
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 879 Session of
2019

INTRODUCED BY GALLOWAY, HILL-EVANS, MURT, T. DAVIS AND NEILSON,
MARCH 25, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 25, 2019

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 the offense of home construction
4 fraud and for penalties; establishing the Home Builder
5 Guaranty Fund; and providing for claims against the fund and
6 for notification of defective or faulty building material or
7 product.

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

23 CHAPTER 1

24 PRELIMINARY PROVISIONS

25 Section 101. Short title.

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

28 Section 102. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

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

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

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

19 "Fund." The Home Builder Guaranty Fund established under
20 section 901.

21 "Home builder."

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

25 (2) The term shall not include the following:

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

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

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

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

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

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

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

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

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

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

29 "Specifications." The plans, detailed drawings, lists of
30 materials, stated allowances or other methods customarily used

1 in the home building industry as a whole to describe with
2 particularity the work, workmanship, materials and quality of
3 materials for each new home.

4 Section 103. Nonapplicability.

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

7 (1) The Federal Government.

8 (2) The Commonwealth or any of its political
9 subdivisions.

10 CHAPTER 3

11 HOME BUILDER REGISTRATION

12 Section 301. Registration of home builders.

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

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

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

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

30 (1) The act of December 22, 1989 (P.L.687, No.90), known

1 as the Mortgage Bankers and Brokers and Consumer Equity
2 Protection Act.

3 (2) 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry
4 licensing and consumer protection).

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

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

17 (a) Application.--

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

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

24 (A) Name.

25 (B) Date of birth.

26 (C) Home address and home telephone number.

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

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

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

3 (G) Social Security number.

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

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

9 (A) Name of each partner.

10 (B) Date of birth of each partner.

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

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

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

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

20 (G) Social Security number of each partner.

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

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

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

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

30 (C) Home address and home telephone number of

1 each officer, manager and general partner.

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

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

7 (F) Federal employer identification number, if
8 available.

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

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

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

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

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

28 (vii) A statement whether:

29 (A) The individual or individuals making
30 application, even if doing so as part of a business

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

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

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

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

29 (2) Information requested in paragraph (1)(i), (ii),
30 (iii), (iv) and (v) shall be for a 10-year period, prior to

1 the time of registration. The applicant shall provide
2 information prior to the last 10 years or as further
3 clarification of the information provided, if the bureau
4 requests such information.

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

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

25 Section 303. Application fees.

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

1 registration number.

2 Section 304. Certificate issuance and renewal.

3 (a) General rule.--An initial certificate issued to a home
4 builder shall be valid for a two-year term. A home builder that
5 meets the requirements of subsection (c) may obtain a renewal of
6 a registration for an additional two-year term. Except as
7 provided in sections 701(b)(4) and 902(j), once expired, a
8 registration may not be renewed.

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

12 (1) a renewal application form; and

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

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

19 (1) Would qualify for an initial registration.

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

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

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

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

28 Section 305. Proof of registration.

29 A home builder shall include the builder's registration
30 number in all advertisements, including business cards,

1 distributed within this Commonwealth and on all contracts,
2 estimates and proposals with consumers of home construction
3 services in this Commonwealth. The home builder registration
4 number shall be displayed on all properties where the builder is
5 performing services under a home construction contract.

6 CHAPTER 5

7 HOME CONSTRUCTION CONTRACTS

8 Section 501. Home construction contracts.

9 (a) Requirements.--A home construction contract must:

10 (1) be legibly written and contain the registration
11 number of the home builder;

12 (2) be signed by all of the following:

13 (i) the consumer or the consumer's agent; and

14 (ii) the home builder or the builder's agent;

15 (3) contain the entire agreement between the consumer
16 and the home builder, including attached copies of all
17 required notices;

18 (4) contain the date the contract was signed;

19 (5) contain the name, address and telephone number of
20 the home builder. For purposes of this paragraph, a post
21 office box number alone shall not be considered an address;

22 (6) contain the approximate starting date and completion
23 date for the work described in the contract;

24 (7) include a description of the work to be performed,
25 the materials to be used and a set of specifications that
26 cannot be changed without a written change order signed by
27 the consumer and the home builder;

28 (8) include the total sale price due under the contract;

29 (9) include the amount of any down payment plus any
30 amount advanced for the purchase of special order materials.

1 The amount of the down payment and the cost of the special
2 order materials must be listed separately;

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

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

15 (12) include the toll-free telephone number under
16 section 301(b);

17 (13) include a notice of the right of rescission under
18 subsection (b); and

19 (14) accompany a copy of the consumer information
20 pamphlet established by the bureau and supplied to the home
21 builder under Chapter 11.

