

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 598 Session of
2011

INTRODUCED BY PRESTON, D. COSTA, DeLUCA, JOSEPHS, KORTZ, MURT,
PAYTON, READSHAW AND YOUNGBLOOD, FEBRUARY 10, 2011

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 10, 2011

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.

6 TABLE OF CONTENTS

- 7 Section 1. Short title.
8 Section 2. Definitions.
9 Section 3. Registration of home builders.
10 Section 4. Procedures for registration as home builder.
11 Section 5. Application fees.
12 Section 6. Renewal of certificate.
13 Section 7. Proof of registration.
14 Section 8. Home construction contracts.
15 Section 9. Home construction fraud.
16 Section 10. Prohibited acts.
17 Section 11. Unfair Trade Practices and Consumer Protection Law.
18 Section 12. Consumer information pamphlet.
19 Section 13. Regulations.

1 Section 14. Preemption of local registration.
2 Section 15. Home Building Guaranty Fund.
3 Section 16. Claims against fund.
4 Section 17. Procedure for submitting claims.
5 Section 18. Reimbursement of fund.
6 Section 19. Notice of suspension or revocation.
7 Section 20. Exemptions.
8 Section 21. Building standards.
9 Section 22. Repeal.
10 Section 23. Effective date.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

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

16 Section 2. Definitions.

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

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

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

27 "Bureau." The Bureau of Consumer Protection in the Office of
28 Attorney General.

29 "Certificate." A certificate of registration as a home
30 builder, issued by the Bureau of Consumer Protection, which

1 contains a registration number assigned by the Bureau of
2 Consumer Protection.

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

8 "Fund." The Home Builder Guaranty Fund established in
9 section 15.

10 "Home builder."

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

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

15 (i) A real estate developer who does not construct
16 homes.

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

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

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

27 "New home." A newly constructed residential dwelling unit
28 and the fixtures and structures that are made a part of the unit
29 at the time of construction. The term includes the following:

30 (1) A residential building as defined by the act of

November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

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

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

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

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

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

Section 3. Registration of home builders.

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

(b) Public access to registration information.--The bureau shall maintain a toll-free telephone number from which a consumer can obtain information as to whether a home builder is

1 registered with the bureau pursuant to this act, as well as
2 information that may be obtained on the bureau's website.

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

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

12 (1) 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry
13 licensing and consumer protection).

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

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

23 (f) Effects of unregistered status.--No unregistered home
24 builder shall have standing to sue, countersue or raise a
25 defense of nonpayment in any dispute arising from a home
26 construction contract. No unregistered home builder may file a
27 mechanic's lien with respect to the construction of a new home.
28 Section 4. Procedures for registration as home builder.

29 (a) Application.--

30 (1) A person shall apply to the bureau in writing, or

1 electronically via a secure Internet connection if permitted
2 by the bureau, on a form provided by the bureau. The
3 application shall include the following information:

4 (i) For an individual applicant, all of the
5 following:

6 (A) Name.

7 (B) Date of birth.

8 (C) Home address and home telephone number.

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

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

13 (F) Federal employer identification number, if
14 available.

15 (G) Social Security number.

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

19 (ii) For a general partnership applicant, all of the
20 following:

21 (A) Name of each partner.

22 (B) Date of birth of each partner.

23 (C) Home address and home telephone number of
24 each partner.

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

28 (E) Partnership name, address and telephone
29 number.

30 (F) Federal employer identification number, if

1 available.

2 (G) Social Security number of each partner.

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

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

8 (A) Name of each officer, manager and general
9 partner.

10 (B) Date of birth of each officer, manager and
11 general partner.

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

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

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

19 (F) Federal employer identification number, if
20 available.

21 (G) Social Security number of each officer,
22 manager and general partner.

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

25 (iv) For an out-of-State corporation, limited
26 liability or limited partnership, the name and address of
27 the entity's resident agent or registered office provider
28 within this Commonwealth and any registration number or
29 license number issued to the entity by its home state or
30 political subdivision of such other state, if applicable.

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

8 (vi) A complete description of the nature of the
9 contracting business of the applicant.

10 (vii) A statement whether:

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

23 (B) The applicant's certificate or a similar
24 certificate or license issued by any other state or
25 political subdivision thereof has ever been revoked
26 or suspended pursuant to an order issued by a court
27 of competent jurisdiction and, if so, the current
28 status of the certificate or similar certificate or
29 license. The statement required by this clause shall
30 include the same information with respect to any

1 other business in which the person making application
2 has or has ever had an interest.

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

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

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

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

1 Commonwealth.

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

6 Section 5. Application fees.

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

13 Section 6. Renewal of certificate.

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

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

21 (1) a renewal application form; and

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

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

28 (1) Would qualify for an initial registration.

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

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

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

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

7 Section 7. Proof of registration.

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

15 Section 8. Home construction contracts.

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

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

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

21 (i) the consumer or his agent; and

22 (ii) the home builder or his agent;

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

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

27 (5) contains the name, address and telephone number of
28 the home builder. For purposes of this paragraph, a post
29 office box number alone shall not be considered an address;

30 (6) contains the approximate starting date and

1 completion date for the work described in the contract;

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

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

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

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

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

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

27 (13) is accompanied by a copy of the consumer
28 information pamphlet established by the bureau and supplied
29 to the home builder pursuant to section 12.

