

Legislative History for Connecticut Act

HB 7044 RA. 215 1993
Sen: 3448-3452, ³⁵⁰⁹⁻³⁵¹¹~~3511-3512~~ (7)
HOUSE: 5602-5618 (17)
GENERAL LAW 769, 770, 825-827,
829-830, 835-844, 889, 935-937
(20)
Total - ~~44~~⁴⁵_p

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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GEN. ASSEMBLY
SENATE

PROCEEDINGS
1993

VOL. 36
PART 10
3333-3736

WEDNESDAY
June 2, 1993

003448

116
tcc

THE CHAIR:

Mr. Clerk.

THE CLERK:

Going back, I guess, to Calendar Page 10, Calendar No. 491, File No. 885, Substitute for House Bill 7044, AN ACT CONCERNING RECOVERY OF HOME IMPROVEMENT CONTRACTORS. (As amended by House Amendment Schedules "A", "B" and "C").

Favorable Report of the Committee on Finance, Revenue and Bonding.

THE CHAIR:

Thank you very much. Senator Colapietro.

SENATOR COLAPIETRO:

Madam President, I move the Joint Committee's Favorable Report and passage of the bill as amended by the House.

THE CHAIR:

Thank you very much. Do you wish to remark further on the bill, sir?

SENATOR COLAPIETRO:

Yes, Madam President. The bill -- the amendment allows home improvement contractors to recover payments for reasonable value of services if, one, the consumer requests the services, the contract is in writing, the contract is signed by the contractor and consumer and

WEDNESDAY
June 2, 1993

003449
117
tcc

includes the three day right of rescision by the consumer, the contract is between homeowner and registered contractor and the court determines that it is inequitable to deny the money and Amendment "C" is revising home improvement definitions and home improvement contract statutes and requires a starting and ending date before the contractor can recover the reasonable value of services.

THE CHAIR:

Thank you very much. Senator Gunther.

SENATOR GUNTHER:

Madam President, I rise to support the bill. The only reason I wanted to comment and not have it go on Consent, the fact that this is a very good bill for the legitimate home improvement contractors in the State of Connecticut. I think it tightens up on it for themselves. It helps them out and basically that's great.

The only trouble is on Page 31 we have Calendar 299 just sitting there on Senate Bill 15, which was petitioned out. Probably the worst scam and the worst abuse of the consumers in the State of Connecticut is the home improvement contractors that are the illegitimate people.

Now that bill is laying there and I'd like to

WEDNESDAY
June 2, 1993

003450
118
tcc

appeal to the Majority Leader when we get to that, that he call it up and it's on a Favorable Report here. This is a bill that's been before this body for the past, oh, I'd say 10 to 15 years, to tighten up on the home improvement contractors that are the fly-by-nights, the Williamson Family, the groups that everybody knows about that are skimming all the decent work in the State of Connecticut -- not all of it, but too much of it in the State of Connecticut. It ought to be before us. It's a bill that we should take an action on --.

THE CHAIR:

Senator, we're on 491, sir.

SENATOR GUNTHER:

I know that and I'm trying to appeal to this body to take an action on Page 31, Calendar 299, Senate Bill 15. We're doing it for the legitimate people. Let's protect the consumers out there. So when that bill comes up, I hope our Majority Leader will call it up, even though it's unfavorable. Let's overturn it and let's do something for the public out here.

THE CHAIR:

Thank you very much. Would anybody else wish to remark on Senate Calendar 491? We are on 491? Are there any further remarks? Senator Upson.

WEDNESDAY
June 2, 1993

003451

119
tcc

SENATOR UPSON:

Yes, on 491, which is File No. 885, I rise in support of this and I know that Senator Colapietro knows that and I believe some of the language that I had in a similar bill is incorporated in here and this would, as he stated, at least allow a home improvement contractor to get the reasonable value of the services that were performed.

As you know, there was a Supreme Court decision that said if it wasn't in writing and value had been put in, such as a swimming pool, the contractor could not get any money back at all. So this at least attempts to alleviate partially that situation. I rise in support. Thank you.

