

BILL ANALYSIS

Senate Research Center
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S.B. 1641
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires a builder to provide a notice in a contract giving the builder's name and registration number with the Texas Residential Construction Commission (TRCC) or the building contract is unenforceable. This has the unintended effect of invalidating the lien of the lender that took assignment of the lien in connection with advancing funds. In these cases, the borrowers had the benefit of the fund as did the builder. The builder's inability to enforce the contract and the added penalties assure that the builder provides the notice but the lien securing the loan from the lender should be preserved as it was required by both the builder and the borrower.

As proposed, S.B. 1641 continues the validity of a lien transferred to a lender in connection with a builder's contract where the builder has been required to provide the notice provided by the TRCC and establishes additional penalties and procedures for instances when a builder fails to provide the required notice.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 420.002, Property Code, as follows:

Sec. 420.002. **REQUIRED CONTRACT PROVISIONS.** (a) Creates this subsection from existing text.

(b) Authorizes a builder to amend a contract that does not comply with this section to add the required provisions to avoid additional civil penalties.

(c) Prohibits the builder and the homeowner, when a builder amends a contract under Subsection (b), from altering any other term or condition of the contract.

SECTION 2. Amends Chapter 420, Property Code, by adding Sections 420.0025 and 420.0026, as follows:

Sec. 420.0025. **CIVIL PENALTY: FAILURE TO COMPLY WITH REQUIRED CONTRACT PROVISIONS.** (a) Provides that a person who violates Section 420.002 is liable for a civil penalty in an amount of not less than \$100 and not more than \$500 for each violation, not to exceed an aggregate amount of \$5,000.

(b) Provides that each day a violation of Section 420.002 continues constitutes a separate violation for the purposes of this section.

(c) Authorizes the attorney general to bring suit to recover a civil penalty under this section.

(d) Requires that the amount of the civil penalty under this section be based on certain criteria.

Sec. 420.0026. CERTAIN LIENS VALID. Provides that, notwithstanding Section 420.002(a), a builder's failure to comply with Section 420.002 does not invalidate a lien of an entity that:

(1) provided third-party financing to a homeowner for the construction of a new home or an improvement to an existing home under a residential construction contract; or

(2) renewed and extended financing for a purpose described by Subdivision (1).

SECTION 3. Effective date: September 1, 2009.