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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1770 Session of  
2017

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INTRODUCED BY GALLOWAY, READSHAW, KINSEY, THOMAS, DAVIS, COX,  
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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, SEPTEMBER 12, 2017

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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 and for notification of defective or faulty building  
6 material or product.

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

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

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

27 Section 102. Definitions.

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

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

5 "Assurance of voluntary compliance." As defined in section 5  
6 of the act of December 17, 1968 (P.L.1224, No.387), known as the  
7 Unfair Trade Practices and Consumer Protection Law.

8 "Bureau." The Bureau of Consumer Protection in the Office of  
9 Attorney General.

10 "Certificate." A certificate of registration as a home  
11 builder, issued by the bureau, which contains a registration  
12 number assigned by the bureau.

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

18 "Fund." The Home Builder Guaranty Fund established in  
19 section 901.

20 "Home builder."

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

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

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

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

30 (iii) The manufacturer of industrialized housing or

1 mobile homes, unless the manufacturer also installs  
2 mobile homes or industrialized housing.

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

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

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

13 (2) Industrialized housing as defined by the act of May  
14 11, 1972 (P.L.286, No.70), known as the Industrialized  
15 Housing Act.

16 (3) A mobile home as defined in 75 Pa.C.S. § 102  
17 (relating to definitions).

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

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

28 "Specifications." The plans, detailed drawings, lists of  
29 materials, stated allowances or other methods customarily used  
30 in the home building industry as a whole to describe with

1 particularity the work, workmanship, materials and quality of  
2 materials for each new home.

3 Section 103. Nonapplicability.

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

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

8 (2) The Federal Government.

9 CHAPTER 3

10 HOME BUILDER REGISTRATION

11 Section 301. Registration of home builders.

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

15 (b) Public access to registration information.--The bureau  
16 shall maintain a toll-free telephone number from which a  
17 consumer can obtain information as to whether a home builder is  
18 registered with the bureau under this act, as well as  
19 information that may be obtained on the bureau's website.

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

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

29 (1) 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry  
30 licensing and consumer protection).

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

4       (e) Liability.--No business entity registered under this act  
5 shall be relieved of responsibility under this act for the  
6 conduct and acts of its agents, employees, officers or  
7 directors, nor shall any person be relieved of responsibility  
8 under this act by reason of his employment or relationship with  
9 such business entity.

10       (f) Effects of unregistered status.--No unregistered home  
11 builder shall have standing to sue, countersue or raise a  
12 defense of nonpayment in any dispute arising from a home  
13 construction contract. No unregistered home builder may file a  
14 mechanics' lien with respect to the construction of a new home.  
15 Section 302. Procedures for registration as home builder.

16       (a) Application.--

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

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

23                   (A) Name.

24                   (B) Date of birth.

25                   (C) Home address and home telephone number.

26                   (D) Driver's license number or an identification  
27 card issued by the state in which the individual  
28 resides.

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

30                   (F) Federal Employer Identification Number, if

1 available.

2 (G) Social Security number.

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

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

8 (A) Name of each partner.

9 (B) Date of birth of each partner.

10 (C) Home address and home telephone number of  
11 each partner.

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

15 (E) Partnership name, address and telephone  
16 number.

17 (F) Federal Employer Identification Number, if  
18 available.

19 (G) Social Security number of each partner.

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

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

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

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

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

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

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

6 (F) Federal Employer Identification Number, if  
7 available.

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

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

12 (iv) For an out-of-State corporation, limited  
13 liability or limited partnership, the name and address of  
14 the entity's resident agent or registered office provider  
15 within this Commonwealth and any registration number or  
16 license number issued to the entity by its home state or  
17 political subdivision of such other state, if applicable.

18 (v) For a joint venture applicant, the name, address  
19 and telephone number of the joint venture, as well as the  
20 name, address and telephone number of each party to the  
21 joint venture. When the parties to a joint venture  
22 include business entities, the information required from  
23 such entities under subsection (b) shall also be  
24 provided.

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

27 (vii) A statement whether:

28 (A) The individual or individuals making  
29 application, even if doing so as part of a business  
30 entity application, has ever been convicted of a

1 criminal offense related to a home building  
2 transaction, fraud, theft, a crime of deception or a  
3 crime involving fraudulent business practices, as  
4 well as a statement whether the applicant has ever  
5 filed a petition in bankruptcy or within the last 10  
6 years received a final civil judgment entered against  
7 the applicant or businesses in which the applicant  
8 held an interest that was related to a home building  
9 transaction.