THE CHAIR:

Thank you very much, Senator. Would anybody else wish to remark on Senate Calendar 491? Any further remarks? If not, Senator, would you like to make a motion to place this item on the Consent Calendar?

SENATOR COLAPIETRO:

I wish to do so, Madam President.

THE CHAIR:

Thank you very much, Senator Colapietro. Is there any objection to placing Senate Calendar 491, Substitute for House Bill 7044, on the Consent

WEDNESDAY
June 2, 1993

003452

120
tcc

Calendar? Is there any objection? Any objection?

Hearing none, so ordered.

THE CLERK:

Calendar Page 11, Calendar No. 515, File 912,
Substitute for House Bill 7248, AN ACT CONCERNING THE
CONFIDENTIALITY OF MEDICAL RECORDS OF PERSONS EXAMINED
OR TREATED AT COMMUNICABLE DISEASE CONTROL CLINICS. (As
amended by House Amendment Schedule "A").

Favorable Report of the Committee on Public Health.

The Clerk is in possession of four amendments.

THE CHAIR:

Thank you very much. Is there someone in this
Chamber that would like to move this bill? Would you
like to pass this item temporarily seeing how there is
no one here?

SENATOR DIBELLA:

Madam President, could we Pass Temporarily on that?

THE CHAIR:

Yes.

THE CLERK:

Calendar Page 12, Calendar No. 522, File No. 812,
Substitute for House Bill 6534, AN ACT ESTABLISHING AN
ADULT FOSTER CARE PROGRAM.

Favorable Report of the Committee on
Appropriations.

WEDNESDAY
June 2, 1993

003509

177
tcc

Calendar No. 393, Substitute for House Bill 7032.

Calendar Page 6, Calendar 466, Substitute for
Senate Bill 729.

Calendar Page 7, I'm sorry -- Calendar Page 6
should have been Calendar No. 446, House Bill 7138 and
on Page 7, Calendar No. 466, Substitute for Senate Bill
729.

Calendar Page 10, Calendar No. 491, Substitute for
House Bill 7044.

Calendar Page 11, Calendar 510, Substitute for
House Bill 5883.

Calendar Page 12, Calendar 522, Substitute for
House Bill 6534.

Calendar Page 13, Calendar No. 535, House Bill
7019.

Calendar Page 15, Calendar 553, Substitute for
House Bill 7042.

Calendar Page 16, Calendar 562, Substitute for
House Bill 6934.

Calendar Page 17, Calendar 563, Substitute for
House Bill 7115.

Calendar Page 18, Calendar No. 568, Substitute for
House Bill 6603. Calendar 569, Substitute for House
Bill 6895. Calendar Page 19, Calendar No. 576,
Substitute for House Bill 6624.

WEDNESDAY
June 2, 1993

003510
178
tcc

Calendar Page 26, Calendar No. 216, Substitute for
House Bill 6856. Calendar Page 26, Calendar 379,
Substitute for House Bill 6011.

Calendar Page 27, Calendar 409, Substitute for
Senate Bill 650. Calendar 414, Substitute for Senate
Bill 855.

Calendar Page 28, Calendar 130, Substitute for
Senate Bill 972.

Calendar Page 29, Calendar No. 242, Senate Bill No.
462.

Calendar Page 30, Calendar No. 328, Substitute for
Senate Bill 885. Calendar No. 400, Senate Bill No. 22.

Calendar Page 33, Calendar No. 141, Substitute for
Senate Bill 886.

Madam President, that completes the first Consent
Calendar.

THE CHAIR:

Thank you very much, Mr. Clerk. You've heard the
items that have been placed on the Consent Calendar
No. 1 for today, Wednesday, June 2nd. The machine is
on. You may record your vote.

Have all Senators voted and are your votes properly
recorded? Have all Senators voted and are your votes
properly recorded? The machine is closed.

The result of the vote:

WEDNESDAY
June 2, 1993

003511
179
tcc

36 Yea

0 Nay

0 Absent

Consent Calendar No. 1 for today has been adopted.

