AN ACT

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

TABLE OF CONTENTS

Section 1. Short title.
Section 2. Definitions.
Section 3. Registration of home builders.
Section 4. Procedures for registration as home builder.
Section 5. Application fees.
Section 6. Renewal of certificate.
Section 7. Proof of registration.
Section 8. Home construction contracts.
Section 9. Home construction fraud.
Section 10. Prohibited acts.
Section 12. Consumer information pamphlet.
Section 13. Regulations.
Section 14. Preemption of local registration.
Section 15. Home Building Guaranty Fund.
Section 16. Claims against fund.
Section 17. Procedure for submitting claims.
Section 18. Reimbursement of fund.
Section 19. Notice of suspension or revocation.
Section 20. Exemptions.
Section 22. Repeal.
Section 23. Effective date.

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

Section 1. Short title.

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

Section 2. Definitions.

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

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


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

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

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

"Home builder."

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

(2) The term does not include the following:

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

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

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

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

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

(1) A residential building as defined by the act of 20090HB0195PN0194.

(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
registered with the bureau pursuant to this act, as well as
information that may be obtained on the bureau's website.
(c) Confidentiality of personal information.--The bureau
shall create a policy for the disclosure of personal information
to the public. The bureau may not disclose to the public a home
builder's Social Security number, driver's license number or any
confidential information prohibited by law from being disclosed.
(d) No dual licenses.--A person registered or required to be
registered as a home builder under this act shall not be
eligible to obtain or renew a license under any of the
following:
(1) 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry
licensing and consumer protection).
(2) The act of December 22, 1989 (P.L.687, No.90), known
as the Mortgage Bankers and Brokers and Consumer Equity
Protection Act.
(e) Liability.--No business entity registered pursuant to
this act shall be relieved of responsibility under this act for
the conduct and acts of its agents, employees, officers or
directors, nor shall any person be relieved of responsibility
under this act by reason of his employment or relationship with
such business entity.
(f) Effects of unregistered status.--No unregistered home
builder shall have standing to sue, countersue or raise a
defense of nonpayment in any dispute arising from a home
construction contract. No unregistered home builder may file a
mechanic's lien with respect to the construction of a new home.
Section 4. Procedures for registration as home builder.
(a) Application.--
(1) A person shall apply to the bureau in writing, or
electronically via a secure Internet connection if permitted by the bureau, on a form provided by the bureau. The application shall include the following information:

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

   (A) Name.
   (B) Date of birth.
   (C) Home address and home telephone number.
   (D) Driver's license number or an identification card issued by the state in which the individual resides.
   (E) Business name, address and telephone number.
   (F) Federal employer identification number, if available.
   (G) Social Security number.
   (H) All prior business names and addresses of home construction businesses operated by the individual.

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

   (A) Name of each partner.
   (B) Date of birth of each partner.
   (C) Home address and home telephone number of each partner.
   (D) Driver's license number or an identification card issued by the state in which the partner resides, of each partner.
   (E) Partnership name, address and telephone number.
   (F) Federal employer identification number, if available.
available.

(G) Social Security number of each partner.

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

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

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

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

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

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

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

(F) Federal employer identification number, if available.

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

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

(iv) For an out-of-State corporation, limited liability or limited partnership, the name and address of the entity's resident agent or registered office provider within this Commonwealth and any registration number or license number issued to the entity by its home state or political subdivision of such other state, if applicable.
(v) For a joint venture applicant, the name, address and telephone number of the joint venture, as well as the name, address and telephone number of each party to the joint venture. When the parties to a joint venture include business entities, the information required from such entities pursuant to subsection (b) shall also be provided.

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

(vii) A statement whether:

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

(B) The applicant's certificate or a similar certificate or license issued by any other state or political subdivision thereof has ever been revoked or suspended pursuant to an order issued by a court of competent jurisdiction and, if so, the current status of the certificate or similar certificate or license. The statement required by this clause shall include the same information with respect to any
other business in which the person making application
has or has ever had an interest.

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

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

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

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

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

Section 5. Application fees.

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

Section 6. Renewal of certificate.

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

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

(1) a renewal application form; and

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

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

(1) Would qualify for an initial registration.

(2) Submits to the bureau a renewal application on the form provided by the bureau.
(3) Pays to the bureau a nonrefundable renewal fee based on the number of building permits for the construction of new homes issued to the registrant in the preceding calendar year as follows:

(i) Ten or fewer homes, $150.
(ii) Eleven or more new homes, $300.