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

20 (viii) Whether within the last 10 years the  
21 applicant has ever been suspended or debarred from  
22 participating in any Federal, State or local program  
23 through which public hearing or other assistance is  
24 provided to consumers for home building.

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

28 (2) Information requested in paragraph (1)(i), (ii),  
29 (iii), (iv) and (v) shall be for a 10-year period, prior to  
30 the time of registration. The applicant shall provide

1 information prior to the last 10 years or as further  
2 clarification of the information provided, if the bureau  
3 requests such information.

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

19 (c) Change of information.--A home builder shall provide the  
20 bureau written notice of any change in the information submitted  
21 under this section within 10 business days after the change is  
22 effective.

23 Section 303. Application fees.

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

30 Section 304. Renewal of certificate.

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

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

8 (1) a renewal application form; and

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

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

15 (1) Would qualify for an initial registration.

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

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

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

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

24 Section 305. Proof of registration.

25 A home builder shall include its registration number in all  
26 advertisements, including business cards, distributed within  
27 this Commonwealth and on all contracts, estimates and proposals  
28 with consumers of home construction services in this  
29 Commonwealth. A home builder shall display its registration  
30 number on all properties at which he is performing services

1 pursuant to a home construction contract.

2 CHAPTER 5

3 HOME CONSTRUCTION CONTRACTS

4 Section 501. Home construction contracts.

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

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

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

10 (i) the consumer or his agent; and

11 (ii) the home builder or his agent;

12 (3) contains the entire agreement between the consumer  
13 and the home builder, including attached copies of all  
14 required notices;

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

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

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

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

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

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

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

6 (11) except as provided in section 2101, provides that  
7 the home builder agrees to maintain liability insurance  
8 covering personal injury in an amount not less than \$300,000  
9 and insurance covering property damage caused by the work of  
10 a home builder in an amount not less than \$300,000 and  
11 identifies the current amount of insurance coverage  
12 maintained at the time of signing the contract;

13 (12) includes the toll-free telephone number under  
14 section 301(b) and a notice of the right of rescission under  
15 subsection (b); and

16 (13) is accompanied by a copy of the consumer  
17 information pamphlet established by the bureau and supplied  
18 to the home builder under Chapter 11.

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

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

1 (d) Arbitration clause.--Nothing in this act shall preclude  
2 the court from setting aside an arbitration clause on any basis  
3 permitted under the laws of this Commonwealth. If the contract  
4 contains an arbitration clause, it shall meet the following  
5 requirements or be deemed void by the court upon motion of  
6 either party, filed prior to the commencement of arbitration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16           (i) the contract establishes a procedure by which  
17 the consumer can choose not to renew the provision or  
18 provisions, thereby avoiding any new fees or charges, by  
19 providing written notice to the home builder via first  
20 class mail postmarked no later than three business days  
21 prior to any renewal;

22           (ii) such procedure is clearly and conspicuously  
23 disclosed in the agreement; and

24           (iii) the contract includes a provision requiring  
25 the home builder to notify the consumer of any automatic  
26 or recurring renewal, and the consumer's option to cancel  
27 such renewal, by mail not earlier than 20 days and not  
28 later than 10 days prior to the date of any such renewal.

29           (f) Home builder's recovery right.--Nothing in this section  
30 shall preclude a home builder who has complied with subsection

1 (a) from the recovery of payment for work performed based on the  
2 reasonable value of services which were requested by the  
3 consumer if a court determines that it would be inequitable to  
4 deny such recovery.

5 Section 502. Building standards.

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

14 Section 503. Notification of defective or faulty building  
15 material or product.

16 For 30 years after a new home is complete, if a home builder  
17 is made aware of a defective building material, product, special  
18 order material or building technique the home builder used in  
19 the construction of a new home, the home builder must provide  
20 written notification of the defective building material,  
21 product, special order material or building technique to the  
22 consumer within three months. The notification shall include a  
23 detailed description of the defect and the date the defective  
24 building material, product, special order material or building  
25 technique was installed or used on the new home.