The Senate will stand at ease for just a minute.

The Senate will come to order and the Chair will recognize Senator DiBella.

SENATOR DIBELLA:

Thank you, Madam President. For the purpose of a new Go List.

THE CHAIR:

Yes, sir.

SENATOR DIBELLA:

On bills that have been Passed Temporarily.

On Page 5, Calendar Item No. 426, Go.

On Page 8, Calendar Item No. 473 is a Go.

Page 11, Calendar Items No. 515 and 517, Go.

Page 12, Calendar Item 523 is a Go.

Page 13, Calendar Items No. 540 and 542 are a Go.

Page 18, Calendar Item No. 567 is a Go.

THE CHAIR:

Thank you very much. Mr. Clerk.

THE CLERK:

Calendar Page 5, Calendar No. 426, File No. 743,
Substitute for Senate Bill 739, AN ACT CREATING AN

H-665

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1993

VOL. 36
PART 16
5528-5811

005602
200

kfh

House of Representatives

Tuesday, May 18, 1993

Clerk, please take the tally.

Clerk, please announce the tally.

CLERK:

House Bill 7260, as amended by House "A"	
Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not Voting	6

DEPUTY SPEAKER COLEMAN:

The bill as amended is passed.

Clerk, please continue with the call of the
Calendar.

CLERK:

Page 38, Calendar 449, Substitute for House Bill
7044, AN ACT CONCERNING RECOVERY OF HOME IMPROVEMENT
CONTRACTORS. Favorable Report of the Committee on
Finance.

DEPUTY SPEAKER COLEMAN:

Representative Fox.

REP. FOX: (144th)

Thank you, Mr. Speaker. I move acceptance of the
Joint Committee's Favorable Report and passage of the
bill.

DEPUTY SPEAKER COLEMAN:

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005603
201

House of Representatives

Tuesday, May 18, 1993

The question is acceptance and passage. Will you remark further?

REP. FOX: (144th)

Yes, I will. Thank you, Mr. Speaker. Mr. Speaker, this is a bill which has been considered by both the General Law Committee and also the Judiciary Committee, under the home improvement contractor statute.

It modifies the existing law to allow a contractor to recover on a theory of quantum meruit for what is reasonable and fair based upon the work that was done, if in fact, certain requirements but not all that are required, are met.

It would be required that the consumer had requested the service, the contract under which they were provided was in writing, signed by the contractor and the homeowner, between a homeowner and a registered contractor or a salesman and the court finds that it would be inequitable to deny recovery.

We had extensive public hearings on this. Based upon what we had seen, we are of the opinion that there ought to be some limited relief provided for what is fair and equitable depending upon the work that was done in a given situation.

I move adoption of the bill.

DEPUTY SPEAKER COLEMAN:

005604

202

kfh

House of Representatives

Tuesday, May 18, 1993

Will you remark further on the bill?

Representative Varese.

REP. VARESE: (112th)

Thank you, Mr. Speaker. Mr. Speaker, I have an amendment to this bill. It is LCO5469. I would ask the Clerk to please call and read.

DEPUTY SPEAKER COLEMAN:

Clerk has in his possession LCO5469. Would the Clerk please call and read? Designated House "A".

CLERK:

LCO5469, House "A" offered by Representative Varese.

DEPUTY SPEAKER COLEMAN:

Clerk, please read the amendment.

CLERK:

In Line 48, after "(2)" insert "(7)".

DEPUTY SPEAKER COLEMAN:

Representative Varese.

REP. VARESE: (112th)

Yes. Mr. Speaker, if I may, I would like to state that in essence, what this particular amendment does is it inserts numbers 6 and 7 under the original part of the bill so that a home improvement contractor would not be able to call or claim quantum meruit if the original contract did not contain a notice of the

005605
203

kfh

House of Representatives

Tuesday, May 18, 1993

owner's right to cancel in accordance with the provisions of Chapter 740.

And in essence, what that is is a three day right of decision that individuals would have when they deal with home improvement contractors.

