4 (c) Change of information.--A home builder shall provide the
5 bureau written notice of any change in the information submitted
6 under this section within ten business days after the change is
7 effective.

8 Section 5. Application fees.

9 Each application for a home builder certificate shall be
10 accompanied by a fee of \$300. After completion of the
11 application and payment of the fee, the bureau shall issue the
12 home builder a certificate identifying the name of the
13 individual builder, name and address of the business and a
14 registration number.

15 Section 6. Renewal of certificate.

16 (a) General rule.--A home builder that meets the
17 requirements of subsection (c) may obtain renewal of a
18 registration before the registration expires for an additional
19 two-year term. Once expired, a registration may not be renewed.

20 (b) Renewal application.--At least 60 days before a home
21 builder's registration expires, the bureau shall mail to the
22 home builder the following:

23 (1) a renewal application form; and

24 (2) a notice that states the date on which the current
25 registration expires and the date by which the bureau must
26 receive the renewal application for a renewal to be issued
27 and mailed before the registration expires.

28 (c) Renewal procedure.--The bureau shall renew the
29 registration of each home builder that:

30 (1) Would qualify for an initial registration.

1 (2) Submits to the bureau a renewal application on the
2 form provided by the bureau.

3 (3) Pays to the bureau a nonrefundable renewal fee based
4 on the number of building permits for the construction of new
5 homes issued to the registrant in the preceding calendar year
6 as follows:

7 (i) Ten or fewer homes, \$150.

8 (ii) Eleven or more new homes, \$300.

9 Section 7. Proof of registration.

10 A home builder shall include its registration number in all
11 advertisements, including business cards, distributed within
12 this Commonwealth and on all contracts, estimates and proposals
13 with consumers of home construction services in this
14 Commonwealth. A home builder shall display its registration
15 number on all properties at which he is performing services
16 pursuant to a home construction contract.

17 Section 8. Home construction contracts.

18 (a) Requirements.--No home construction contract shall be
19 valid or enforceable against a consumer unless it:

20 (1) is in writing and legible and contains the
21 registration number of the home builder;

22 (2) is signed by all of the following:

23 (i) the consumer or his agent; and

24 (ii) the home builder or his agent;

25 (3) contains the entire agreement between the consumer
26 and the home builder, including attached copies of all
27 required notices;

28 (4) contains the date the contract was signed;

29 (5) contains the name, address and telephone number of
30 the home builder. For purposes of this paragraph, a post

1 office box number alone shall not be considered an address;

2 (6) contains the approximate starting date and
3 completion date for the work described in the contract;

4 (7) includes a description of the work to be performed,
5 the materials to be used and a set of specifications that
6 cannot be changed without a written change order signed by
7 the consumer and the home builder;

8 (8) includes the total sale price due under the
9 contract;

10 (9) includes the amount of any down payment plus any
11 amount advanced for the purchase of special order materials.
12 The amount of the down payment and the cost of the special
13 order materials must be listed separately;

14 (10) includes the names, addresses and telephone numbers
15 of all subcontractors on the project known at the date of
16 signing the contract. For the purposes of this paragraph, a
17 post office box number alone shall not be considered an
18 address;

19 (11) except as provided in section 14, provides that the
20 home builder agrees to maintain liability insurance covering
21 personal injury in an amount not less than \$300,000 and
22 insurance covering property damage caused by the work of a
23 home builder in an amount not less than \$300,000 and
24 identifies the current amount of insurance coverage
25 maintained at the time of signing the contract;

26 (12) includes the toll-free telephone number under
27 section 3(b) and a notice of the right of rescission under
28 subsection (b); and

29 (13) is accompanied by a copy of the consumer
30 information pamphlet established by the bureau and supplied

1 to the home builder pursuant to section 12.

2 (b) Right of rescission.--A person signing a home
3 construction contract, except as provided in the emergency
4 provisions of section 7 of the act of December 17, 1968
5 (P.L.1224, No.387), known as the Unfair Trade Practices and
6 Consumer Protection Law, shall be permitted to rescind the
7 contract without penalty regardless of where the contract was
8 signed, within three business days following the date of
9 signing. A home construction contract that does not contain a
10 notice of this right of rescission is voidable by the consumer.

11 (c) Copy to be provided.--A home builder shall provide and
12 deliver to the consumer, without charge, a completed copy of the
13 home building contract at the time the contract is executed.