22 (b) Right of rescission.--A person signing a home
23 construction contract, except as provided in the emergency
24 provisions of section 7 of the act of December 17, 1968
25 (P.L.1224, No.387), known as the Unfair Trade Practices and
26 Consumer Protection Law, shall be permitted to rescind the
27 contract, within three business days following the date of
28 signing, without penalty regardless of where the contract was
29 signed. A home construction contract that does not contain a
30 notice under subsection (a)(13) is voidable by the consumer.

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

4 (d) Arbitration clause.--Nothing in this act may preclude a
5 court from setting aside an arbitration clause on any basis
6 permitted under the laws of this Commonwealth. If the contract
7 contains an arbitration clause, the clause shall:

8 (1) be in capital letters, printed in 12-point boldface
9 type, appearing on a separate page from the rest of the
10 contract;

11 (2) contain a separate line for each of the parties to
12 indicate assent to the terms of the arbitration clause;

13 (3) only be effective if all parties have assented to
14 the terms of the arbitration clause as evidenced by signature
15 and date, which shall be the date on which the contract was
16 executed;

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

20 (5) state whether the facts of the dispute, related
21 documents and the decision are confidential.

22 (e) Arbitration clause voidability.--An arbitration clause
23 that fails to meet the requirements of subsection (d) shall be
24 deemed void by a court or motion of either party filed prior to
25 the commencement of arbitration.

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

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

30 (2) A waiver of Federal, State or local health, life,

1 safety or building code requirements.

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

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

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

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

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

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

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

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

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

27 (ii) the procedure is clearly and conspicuously
28 disclosed in the agreement; and

29 (iii) the contract includes a provision requiring
30 the home builder to notify the consumer of any automatic

1 or recurring renewal, and the consumer's option to cancel
2 such renewal, by mail not earlier than 20 days and not
3 later than 10 days prior to the date of any such renewal.

4 (g) Home builder's recovery right.--Nothing in this section
5 shall preclude a home builder who has complied with subsection
6 (a) from the recovery of payment for work performed based on the
7 reasonable value of services which were requested by the
8 consumer if a court determines that it would be inequitable to
9 deny such recovery.

10 Section 502. Building standards.

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

19 Section 503. Notification of defective or faulty building
20 material or product.

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

1 CHAPTER 7

2 VIOLATIONS AND PENALTIES

3 Section 701. Home construction fraud.

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

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

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

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

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

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

30 (6) alters a home construction contract, mortgage,

1 promissory note or other document incident to building a new
2 home without the consent of the consumer; or

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

6 (b) Grading.--

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

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

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

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

1 Pennsylvania shall report to the bureau any suspension or
2 revocation of a certificate ordered by a court.

3 (c) Jurisdiction.--

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

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

20 Section 702. Prohibited acts.

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

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

23 (2) Fail to refund the amount paid under a home
24 construction contract within 10 days of:

25 (i) the acceptance and execution of a return receipt
26 for certified mail containing a written request for a
27 refund; or

28 (ii) the refusal to accept the certified mail sent
29 to the home builder's last known address if:

30 (A) no substantial portion of the contracted

1 work has been performed at the time of the request;
2 and

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

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

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

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

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

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

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

29 (7) Prepare, arrange, accept or participate in the
30 financing of a home construction contract with knowledge that

1 the home construction contract states a greater monetary
2 obligation than the actual price.

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

5 (i) Accept a home construction contract.

6 (ii) Perform a home construction contract.

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

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

16 Section 703. Unfair Trade Practices and Consumer Protection
17 Law.

18 A violation of any of the provisions of this act shall be
19 deemed a violation of the act of December 17, 1968 (P.L.1224,
20 No.387), known as the Unfair Trade Practices and Consumer
21 Protection Law. Nothing in this act shall preclude a consumer
22 from exercising any right provided under the Unfair Trade
23 Practices and Consumer Protection Law.

24 CHAPTER 9

25 RECOVERY FROM FUND

26 Section 901. Home Builder Guaranty Fund.

27 (a) Establishment.--The Home Builder Guaranty Fund is
28 established in the State Treasury and shall be administered by
29 the bureau in accordance with this act. Money deposited in the
30 fund may not be considered general revenue of the Commonwealth

1 and shall be used only to effectuate the purposes of this act.

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

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

10 (d) Minimum balance.--

11 (1) Payments received under subsection (b) shall be
12 credited to the fund, which shall maintain a balance of at
13 least \$2,000,000. If the bureau finds that, because of
14 pending claims, the amount of the fund may fall below
15 \$1,000,000, the bureau shall assess each home builder \$25.
16 However, under this subsection the bureau may not make more
17 than one assessment in any calendar year.