In addition, under number 7, it would also require that the starting and completion dates be included in the contract so that the home improvement contractor would be required, in writing, to let the people know when indeed the contract would be started and when it would be completed. If they did not comply with either one of those particular sections, then in that event, they would not be able to claim quantum meruit and I would move the amendment, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

The question is adoption of House "A". Would you remark further? Will you remark further on House "A"? Representative Munns.

REP. MUNNS: (9th)

Thank you, Mr. Speaker. A question to the proponent of the amendment, through you.

DEPUTY SPEAKER COLEMAN:

Please proceed, Sir.

REP. MUNNS: (9th)

Mr. Speaker. Representative Varese, I would just

005606

204

kfh

House of Representatives

Tuesday, May 18, 1993

like to make sure I have the right amendment. you had called LC05469. And you mentioned in your comments, it was going to add 6 and 7.

REP. VARESE: (112th)

That is correct. I am sorry. 5469, then it is only 7. You are correct. We will have to do one at a time.

REP. MUNNS: (9th)

Okay. I just wanted to make sure, Mr. Speaker that it is only adding subsection 7.

REP. VARESE: (112th)

Thank you, Representative Munns. Through you, Mr. Speaker.

Mr. Speaker, this here merely contains a starting date and a completion date and in essence, if an individual does not have the starting date or completion date in the contract, then they would not be able to recover under quantum meruit.

DEPUTY SPEAKER COLEMAN:

Treat that response as a response to a question. Representative Fox.

REP. FOX: (144th)

Thank you, Mr. Speaker. Representative Varese and I have discussed this amendment. I think it is a concept which had been discussed back and forth within

005607
205

kfh

House of Representatives

Tuesday, May 18, 1993

the committee. I think an argument can be made on either side. I think it is a reasonable addition to the bill and I support the amendment.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Fox. Will you remark further on House "A"? Will you remark further on House "A"?

If not, the Chair will try your minds. All those in favor of House Amendment Schedule "A", please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COLEMAN:

All those opposed, say Nay.

The ayes have it.

House "A" is adopted and ruled technical.

Will you remark further on the bill, as amended?

Representative Varese.

REP. VARESE: (112th)

Mr. Speaker, I apologize for not including this in the original proposal, but in any event, I have another amendment. It is LC05468. I would request the Clerk call and read.

DEPUTY SPEAKER COLEMAN:

Clerk has LC05468. Would the Clerk please call and

005608
206

kfh

House of Representatives

Tuesday, May 18, 1993

read? Designated House "B".

CLERK:

LC05468, House "B" offered by Representative
Varese.

In line 48 after "(2)" insert "(6)"

DEPUTY SPEAKER COLEMAN:

Representative Varese.

REP. VARESE: (112th)

Thank you, Mr. Speaker. Mr. Speaker, if you please, this merely inserts number six of the original bill into particular exclusions from quantum meruit, claims in quantum meruit and under item six, that is where it contains a notice of the owner's right to cancel.

In essence, owners have a three day right of rescission for home improvement contracts. Sometimes, unfortunately, seniors are taken advantage of, individuals who are not familiar with the law are taken advantage of and in essence, I wanted to attempt to include this requirement in the bill so that a contractor would not be able to in essence, obtain monies from the individual if the individual did not realize that he had a right of rescission and I would move this amendment.

DEPUTY SPEAKER COLEMAN:

005609
207

kfh

House of Representatives

Tuesday, May 18, 1993

Motion is for adoption of House "B". Will you
remark further? Will you remark further on House "B"?

Representative Fox.

REP. FOX: (144th)

Thank you, Mr. Speaker. This too, is a concept
that we had discussed both at the General Law Committee
and in the Judiciary Committee. I again, think this is
a reasonable addition and I support the amendment.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Fox.

Will you remark further on House "B"? Are there
any further remarks on House "B"?

Representative Jarjura.

REP. JARJURA: (74th)

Yes, Mr. Speaker. A question, through you to
Representative Fox.

DEPUTY SPEAKER COLEMAN:

Please frame your question, Sir.