14 (d) Arbitration clause.--Nothing in this act shall preclude
15 the court from setting aside an arbitration clause on any basis
16 permitted under Pennsylvania law. If the contract contains an
17 arbitration clause, it shall meet the following requirements or
18 be deemed void by the court upon motion of either party, filed
19 prior to the commencement of arbitration:

20 (1) the text of the clause must be in capital letters;

21 (2) the text shall be printed in 12-point boldface type
22 and the arbitration clause must appear on a separate page
23 from the rest of the contract;

24 (3) the clause shall contain a separate line for each of
25 the parties to indicate their assent to be bound thereby;

26 (4) the clause shall not be effective unless both
27 parties have assented as evidenced by signature and date,
28 which shall be the date on which the contract was executed;

29 (5) the clause shall state clearly whether the decision
30 of the arbitration is binding on the parties or may be

1 appealed to the court of common pleas; and

2 (6) the clause shall state whether the facts of the
3 dispute, related documents and the decision are confidential.

4 (e) Voidable clause.--If a home construction contract
5 contains any of the following clauses, the home construction
6 contract shall be voidable by the consumer:

7 (1) A hold harmless clause in favor of the home builder.

8 (2) A waiver of Federal, State or local health, life,
9 safety or building code requirements.

10 (3) A confession of judgment clause against the
11 consumer.

12 (4) A waiver by the consumer of any right to a jury
13 trial in any action brought by or against the consumer.

14 (5) An assignment by the consumer of or order for
15 payment of wages or other compensation by the consumer for
16 services performed by the home builder.

17 (6) A provision by which the consumer agrees not to
18 assert any claim or defense arising out of the contract.

19 (7) A provision that the home builder shall be awarded
20 attorney fees and costs.

21 (8) A clause by which the consumer relieves the home
22 builder from liability for acts committed by the home builder
23 or the home builder's agents in the collection of any
24 payments or in repossession of any goods.

25 (9) A waiver by the consumer of any rights provided
26 under this act.

27 (10) A provision providing for the automatic or
28 recurring renewal of any provisions of the agreement, unless:

29 (i) the contract establishes a procedure by which
30 the consumer can choose not to renew the provision or

1 provisions, thereby avoiding any new fees or charges, by
2 providing written notice to the home builder via first
3 class mail postmarked no later than three business days
4 prior to any renewal;

5 (ii) such procedure is clearly and conspicuously
6 disclosed in the agreement; and

7 (iii) the contract includes a provision requiring
8 the home builder to notify the consumer of any automatic
9 or recurring renewal, and the consumer's option to cancel
10 such renewal, by mail not earlier than 20 days and not
11 later than ten days prior to the date of any such
12 renewal.

13 (f) Home builder's recovery right.--Nothing in this section
14 shall preclude a home builder who has complied with subsection
15 (a) from the recovery of payment for work performed based on the
16 reasonable value of services which were requested by the
17 consumer if a court determines that it would be inequitable to
18 deny such recovery.

19 Section 9. Home construction fraud.

20 (a) Offense defined.--A person commits the offense of home
21 construction fraud if the person intentionally or knowingly:

22 (1) makes a materially false statement to induce,
23 encourage or solicit a person to enter into any written or
24 oral agreement for home building services or to justify an
25 increase in the previously agreed-upon price;

26 (2) receives any advance payment for home building
27 services and fails to perform or provide such services when
28 specified in the contract taking into account any force
29 majeure or unforeseen labor strike that would extend the time
30 frame or unless extended by agreement with the consumer and

1 fails to return the payment received for such services which
2 were not provided by that date;

3 (3) while soliciting a person to enter into an agreement
4 for home building services, misrepresents or conceals the
5 home builder's real name, the name of the home building
6 business, liability insurance information or home builder's
7 business address or any other identifying information;

8 (4) subsequent to entering into an agreement for home
9 building services, changes the name of the home building
10 business, liability insurance information, the home builder's
11 address or any other identifying information without advising
12 the consumer in writing within ten days following any such
13 change;

14 (5) misrepresents an item as a special order material or
15 misrepresents the cost of the special order material;

16 (6) alters a home construction contract, mortgage,
17 promissory note or other document incident to building a new
18 home without the consent of the consumer; or

19 (7) directly or indirectly publishes a false or
20 deceptive advertisement in violation of State law governing
21 advertising about home building.

22 (b) Grading.--

23 (1) A violation of subsection (a)(1), (2), (3), (4), (5)
24 or (6) constitutes a felony of the third degree.