Section 7. Proof of registration.

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

Section 8. Home construction contracts.

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

(1) is in writing and legible and contains the registration number of the home builder;
(2) is signed by all of the following:
   (i) the consumer or his agent; and
   (ii) the home builder or his agent;
(3) contains the entire agreement between the consumer and the home builder, including attached copies of all required notices;
(4) contains the date the contract was signed;
(5) contains the name, address and telephone number of the home builder. For purposes of this paragraph, a post office box number alone shall not be considered an address;
(6) contains the approximate starting date and
(7) includes a description of the work to be performed, the materials to be used and a set of specifications that cannot be changed without a written change order signed by the consumer and the home builder;

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

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

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

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

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

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

(b) Right of rescission.--A person signing a home
construction contract, except as provided in the emergency
provisions of section 7 of the act of December 17, 1968 (P.L.
1224, No.387), known as the Unfair Trade Practices and Consumer
Protection Law, shall be permitted to rescind the contract
without penalty regardless of where the contract was signed,
within three business days following the date of signing. A home
construction contract that does not contain a notice of this
right of rescission is voidable by the consumer.
(c) Copy to be provided.--A home builder shall provide and
deliver to the consumer, without charge, a completed copy of the
home building contract at the time the contract is executed.
(d) Arbitration clause.--Nothing in this act shall preclude
the court from setting aside an arbitration clause on any basis
permitted under Pennsylvania law. If the contract contains an
arbitration clause, it shall meet the following requirements or
be deemed void by the court upon motion of either party, filed
prior to the commencement of arbitration:
(1) the text of the clause must be in capital letters;
(2) the text shall be printed in 12-point boldface type,
and the arbitration clause must appear on a separate page
from the rest of the contract;
(3) the clause shall contain a separate line for each of
the parties to indicate their assent to be bound thereby;
(4) the clause shall not be effective unless both
parties have assented as evidenced by signature and date,
which shall be the date on which the contract was executed;
(5) the clause shall state clearly whether the decision
of the arbitration is binding on the parties or may be
appealed to the court of common pleas; and
(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
class mail postmarked no later than three business days
prior to any renewal;
(ii) such procedure is clearly and conspicuously
disclosed in the agreement; and
(iii) the contract includes a provision requiring
the home builder to notify the consumer of any automatic
or recurring renewal, and the consumer's option to cancel
such renewal, by mail not earlier than 20 days and not
later than ten days prior to the date of any such
renewal.
(f) Home builder's recovery right.--Nothing in this section
shall preclude a home builder who has complied with subsection
(a) from the recovery of payment for work performed based on the
reasonable value of services which were requested by the
consumer if a court determines that it would be inequitable to
deny such recovery.
Section 9. Home construction fraud.
(a) Offense defined.--A person commits the offense of home
construction fraud if the person intentionally or knowingly:
(1) makes a materially false statement to induce,
encourage or solicit a person to enter into any written or
oral agreement for home building services or to justify an
increase in the previously agreed-upon price;
(2) receives any advance payment for home building
services and fails to perform or provide such services when
specified in the contract taking into account any force
majeure or unforeseen labor strike that would extend the time
frame or unless extended by agreement with the consumer and
fails to return the payment received for such services which
were not provided by that date;
while soliciting a person to enter into an agreement for home building services, misrepresents or conceals the home builder's real name, the name of the home building business, liability insurance information or home builder's business address or any other identifying information;

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

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

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

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

(b) Grading.--

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

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

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

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

(c) Jurisdiction.--

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

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No. 164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a 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.
      (ii) Get or grant credit or a loan on security of
the right to receive payment under a home construction
contract.

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

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

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

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

(i) Accept a home construction contract.

(ii) Perform a home construction contract.

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

(b) Criminal penalty.--In addition to any other penalty provided by law, a person who knowingly violates any provision of this act for which a criminal penalty is not otherwise provided commits a summary offense subject to the fine established in 18 Pa.C.S. § 1105 (relating to sentence of imprisonment for summary offenses).
No.387), known as the Unfair Trade Practices and Consumer Protection Law. Nothing in this act shall preclude a consumer from exercising any right provided under the Unfair Trade Practices and Consumer Protection Law.

Section 12. Consumer information pamphlet.

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

Section 13. Regulations.

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

Section 14. Preemption of local registration.