REP. JARJURA: (74th)

Representative fox, if we now added number seven
and now number six, to the list, what is left of the
bill that we are providing for the home improvement
contractor, under quantum meriut?

DEPUTY SPEAKER COLEMAN:

Representative Fox.

005610

kfh

208

House of Representatives

Tuesday, May 18, 1993

REP. FOX: (144th)

Through you, Mr. Speaker. What we have eliminated is five. The purpose being to be cognizant of the fact that the courts of this State, similar to legislation relating to real estate brokers, have interpreted it very stringently. It is and has been the opinion of our committee that we would want to open that door ever so slightly as a matter of equity based upon the testimony that we have heard. This, I think, would do that.

REP. JARJURA: (74th)

Yes. Thank you, Mr. Speaker. My concern was that the testimony at the committee was that a lot of the home improvement contracts were in effect, the law was being used against them for the slightest of deficits or defects under the Home Improvement Act and the intent of the bill was to somehow give them some basis of relief.

Now, the question, through you, Mr. Speaker to Representative Fox, with these two amendments, do those cracks still remain open?

DEPUTY SPEAKER COLEMAN:

Representative Fox.

REP. FOX: (144th)

Through you, Mr. Speaker. In my opinion, it would.

005611
209

kfh

House of Representatives

Tuesday, May 18, 1993

Keeping in mind that the decisions that we have seen and I think in particular, was the Barrett Builders vs. Miller decision which as a Supreme Court decision indicated that unless each and every one of these requirements were met, one could not recover. We, as a committee and I think the Judiciary Committee also, felt that that was somewhat unfair to require that each "i" be dotted and "t" be crossed, if in fact, is a matter of equity.

If one had done the job and was entitled to some recovery as a matter of equity. I think that this bill would be a start in that direction, to answer your question, directly. It would eliminate the specificity which would otherwise would have been required by the Supreme Court. It may be something that we want to take a look at again as time goes on to see if we want to open that door more widely.

But, I think in terms of balancing the interest of the consumers, whom we very much want to protect and at the same time the contracts, whom we want to be fair, it is our opinion that this is a step in the right direction.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

005612
210

kfh

House of Representatives

Tuesday, May 18, 1993

Thank you, Mr. Speaker. Based on those representations, I will not opposed the amendment. I think the original version was a very good compromise that we had worked out in committee and I am sure we will look at it in the future.

Thank you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Jarjura.

Will you remark further on House "B"?

Will you remark further?

If not, the Chair will try your minds.

All those in favor of House Amendment Schedule "B", please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COLEMAN:

All those opposed, indicated by saying Nay.

DEPUTY SPEAKER COLEMAN:

The ayes have it.

House "B" is adopted and ruled technical.

Will you remark further on the bill, as amended?

Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker. The Clerk has an Amendment, LCO6644. Would he please call and I be

005613

kfh

211

House of Representatives

Tuesday, May 18, 1993

allowed to summarize?

DEPUTY SPEAKER COLEMAN:

Will the Clerk please call LCO6644?

Designated House "C".

CLERK:

LCO6644, House "C" offered by Representative
Stratton.

DEPUTY SPEAKER COLEMAN:

Representative Stratton has requested leave to summarize. Is there objection?

Seeing none, please proceed.

REP. STRATTON: (17th)

Thank you, Mr. Speaker. If the Clerk and I can stop yawning, I will summarize.

This amendment is designed to clarify the language that exists in the Home Improvement Contractor law who is eligible to make application to the guaranty fund and is really the outgrowth again of judicial action which seemed inconsistent with the goal and the intent of the legislature in the initial bill.

It defines very clearly that a residential property of up to six units, even if that property is rented and one could not conceivably really live in all six units, in most cases, that work done on a residential property that is rented as long as it fits within that six

005614
212

kfh

House of Representatives

Tuesday, May 18, 1993

units, is not excluded from the home improvement definition.

Also, being merely a general contractor, yourself, by hiring someone to come in and work on such a residential or rental property does not exclude you and that the fact that receiving income for a rental property does not thereby make it a commercial venture and excluded if it falls within the six unit definition.