25 (2) Where a person commits an offense under subsection
26 (a) and the victim is 60 years of age or older, the grading
27 of the offense shall be one grade higher than specified in
28 paragraph (1). This paragraph shall not be applicable to a
29 person whose sentence would be enhanced pursuant to paragraph
30 (3).

1 (3) Notwithstanding any other provisions of this
2 section, where a person commits a second or subsequent
3 offense described in subsection (a), the offense will
4 constitute a felony of the second degree. For this paragraph
5 to be applicable, the second or subsequent offense must have
6 occurred after the first conviction. Paragraph (2) shall not
7 be applicable to a person whose sentence would be enhanced
8 pursuant to this paragraph.

9 (4) In addition to any other penalty imposed by this
10 act, the court may revoke or suspend the certificate of
11 registration issued under section 5. At the time of
12 sentencing, the court shall state the reasons for such
13 revocation or suspension. A person whose registration has
14 been revoked or suspended may petition the court of original
15 jurisdiction for reinstatement after a period of five years
16 from the date of revocation or suspension, or as specified in
17 the court's order.

18 (c) Jurisdiction.--

19 (1) The district attorneys of the several counties shall
20 have the authority to investigate and to institute criminal
21 proceedings for any violation of this section.

22 (2) In addition to the authority conferred upon the
23 Attorney General by the act of October 15, 1980 (P.L.950,
24 No.164), known as the Commonwealth Attorneys Act, the
25 Attorney General shall have the authority to investigate and
26 institute criminal proceedings for any violation of this
27 section or any series of such violations involving more than
28 one county of this Commonwealth or involving any county of
29 this Commonwealth and another state. No person charged with a
30 violation of this section by the Attorney General shall have

standing to challenge the authority of the Attorney General to investigate or prosecute the case, and if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

Section 10. Prohibited acts.

(a) Specific conduct.--No person shall:

(1) Fail to register as required by this act.

(2) Fail to refund the amount paid under a home construction contract within ten days of either the acceptance and execution of a return receipt for certified mail containing a written request for a refund or the refusal to accept the certified mail sent to the home builder's last known address if all of the following apply:

(i) no substantial portion of the contracted work has been performed at the time of the request; and

(ii) more than 45 days have elapsed since the starting date specified in the written contract.

(3) Accept a municipal certificate of occupancy or other proof that performance of a home construction contract is complete or satisfactorily concluded with knowledge that the document or proof is false and the performance is incomplete.

(4) Utter, offer or use a completion certificate or other proof that a home construction contract is complete or satisfactorily concluded when the person knows or has reason to know that the document or proof is false and is made to accomplish any of the following:

(i) Make or accept an assignment or negotiation of the right to receive payment under a home construction contract.

1 (ii) Get or grant credit or a loan on security of
2 the right to receive payment under a home construction
3 contract.

4 (5) Abandon or fail to perform, without justification,
5 any home construction contract. For purposes of this
6 paragraph, the term "justification" shall include nonpayment
7 by the consumer as required under the contract or any other
8 violation of the contract by the consumer.

9 (6) Deviate from or disregard plans or specifications,
10 in any material respect, without a written change order dated
11 and signed by both the home builder and consumer, which
12 contains the accompanying price changes for each deviation.

13 (7) Prepare, arrange, accept or participate in the
14 financing of a home construction contract with knowledge that
15 the home construction contract states a greater monetary
16 obligation than the actual price.

17 (8) Advertise or offer, by any means, to build new homes
18 if the person does not intend to do any of the following:

19 (i) Accept a home construction contract.

20 (ii) Perform a home construction contract.

21 (9) Demand or receive any payment for a home
22 construction contract before the home construction contract
23 is signed.

24 (b) Criminal penalty.--In addition to any other penalty
25 provided by law, a person who knowingly violates any provision
26 of this act for which a criminal penalty is not otherwise
27 provided commits a summary offense subject to the fine
28 established in 18 Pa.C.S. § 1105 (relating to sentence of
29 imprisonment for summary offenses).

30 Section 11. Unfair Trade Practices and Consumer Protection Law.

1 A violation of any of the provisions of this act shall be
2 deemed a violation of the act of December 17, 1968 (P.L.1224,
3 No.387), known as the Unfair Trade Practices and Consumer
4 Protection Law. Nothing in this act shall preclude a consumer
5 from exercising any right provided under the Unfair Trade
6 Practices and Consumer Protection Law.