## 26 CHAPTER 7

### 27 VIOLATIONS AND PENALTIES

28 Section 701. Home construction fraud.

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

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

5 (2) receives any advance payment for home building  
6 services and fails to perform or provide such services when  
7 specified in the contract, taking into account any force  
8 majeure or unforeseen labor strike that would extend the time  
9 frame or any extension agreement negotiated with the  
10 consumer, and fails to return the payment received for such  
11 services which were not provided by that date;

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

17 (4) subsequent to entering into an agreement for home  
18 building services, changes the name of the home building  
19 business, liability insurance information, the home builder's  
20 address or any other identifying information without advising  
21 the consumer in writing within 10 days following any such  
22 change;

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

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

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

1 (b) Grading.--

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

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

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

17 (4) In addition to any other penalty imposed by this  
18 act, the court may revoke or suspend the certificate of  
19 registration issued under Chapter 3. At the time of  
20 sentencing, the court shall state the reasons for such  
21 revocation or suspension. A person whose registration has  
22 been revoked or suspended may petition the court of original  
23 jurisdiction for reinstatement after a period of five years  
24 from the date of revocation or suspension, or as specified in  
25 the court's order. The office of the Court Administrator of  
26 Pennsylvania shall report to the bureau any suspension or  
27 revocation of a certificate ordered by a court.

28 (c) Jurisdiction.--

29 (1) The district attorneys of the several counties shall  
30 have the authority to investigate and to institute criminal

1 proceedings for any violation of this section.

2 (2) In addition to the authority conferred upon the  
3 Attorney General by the act of October 15, 1980 (P.L.950,  
4 No.164), known as the Commonwealth Attorneys Act, the  
5 Attorney General shall have the authority to investigate and  
6 institute criminal proceedings for any violation of this  
7 section or any series of such violations involving more than  
8 one county of this Commonwealth or involving any county of  
9 this Commonwealth and another state. No person charged with a  
10 violation of this section by the Attorney General shall have  
11 standing to challenge the authority of the Attorney General  
12 to investigate or prosecute the case, and, if any such  
13 challenge is made, the challenge shall be dismissed and no  
14 relief shall be available in the courts of this Commonwealth  
15 to the person making the challenge.

16 Section 702. Prohibited acts.

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

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

19 (2) Fail to refund the amount paid under a home  
20 construction contract within 10 days of either the acceptance  
21 and execution of a return receipt for certified mail  
22 containing a written request for a refund or the refusal to  
23 accept the certified mail sent to the home builder's last  
24 known address if all of the following apply:

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

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

29 (3) Accept a municipal certificate of occupancy or other  
30 proof that performance of a home construction contract is

1 complete or satisfactorily concluded with knowledge that the  
2 document or proof is false and the performance is incomplete.

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

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

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

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

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

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

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

29 (i) Accept a home construction contract.

30 (ii) Perform a home construction contract.



1 any other fees imposed for a permit.

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

5 (d) Minimum balance.--

6 (1) Payments received under subsection (b) shall be  
7 credited to the fund, which shall maintain a balance of at  
8 least \$2,000,000. If the bureau finds that, because of  
9 pending claims, the amount of the fund may fall below  
10 \$1,000,000, the bureau shall assess each home builder \$25.  
11 However, under this subsection the bureau may not make more  
12 than one assessment in any calendar year.

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

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

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

25 Section 902. Claims against fund.

26 (a) General rule.--A consumer may be compensated from the  
27 fund for an actual loss that results from an act or omission by  
28 a home builder in the performance of a home construction  
29 contract or a violation of this act by a home builder as found  
30 by a court of competent jurisdiction, upon the final

1 determination of or expiration of time for appeal in connection  
2 with any such judgment or if a consumer is prevented from  
3 collecting the entirety of a final judgment as a result of the  
4 home builder's filing for bankruptcy protection under Federal  
5 law. In the event the bureau and the home builder enter into an  
6 assurance of voluntary compliance, which requires payment of  
7 restitution to a consumer and the home builder fails to pay as  
8 required by the terms of the assurance of voluntary compliance,  
9 the bureau shall issue an order of payment from the fund to the  
10 consumer. The payment made pursuant to an assurance of voluntary  
11 compliance shall be considered a claim for the purposes of  
12 reimbursement of the fund; however, subsection (f) shall not be  
13 applicable.

