

- SUBJECT:** Allowing builders to correct contracts for registration number
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 7 ayes — Deshotel, Elkins, England, Giddings, S. Miller, Quintanilla, S. Turner
- 0 nays
- 4 absent — Christian, Gattis, Keffer, Orr
- SENATE VOTE:** On final passage, May 5 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing
- BACKGROUND:** Property Code, sec. 420.002 makes a contract for construction of a new home or improvement to an existing home that is subject to the registration requirements of Property Code, ch. 420 (the Texas Residential Construction Act) unenforceable against the homeowner if the builder fails to include the builder's name and certificate of registration number and a notice that the contract is subject to provisions of Property Code, ch. 420. The notice also must list the number of the Texas Residential Construction Commission (TRCC) so that the homeowner is able to check the status of the builder's registration.
- DIGEST:** SB 1641 would amend Property Code, sec. 420.002 to provide that a builder could amend a contract to add required provisions and avoid additional civil penalties. When a builder amended the contract for this purpose, the builder and homeowner would not be allowed to alter any other term or condition of the contract.
- The bill would establish civil penalties for violating Property Code, sec. 420.002 requirements at not less than \$100 nor more than \$500 for each violation, not to exceed an aggregate amount of \$5,000. The bill would provide that each day the violation continued would constitute a separate violation. The attorney general would be authorized to bring suit to recover the civil penalty.

The amount of the civil penalty would have to be based on:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- history of previous violations;
- amount necessary to deter future violations;
- whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
- other matters that justice would require.

SB 1641 would provide that a builder's failure to provide name and registration number or the required TRCC notification would not invalidate a lien on the property arising from the contract between the homeowner and a lending institution that provided financing for the new home construction or home improvements or for renewed or extended financing.

The bill would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

SB 1641 would add potential civil penalties on top of an unenforceable contract should a builder fail to comply with the Texas Residential Construction Act. The bill also would remedy an unintended consequence of Property Code, sec. 460.002 that could invalidate a lien from a lending institution should the contract between the homeowner and builder be unenforceable. The lien securing a loan should be preserved and not invalidated by what amounts to a technical violation of the contract between the homeowner and builder.

SB 1641 would protect both homeowners and the builders by prohibiting either party from altering the contract if the builder needed to amend the contract to correct the builder's name or registration number. Any change would be of a technical nature and only could revise the name or registration number of the builder.

The bill would authorize the attorney general to enforce provisions of the Texas Residential Construction Act and protect homebuyers, even if the TRCC were abolished.

**OPPONENTS
SAY:**

SB 1641 would allow a builder to change its name unilaterally on a contract to avoid additional civil penalties. Dishonest builders that

constantly change their names to avoid liability for construction defects would be authorized to do so under this bill and would face virtually meaningless consequences. The builders would have the right to change contracts unilaterally to commit fraud, but the homeowner would be powerless to try to change unconscionable terms and conditions of the same contract.

SB 1641 also would remove any incentive for financial institutions to confirm that homebuilders' contracts with homeowners contain the builder's name for purposes of legal accountability. If the lien were dependent upon the contract containing the builder's legal name, financial institutions would make sure that the contracts contained this information. Otherwise, if this bill becomes law, there would be no incentive for financial institutions to verify legal compliance.

NOTES:

HB 3441 by Kleinschmidt, which provided that the lien for third-party financing on a new home or renovation project would remain valid even if the contract between the builder and homeowner were to become unenforceable, was reported favorably by the House Business and Industry Committee on April 28 and set on the May 11 General State Calendar.