7 Section 12. Consumer information pamphlet.

8 The bureau shall develop, in consultation with the home
9 building industry, a consumer information pamphlet that sets
10 forth the rights and remedies for consumers as provided for in
11 this act, the toll-free number established under section 3 and
12 any other information that the bureau considers reasonably
13 necessary to assist consumers. The bureau shall provide each
14 registered home builder with copies of this pamphlet to
15 distribute to consumers.

16 Section 13. Regulations.

17 The bureau may adopt rules and regulations necessary to carry
18 out the provisions of this act.

19 Section 14. Preemption of local registration.

20 Registration under this act shall preclude any requirement of
21 payment of a fee or registration or licensing of any home
22 builder by any political subdivision. Political subdivisions
23 shall be permitted to require building permits and local
24 enforcement of the building code for that political subdivision,
25 for which a reasonable fee may be charged. Except for a building
26 permit for construction to be performed directly by a landowner
27 solely for the landowner's own use, the political subdivision
28 may not issue a permit for home building unless the permit
29 includes the home builder's registration number. This provision
30 does not affect a political subdivision's responsibilities or

1 authority under the act of November 10, 1999 (P.L.491, No.45),
2 known as the Pennsylvania Construction Code Act, or the
3 requirements under section 302(e) of the act of June 2, 1915
4 (P.L.736, No.338), known as the Workers' Compensation Act,
5 regarding workers' compensation. This provision does not affect
6 existing licensing standards in effect on the effective date of
7 this act with respect to electricians, plumbers, sheet metal
8 workers, warm air installers and fire suppression workers, where
9 licensing is conditioned on requirements of testing or
10 possession of certificates obtained through specific training in
11 electricity, plumbing, sheet metal work, warm air installation
12 and fire suppression. This provision does not affect standards
13 for liability insurance adopted by a political subdivision prior
14 to January 1, 2006, and which are in effect on the effective
15 date of this section.

16 Section 15. Home Builder Guaranty Fund.

17 (a) Establishment.--The Home Builder Guaranty Fund is hereby
18 established in the State Treasury and shall be administered by
19 the bureau in accordance with this act. All moneys deposited in
20 the fund shall not be considered general revenue of the
21 Commonwealth but shall be used only to effectuate the purposes
22 of this act.

23 (b) Guaranty fund fee.--A home builder must pay a guaranty
24 fund fee of \$50 for each construction or building permit issued
25 by a political subdivision. The fee shall be collected by the
26 political subdivision issuing the permit and be in addition to
27 any other fees imposed for a permit.

28 (c) Deposit of guaranty fund fees into fund.--On a quarterly
29 basis, each political subdivision must remit the guaranty fund
30 fees collected to the bureau for deposit into the fund.

1 (d) Minimum balance.--

2 (1) Payments received under subsection (b) shall be
3 credited to the fund, which shall maintain a balance of at
4 least \$2,000,000. If the bureau finds that, because of
5 pending claims, the amount of the fund may fall below
6 \$1,000,000, the bureau shall assess each home builder \$25.
7 However, under this subsection the bureau may not make more
8 than one assessment in any calendar year.

9 (2) Failure to make payments to the fund as required by
10 this act shall result in suspension of registration. Barring
11 the existence of other grounds for suspension or revocation
12 of registration, the certificate shall be reinstated upon
13 full payment of all required fees.

14 (e) Investment.--The moneys of the fund shall be invested
15 and the interest arising from the investments shall be credited
16 to the fund.

17 (f) Waiver of biennial fund fee.--In the event that the
18 bureau finds that the fund is adequately funded, the bureau
19 shall, during the first month of each fiscal year, adjust or
20 waive any biennial fund fee for the fiscal year.

21 Section 16. Claims against fund.

22 (a) General rule.--A consumer may be compensated from the
23 fund for an actual loss that results from an act or omission by
24 a home builder in the performance of a home construction
25 contract or a violation of this act by a home builder as found
26 by a court of competent jurisdiction, upon the final
27 determination of or expiration of time for appeal in connection
28 with any such judgment or if a consumer is prevented from
29 collecting the entirety of a final judgment as a result of the
30 home builder's filing for bankruptcy protection under Federal

1 law. In the event the bureau and the home builder enter into an
2 assurance of voluntary compliance, which requires payment of
3 restitution to a consumer and the home builder fails to pay as
4 required by the terms of the assurance of voluntary compliance,
5 the bureau shall issue an order of payment from the fund to the
6 consumer. The payment made pursuant to an assurance of voluntary
7 compliance shall be considered a claim for the purposes of
8 reimbursement of the fund; however, subsection (f) shall not be
9 applicable.