Registration under this act shall preclude any requirement of payment of a fee or registration or licensing of any home builder by any political subdivision. Political subdivisions shall be permitted to require building permits and local enforcement of the building code for that political subdivision, for which a reasonable fee may be charged. Except for a building permit for construction to be performed directly by a landowner solely for the landowner's own use, the political subdivision may not issue a permit for home building unless the permit includes the home builder's registration number. This provision does not affect a political subdivision's responsibilities or authority under the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, or the 20090HB0195PN0194
requirements under section 302(e) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, regarding workers' compensation. This provision does not affect existing licensing standards in effect on the effective date of this act with respect to electricians, plumbers, sheet metal workers, warm air installers and fire suppression workers, where licensing is conditioned on requirements of testing or possession of certificates obtained through specific training in electricity, plumbing, sheet metal work, warm air installation and fire suppression. This provision does not affect standards for liability insurance adopted by a political subdivision prior to January 1, 2008, and which are in effect on the effective date of this section.

Section 15. Home Builder Guaranty Fund.

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

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

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

(d) Minimum balance.--

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

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

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

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

Section 16. Claims against fund.

(a) General rule.--A consumer may be compensated from the fund for an actual loss that results from an act or omission by a home builder in the performance of a home construction contract or a violation of this act by a home builder as found by a court of competent jurisdiction, upon the final determination of or expiration of time for appeal in connection with any such judgment or if a consumer is prevented from collecting the entirety of a final judgment as a result of the home builder's filing for bankruptcy protection under Federal law. In the event the bureau and the home builder enter into an assurance of voluntary compliance, which requires payment of...
restitution to a consumer and the home builder fails to pay as required by the terms of the assurance of voluntary compliance, the bureau shall issue an order of payment from the fund to the consumer. The payment made pursuant to an assurance of voluntary compliance shall be considered a claim for the purposes of reimbursement of the fund; however, subsection (f) shall not be applicable.

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

(c) Limitation on recovery.--

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

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

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

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

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

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

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

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

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

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

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

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

(3) an immediate relative of an employee, officer,
director, partner or other party which holds a financial
interest in the business of the home builder.
(e) Limitation period.--A claim must be made against the fund within two years after the consumer obtains an entry of final judgment or decree against the home builder and all appeal rights have expired or been exhausted, or, in the case of an assurance of voluntary compliance, within the later of two years of entry into such assurance or one year after nonpayment according to the terms of the assurance.

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

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

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

(i) Investigation by bureau.--As provided in section 17, if the bureau pays any amount from the fund as a result of a claim against a home builder, the bureau may conduct an investigation to determine if the home builder is possessed of assets liable to be sold or applied in satisfaction of the claim on the fund. If the bureau discovers any such assets, the bureau may take any lawful action necessary for the reimbursement of the fund.
(j) Revocation caused by payment of claim.--If the bureau makes a payment of an amount as a result of a claim against a home builder, the bureau shall revoke the certificate of the home builder, and the home builder shall not be eligible to receive a new or renewed certificate until the home builder has repaid such amount in full, plus interest, from the time the payment is made from the fund, except that the bureau may permit a home builder to receive a new or renewed certificate after the home builder has entered into an agreement with the bureau whereby the home builder agrees to repay the fund in full in the form of periodic payments over a set period of time. If the home builder fails to pay in accordance with the terms of the agreement, the bureau shall automatically suspend the home builder's certificate.

Section 17. Procedure for submitting claims.

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

(b) Copy of claim to home builder.--On receipt of a claim pursuant to this section, the bureau shall send a copy of the claim to the home builder alleged to be responsible for the actual loss. The home builder shall file a response or objection 20090HB0195PN0194 - 26 -
to the claim within 30 days of the receipt of the notice of such
claim. Failure to respond to the claim shall constitute a waiver
of any defense or objection to the claim. The only defense a
home builder may raise in his response is a defense of payment
in full of the claim.

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

Section 18. Reimbursement of fund.

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

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

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

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

   (i) The amount paid from the fund.

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

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

(b) Suit for nonpayment.--If, within 30 days after the
bureau gives notice, a home builder whose account a claim was
paid shall fail to reimburse the fund in full, the bureau may
initiate an action against the home builder in a court of
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.
(2) The Federal Government.

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

Section 22. Repeal.

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

Section 23. Effective date.

This act shall take effect in 180 days.