It really, in my opinion, is an amendment that really makes absolutely clear what was already clear in the existing law and I urge adoption.

DEPUTY SPEAKER COLEMAN:

The question is adoption of House "C".

Will you remark further?

Will you remark further?

Representative O'Neill.

REP. O'NEILL: (69th)

Thank you, Mr. Speaker. A question, if I may to Representative Stratton?

DEPUTY SPEAKER COLEMAN:

Please frame your question, Sir.

REP. O'NEILL: (69th)

Through you, Mr. Speaker. This thing sets the number that qualifies it as residential at 6 or less

005615

kfh

213

House of Representatives

Tuesday, May 18, 1993

units, as I understand it. Normally, what I hear is references to one to four family units when we talk about mortgages and other aspects of laws that relate to how one goes about defining residential versus commercial type transactions. Through you, Mr. Speaker, my question is why was the number six chosen as opposed to say four or five?

Is there a particular reason? Through you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker. The six units is existing law. This amendment does not change that number and is merely clarifying that whether or not those units are rented, they are not disqualified. The six unit designation was a part of the original home contractor law in its existing statute.

REP. O'NEILL: (69th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative O'Neill.

Will you remark further?

Will you remark further on House "C"?

If not, the Chair will try your minds. All those

005616
214

kfh

House of Representatives

Tuesday, May 18, 1993

in favor of House "C" please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COLEMAN:

All those opposed, say Nay.

The ayes have it. House "C" is adopted and ruled technical.

Will you remark further on the bill, as amended?

Representative Munns.

REP. MUNNS: (9th)

Thank you, Mr. Speaker. Mr. Speaker, I would like to ask a question, through you, to the distinguished chairman of the General Law Committee.

DEPUTY SPEAKER COLEMAN:

Please proceed.

REP. MUNNS: (9th)

Thank you. Representative Fox, early in the debate, you had answered a question of Representative Jarjura and I just wanted to clarify it because I think you might have left out part of the answer.

He had asked you what so divisions would be left in this bill with the passage of the two amendments brought to us by Representative Varese and I think you had said subsection 5, but as I read it, I think it also includes, excuse me..subdivisions 3 and 4 also.

005617

215

kfh

House of Representatives

Tuesday, May 18, 1993

Is that correct?

DEPUTY SPEAKER COLEMAN:

Representative Fox, do you care to respond?

REP. FOX: (144th)

Thank you, Mr. Speaker. Three, four and five.

That is correct.

REP. MUNNS: (9th)

Thank you. In case I didn't hear you correctly or in case you said something different, I just wanted to clarify that those three subdivisions are named in the bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Munns.

Would you care to remark further on the bill, as amended?

Will you remark further on the bill, as amended?

If not, would staff and guests please come to the well of the House? Would members please be seated?

The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members, to the Chamber, please. The House is voting by roll call. Members, kindly report to the Chamber.

005618

216

kfh

House of Representatives

Tuesday, May 18, 1993

DEPUTY SPEAKER COLEMAN:

Have all members voted? Have all members voted and is your vote properly recorded? Please check the roll call board to make sure your vote is properly recorded.

Will the Clerk please announce the tally?

CLERK:

House Bill 7044, as amended by House Amendments "A", "B" and "C"

Total Number Voting 147

Necessary for Passage 74

Those voting Yea 147

Those voting Nay 0

Those absent and not Voting 4

DEPUTY SPEAKER COLEMAN:

House Bill 7044, as amended by Amendments "A", "B" and "C" is passed.

Will the Clerk please continue with the call of the Calendar?

CLERK:

Please turn to page 17. Calendar 575. Substitute for Senate Bill 978, AN ACT ALLOWING MUNICIPAL EMPLOYEES TO SERVE ON ZONING COMMISSIONS. Favorable Report of the Committee on Planning and Development.

DEPUTY SPEAKER COLEMAN:

Representative Lawlor.