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

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

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

30 Section 902. Claims against fund.

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

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

24 (c) Limitation on recovery.--

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

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

28 (ii) More than \$200,000 to all consumers for acts or
29 omissions of one home builder unless, after the bureau
30 has paid out \$200,000 on account of acts or omissions of

1 the home builder, the home builder reimburses the fund.
2 However, in no case shall any one home builder be
3 indebted, at any one time, to the fund for more than
4 \$200,000.

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

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

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

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

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

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

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

1 by:

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

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

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

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

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

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

28 (h) Special order of payment.--If the money in the fund is
29 insufficient to satisfy any duly authorized claim or portion
30 thereof, the bureau shall, when sufficient money exists in the

1 fund, satisfy the unpaid claims or portions thereof, in the
2 order that those claims or portions thereof were originally
3 determined.

4 (i) Investigation by bureau.--As provided in section 903, if
5 the bureau pays any amount from the fund as a result of a claim
6 against a home builder, the bureau may conduct an investigation
7 to determine if the home builder is possessed of assets liable
8 to be sold or applied in satisfaction of the claim on the fund.
9 If the bureau discovers any assets, the bureau may take any
10 lawful action necessary for the reimbursement of the fund.

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

25 Section 903. Procedure for submitting claims.

26 (a) Initial claim.--In order to recover from the fund, a
27 consumer must submit to the bureau the documentation required
28 under section 902(f), together with a copy of the judgment and
29 evidence that the judgment has not been appealed or a copy of
30 the assurance of voluntary compliance and a certification that

1 the home builder has failed to pay or evidence that the consumer
2 has been prevented from collecting the entirety of a final
3 judgment as a result of the home builder's filing for bankruptcy
4 protection under Federal law. In the latter event, the consumer
5 shall only be entitled to collect from the fund the amount he
6 was prevented from collecting as a result of the filing.

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

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

19 Section 904. Reimbursement of fund.

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

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

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

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

28 (i) The amount paid from the fund.

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

1 basis.

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

4 (b) Suit for nonpayment.--If, within 30 days after the
5 bureau gives notice, a home builder on whose account a claim was
6 paid fails to reimburse the fund in full, the bureau may
7 initiate an action against the home builder in a court of
8 competent jurisdiction for the unreimbursed amount.

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

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

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

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

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

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

30 CHAPTER 11

1 ADMINISTRATION

2 Section 1101. Consumer information pamphlet.

3 The bureau shall develop, in consultation with the home
4 building industry, a consumer information pamphlet that sets
5 forth the rights and remedies for consumers as provided for in
6 this act, the toll-free telephone number established under
7 section 301 and any other information that the bureau considers
8 reasonably necessary to assist consumers. The bureau shall
9 provide each registered home builder with copies of this
10 pamphlet to distribute to consumers.

11 Section 1102. Regulations.

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

14 CHAPTER 21

15 MISCELLANEOUS PROVISIONS

16 Section 2101. Preemption of local registration.

17 Registration under this act shall preclude any requirement of
18 payment of a fee or registration or licensing of any home
19 builder by any political subdivision. Political subdivisions
20 shall be permitted to require building permits and local
21 enforcement of the building code for that political subdivision,
22 for which a reasonable fee may be charged. Except for a building
23 permit for construction to be performed directly by a landowner
24 solely for the landowner's own use, the political subdivision
25 may not issue a permit for home building unless the permit
26 includes the home builder's registration number. This provision
27 shall not affect a political subdivision's responsibilities or
28 authority under the act of November 10, 1999 (P.L.491, No.45),
29 known as the Pennsylvania Construction Code Act, or the
30 requirements under section 302(e) of the act of June 2, 1915

1 (P.L.736, No.338), known as the Workers' Compensation Act,
2 regarding workers' compensation. This provision shall not affect
3 existing licensing standards in effect on the effective date of
4 this act with respect to electricians, plumbers, sheet metal
5 workers, warm air installers and fire suppression workers, where
6 licensing is conditioned on requirements of testing or
7 possession of certificates obtained through specific training in
8 electricity, plumbing, sheet metal work, warm air installation
9 and fire suppression. This provision shall not affect standards
10 for liability insurance adopted by a political subdivision prior
11 to January 1, 2015, and which are in effect on the effective
12 date of this section.

13 Section 2102. Applicability.

14 This act shall apply to any contract entered into on or after
15 the effective date of this section.

16 Section 2103. Effective date.

17 This act shall take effect as follows:

18 (1) The following provisions shall take effect
19 immediately:

20 (i) This section.

21 (ii) Section 2102 of this act.

22 (2) The remainder of this act shall take effect in 180
23 days.