10 (b) Acts of subcontractors and employees.--For purposes of
11 recovery from the fund, the act or omission of a home builder
12 includes the act or omission of a subcontractor or employee of
13 the home builder whether or not any express agency relationship
14 exists so long as the subcontractor or employee acted within the
15 scope of the home construction contract.

16 (c) Limitation on recovery.--

17 (1) The bureau may not provide from the fund:

18 (i) More than \$30,000 to one consumer for acts or
19 omissions of one home builder.

20 (ii) More than \$200,000 to all consumers for acts or
21 omissions of one home builder unless, after the bureau
22 has paid out \$200,000 on account of acts or omissions of
23 the home builder, the home builder reimburses the fund.
24 However, in no case shall any one home builder be
25 indebted, at any one time, to the fund for more than
26 \$200,000.

27 (iii) An amount for any attorney fees, consequential
28 damages, court costs, interest, personal injury damages
29 or punitive damages, except as may be provided in an
30 assurance of voluntary compliance.

1 (2) In addition to the limits set forth in paragraph
2 (1), a consumer may not recover from the fund more than that
3 consumer's actual loss, to a maximum of \$30,000, for a claim
4 made on one contract.

5 (3) Nothing in this section shall preclude a consumer
6 from recovering or seeking to recover from a home builder:

7 (i) the difference between the amount of the
8 judgment against the home builder received by the
9 consumer and the amount actually paid to the consumer
10 from the fund; or

11 (ii) the difference between the amount a home
12 builder agrees to pay a consumer under an assurance of
13 voluntary compliance and the amount actually paid to the
14 consumer from the fund.

15 In the event the consumer does not receive payment in full of
16 a judgment amount from the fund, the judgment shall be deemed
17 to be satisfied only to the extent of the payment received,
18 and the judgment shall continue in full force and effect with
19 respect to the amount still owed until the consumer receives
20 payment in full.

21 (d) Excluded claimants.--A claim against the fund based on
22 the act or omission of a particular builder shall not be made
23 by:

24 (1) a spouse or other immediate relative of the home
25 builder, or of a party which holds a financial stake in the
26 business of the home builder;

27 (2) an employee, officer, director, partner or other
28 party which holds a financial interest in the business of the
29 home builder; or

30 (3) an immediate relative of an employee, officer,

1 director, partner or other party which holds a financial
2 interest in the business of the home builder.

3 (e) Limitation period.--A claim must be made against the
4 fund within two years after the consumer obtains an entry of
5 final judgment or decree against the home builder and all appeal
6 rights have expired or been exhausted, or, in the case of an
7 assurance of voluntary compliance, within the later of two years
8 of entry into such assurance or one year after nonpayment
9 according to the terms of the assurance.

10 (f) Offer of proof.--In order to recover from the fund a
11 consumer must offer proof to the bureau that the consumer has
12 exhausted all reasonable actions available at law and in equity
13 to collect the unpaid amount of a final judgment.

14 (g) Partial payments for fund integrity.--In order to
15 preserve the integrity of the fund, the bureau may order payment
16 out of the fund of an amount less than the judgment amount or
17 the amount agreed to be paid in an assurance of voluntary
18 compliance. The balance remaining due to the consumer shall be
19 paid from the fund pursuant to subsection (h).

20 (h) Special order of payment.--If the money in the fund is
21 insufficient to satisfy any duly authorized claim or portion
22 thereof, the bureau shall, when sufficient money exists in the
23 fund, satisfy the unpaid claims or portions thereof, in the
24 order that those claims or portions thereof were originally
25 determined.

26 (i) Investigation by bureau.--As provided in section 17, if
27 the bureau pays any amount from the fund as a result of a claim
28 against a home builder, the bureau may conduct an investigation
29 to determine if the home builder is possessed of assets liable
30 to be sold or applied in satisfaction of the claim on the fund.

1 If the bureau discovers any such assets, the bureau may take any
2 lawful action necessary for the reimbursement of the fund.