30 (b) Right of rescission.--A person signing a home

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

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

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

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

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

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

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

27 (5) the clause shall state clearly whether the decision
28 of the arbitration is binding on the parties or may be
29 appealed to the court of common pleas; and

30 (6) the clause shall state whether the facts of the

dispute, related documents and the decision are confidential.

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

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

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

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

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

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

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

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

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

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

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

(i) the contract establishes a procedure by which the consumer can choose not to renew the provision or provisions, thereby avoiding any new fees or charges, by providing written notice to the home builder via first

1 class mail postmarked no later than three business days
2 prior to any renewal;

3 (ii) such procedure is clearly and conspicuously
4 disclosed in the agreement; and

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

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

17 Section 9. Home construction fraud.

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

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

24 (2) receives any advance payment for home building
25 services and fails to perform or provide such services when
26 specified in the contract taking into account any force
27 majeure or unforeseen labor strike that would extend the time
28 frame or unless extended by agreement with the consumer and
29 fails to return the payment received for such services which
30 were not provided by that date;

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

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

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

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

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

20 (b) Grading.--

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

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

29 (3) Notwithstanding any other provisions of this
30 section, where a person commits a second or subsequent

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

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

16 (c) Jurisdiction.--

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

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

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

1 contract.

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

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

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

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

17 (i) Accept a home construction contract.

18 (ii) Perform a home construction contract.

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

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

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

29 A violation of any of the provisions of this act shall be
30 deemed a violation of the act of December 17, 1968 (P.L.1224,

1 No.387), known as the Unfair Trade Practices and Consumer
2 Protection Law. Nothing in this act shall preclude a consumer
3 from exercising any right provided under the Unfair Trade
4 Practices and Consumer Protection Law.

5 Section 12. Consumer information pamphlet.

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

14 Section 13. Regulations.

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

17 Section 14. Preemption of local registration.

18 Registration under this act shall preclude any requirement of
19 payment of a fee or registration or licensing of any home
20 builder by any political subdivision. Political subdivisions
21 shall be permitted to require building permits and local
22 enforcement of the building code for that political subdivision,
23 for which a reasonable fee may be charged. Except for a building
24 permit for construction to be performed directly by a landowner
25 solely for the landowner's own use, the political subdivision
26 may not issue a permit for home building unless the permit
27 includes the home builder's registration number. This provision
28 does not affect a political subdivision's responsibilities or
29 authority under the act of November 10, 1999 (P.L.491, No.45),
30 known as the Pennsylvania Construction Code Act, or the

1 requirements under section 302(e) of the act of June 2, 1915
2 (P.L.736, No.338), known as the Workers' Compensation Act,
3 regarding workers' compensation. This provision does not affect
4 existing licensing standards in effect on the effective date of
5 this act with respect to electricians, plumbers, sheet metal
6 workers, warm air installers and fire suppression workers, where
7 licensing is conditioned on requirements of testing or
8 possession of certificates obtained through specific training in
9 electricity, plumbing, sheet metal work, warm air installation
10 and fire suppression. This provision does not affect standards
11 for liability insurance adopted by a political subdivision prior
12 to January 1, 2008, and which are in effect on the effective
13 date of this section.

14 Section 15. Home Builder Guaranty Fund.

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

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

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

29 (d) Minimum balance.--

30 (1) Payments received under subsection (b) shall be

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

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

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

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

19 Section 16. Claims against fund.

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

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

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

14 (c) Limitation on recovery.--

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

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

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

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

29 (2) In addition to the limits set forth in paragraph

30 (1), a consumer may not recover from the fund more than that

1 consumer's actual loss, to a maximum of \$30,000, for a claim
2 made on one contract.

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

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

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

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

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

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

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

28 (3) an immediate relative of an employee, officer,
29 director, partner or other party which holds a financial
30 interest in the business of the home builder.

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

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

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

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

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

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

15 Section 17. Procedure for submitting claims.

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

27 (b) Copy of claim to home builder.--On receipt of a claim
28 pursuant to this section, the bureau shall send a copy of the
29 claim to the home builder alleged to be responsible for the
30 actual loss. The home builder shall file a response or objection

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

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

9 Section 18. Reimbursement of fund.

10 (a) General rule.--After the bureau pays a claim from the
11 fund:

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

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

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

18 (i) The amount paid from the fund.

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

22 All money that the bureau recovers on a claim shall be deposited
23 in the fund.

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

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

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

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

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

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

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

20 Section 19. Notice of suspension or revocation.

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

24 Section 20. Exemptions.

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

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

29 (2) The Federal Government.

30 Section 21. Building standards.

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

9 Section 22. Repeal.

10 All acts and parts of acts are repealed insofar as they are
11 inconsistent with this act.

12 Section 23. Effective date.

13 This act shall take effect in 180 days.