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

20 (c) Limitation on recovery.--

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

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

24 (ii) More than \$200,000 to all consumers for acts or  
25 omissions of one home builder unless, after the bureau  
26 has paid out \$200,000 on account of acts or omissions of  
27 the home builder, the home builder reimburses the fund.  
28 However, in no case shall any one home builder be  
29 indebted, at any one time, to the fund for more than  
30 \$200,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30           (i) Investigation by bureau.--As provided in section 903, if

1 the bureau pays any amount from the fund as a result of a claim  
2 against a home builder, the bureau may conduct an investigation  
3 to determine if the home builder is possessed of assets liable  
4 to be sold or applied in satisfaction of the claim on the fund.  
5 If the bureau discovers any such assets, the bureau may take any  
6 lawful action necessary for the reimbursement of the fund.

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

21 Section 903. Procedure for submitting claims.

22 (a) Initial claim.--In order to recover from the fund, a  
23 consumer must submit to the bureau the documentation required  
24 under section 902(f), together with a copy of the judgment and  
25 evidence that the judgment has not been appealed or a copy of  
26 the assurance of voluntary compliance and a certification that  
27 the home builder has failed to pay or evidence that the consumer  
28 has been prevented from collecting the entirety of a final  
29 judgment as a result of the home builder's filing for bankruptcy  
30 protection under Federal law. In the latter event, the consumer

1 shall only be entitled to collect from the fund the amount he  
2 was prevented from collecting as a result of the filing.

3 (b) Copy of claim to home builder.--On receipt of a claim  
4 under this section, the bureau shall send a copy of the claim to  
5 the home builder alleged to be responsible for the actual loss.  
6 The home builder shall file a response or objection to the claim  
7 within 30 days of the receipt of the notice of such claim.  
8 Failure to respond to the claim shall constitute a waiver of any  
9 defense or objection to the claim. The only defense a home  
10 builder may raise in his response is a defense of payment in  
11 full of the claim.

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

15 Section 904. Reimbursement of fund.

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

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

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

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

24 (i) The amount paid from the fund.

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

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

30 (b) Suit for nonpayment.--If, within 30 days after the

1 bureau gives notice, a home builder on whose account a claim was  
2 paid fails to reimburse the fund in full, the bureau may  
3 initiate an action against the home builder in a court of  
4 competent jurisdiction for the unreimbursed amount.

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

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

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

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

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

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

## 26 CHAPTER 11

### 27 ADMINISTRATION

28 Section 1101. Consumer information pamphlet.

29 The bureau shall develop, in consultation with the home  
30 building industry, a consumer information pamphlet that sets

1 forth the rights and remedies for consumers as provided for in  
2 this act, the toll-free telephone number established under  
3 section 301 and any other information that the bureau considers  
4 reasonably necessary to assist consumers. The bureau shall  
5 provide each registered home builder with copies of this  
6 pamphlet to distribute to consumers.

7 Section 1102. Regulations.

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

10 CHAPTER 21

11 MISCELLANEOUS PROVISIONS

12 Section 2101. Preemption of local registration.

13 Registration under this act shall preclude any requirement of  
14 payment of a fee or registration or licensing of any home  
15 builder by any political subdivision. Political subdivisions  
16 shall be permitted to require building permits and local  
17 enforcement of the building code for that political subdivision,  
18 for which a reasonable fee may be charged. Except for a building  
19 permit for construction to be performed directly by a landowner  
20 solely for the landowner's own use, the political subdivision  
21 may not issue a permit for home building unless the permit  
22 includes the home builder's registration number. This provision  
23 does not affect a political subdivision's responsibilities or  
24 authority under the act of November 10, 1999 (P.L.491, No.45),  
25 known as the Pennsylvania Construction Code Act, or the  
26 requirements under section 302(e) of the act of June 2, 1915  
27 (P.L.736, No.338), known as the Workers' Compensation Act,  
28 regarding workers' compensation. This provision does not affect  
29 existing licensing standards in effect on the effective date of  
30 this act with respect to electricians, plumbers, sheet metal

1 workers, warm air installers and fire suppression workers, where  
2 licensing is conditioned on requirements of testing or  
3 possession of certificates obtained through specific training in  
4 electricity, plumbing, sheet metal work, warm air installation  
5 and fire suppression. This provision does not affect standards  
6 for liability insurance adopted by a political subdivision prior  
7 to January 1, 2015, and which are in effect on the effective  
8 date of this section.

9 Section 2102. Effective date.

10 This act shall take effect in 180 days.