3 (j) Revocation caused by payment of claim.--If the bureau
4 makes a payment of an amount as a result of a claim against a
5 home builder, the bureau shall revoke the certificate of the
6 home builder and the home builder shall not be eligible to
7 receive a new or renewed certificate until the home builder has
8 repaid such amount in full, plus interest, from the time the
9 payment is made from the fund, except that the bureau may permit
10 a home builder to receive a new or renewed certificate after the
11 home builder has entered into an agreement with the bureau
12 whereby the home builder agrees to repay the fund in full in the
13 form of periodic payments over a set period of time. If the home
14 builder fails to pay in accordance with the terms of the
15 agreement, the bureau shall automatically suspend the home
16 builder's certificate.

17 Section 17. Procedure for submitting claims.

18 (a) Initial claim.--In order to recover from the fund, a
19 consumer must submit to the bureau the documentation required
20 under section 16(f), together with a copy of the judgment and
21 evidence that the judgment has not been appealed or a copy of
22 the assurance of voluntary compliance and a certification that
23 the home builder has failed to pay or evidence that the consumer
24 has been prevented from collecting the entirety of a final
25 judgment as a result of the home builder's filing for bankruptcy
26 protection under Federal law. In the latter event, the consumer
27 shall only be entitled to collect from the fund the amount he
28 was prevented from collecting as a result of the filing.

29 (b) Copy of claim to home builder.--On receipt of a claim
30 pursuant to this section, the bureau shall send a copy of the

1 claim to the home builder alleged to be responsible for the
2 actual loss. The home builder shall file a response or objection
3 to the claim within 30 days of the receipt of the notice of such
4 claim. Failure to respond to the claim shall constitute a waiver
5 of any defense or objection to the claim. The only defense a
6 home builder may raise in his response is a defense of payment
7 in full of the claim.

8 (c) General order of payment.--Except as otherwise provided
9 in this act, the bureau shall pay from the fund approved claims
10 in the order that they are submitted.

11 Section 18. Reimbursement of fund.

12 (a) General rule.--After the bureau pays a claim from the
13 fund:

14 (1) The bureau shall be subrogated to all rights of the
15 consumer in the claim up to the amount paid.

16 (2) The consumer shall assign to the bureau all rights
17 of the consumer in the claim up to the amount paid.

18 (3) The bureau has a right to reimbursement of the fund
19 by the home builder for:

20 (i) The amount paid from the fund.

21 (ii) Interest on the amount at an annual rate of 5%
22 as adjusted by the Consumer Price Index on an annual
23 basis.

24 All money that the bureau recovers on a claim shall be deposited
25 in the fund.

26 (b) Suit for nonpayment.--If, within 30 days after the
27 bureau gives notice, a home builder whose account a claim was
28 paid shall fail to reimburse the fund in full, the bureau may
29 initiate an action against the home builder in a court of
30 competent jurisdiction for the unreimbursed amount.

(c) Judgment.--The bureau is entitled to a judgment for the unreimbursed amount if the bureau proves that:

(1) a claim was paid from the fund on account of the home builder;

(2) the home builder has not reimbursed the fund in full; and

(3) the bureau directed payment based on a final judgment of a court of competent jurisdiction or an assurance of voluntary compliance.

(d) Withholding of tax refund.--If a person is delinquent for at least one year in making payments to the bureau for the purposes of reimbursing the fund, the Department of Revenue shall credit the amount of any refundable overpayment of tax imposed by Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, against the delinquency in respect to this act on the part of the person who made the overpayment.

(e) Bankruptcy proceedings.--For the purpose of excepting to a discharge of an individual or business under Federal bankruptcy law, the bureau shall be a creditor of the individual or business for the amount paid from the fund.

Section 19. Notice of suspension or revocation.

The Office of the Court Administrator of Pennsylvania shall report to the bureau any suspension or revocation of a certificate ordered by a court.

Section 20. Exemptions.

This act shall not apply to any of the following persons or organizations:

(1) The Commonwealth or any of its political subdivisions.

1 (2) The Federal Government.

2 Section 21. Building standards.

3 All work performed by a home builder under a home
4 construction contract shall comply with the requirements of the
5 International Residential Code and the International Existing
6 Building Code as currently adopted by the Department of Labor
7 and Industry under the act of November 10, 1999 (P.L.491,
8 No.45), known as the Pennsylvania Construction Code Act,
9 regardless of whether a permit or inspection is required by the
10 municipality in which the work is being performed.

11 Section 22. Repeal.

12 All acts and parts of acts are repealed insofar as they are
13 inconsistent with this act.

14 Section 23. Effective date.

15 This act shall take effect in 180 days.