JOINT
STANDING
COMMITTEE
HEARINGS

GENERAL LAW
PART 3
752-1005

1993

people who are licensed. So, they don't see their job as going out locally and apprehending people who are operating without a license. Those people don't take permits, the inspectors don't get into those properties and they don't know what went on.

To ask them to become investigators is a radical change, I think, in the definition of their role as inspectors. Theirs is just to insure that this conformance to code by the qualified licensed contractors that use the permit system.

SEN. KISSEL: Then, now I have a question. If their job is not to investigate people who are out there making these electrical work, plumbing work, heating work that are not licensed, how does helping fund these inspectors address that issue?

ROBERT HUPPELSBERG: I am differentiating between local inspectors and state inspectors. The State inspectors do have that obligation to go out and apprehend anyone who is violating the occupational licensing law.

SEN. KISSEL: So, the State inspectors are investigators and that is what you want. You want investigators out there to clean out these individuals and corp companies that are taking away business and doing a disservice to consumers?

ROBERT HUPPELSBERG: Exactly.

SEN. KISSEL: Thank you. Thank you, Mr. Chairman.

REP. FOX: Okay, thank you, Sir. Next speaker is Michael Lauzier.

MICHAEL LAUZIER: Good afternoon, Representative Fox, Senator Colapietro, members of the General Law Committee. My name is Michael Lauzier and I serve as Executive Vice President for the Home Builders Association of Connecticut and also Executive Director for the Connecticut Construction Coalition. I would like to use my three minutes to testify on four bills, very briefly and we have submitted a statement to the effect.

SB 824
SB 826
HB 7044
SB 1037

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56
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GENERAL LAW

March 16, '1993

On SB824, AN ACT CONCERNING ENFORCEMENT OF OCCUPATIONAL LICENSING LAWS. It is true and evident as what has been said today that there needs to be some dedicated funds for enforcement. I think if you look at the Department of Consumer Protection, they failed in three particular areas. They failed in enforcement, they failed in educating the consumer, and they failed in educating the contractor. I believe the first enforcement provision if we can get dedicated funds in that particular area, is going to help clean up the industry and it is going to help protect the consumer.

We are also in support of SB826, AN ACT CONCERNING UNIFORM BUILDING PERMIT APPLICATIONS. We would also suggest an amendment to this language that adds "all building permits" as well.

HB7044, AN ACT CONCERNING RECOVERY OF HOME IMPROVEMENT CONTRACTORS. The building and construction industry supports a provision that work performed should be paid for.

And the last one which seems to be a very hot item in discussion with those in regards to the home improvement and building and remodeling trades is the issue of licensing. This proposal, SB1037, would license home improvement contractors in the State that are currently registered.

What was referred today, so far, the State of Connecticut cannot handle the current laws on the books as they are in regards to licensing provisions i.e. meaning the electrical, the plumbing and heating and the cooling contracting fields.

I would like to go back to the area of education. I think if we can get the dedicated funds in this particular area and educate the contractor and the consumer, and enforce those contractors who are ripping off the public, and put them in jail where they belong, that is the way to handle this. But, don't add more laws onto the books that you can't enforce. And Senator Gunther said it very well, even though he is for it, he said before you today, "don't add anymore than you can't enforce". And we can't do what we have on the books today.

000825

111
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GENERAL LAW

March 16, '1993

And very, very important in the bill, and it came up with Radon which we all heard so much about a few years ago. There's a simple provision in this bill that says, no home inspector shall provide services to a consumer without disclosing if they have a personal interest in a home contracting business. So if I'm holding myself out to the public to give Radon inspections and discover Radon inspection, I should disclose to the public if I have an interest in doing contract work to improve the house to do sub-slab ventilation, for example, that may be a conflict of interest. This bill does provide that.

But we think this is just a baby step. It doesn't hurt anybody. If \$60 isn't enough, perhaps \$100 fee would be sufficient, but I do urge you all to read the task force report that endorsed registration of home inspectors. Thank you.

REP. FOX: Okay, thank you, Sir. We would then move on to SB7044 covering home improvement contracts. First speaker is a Buddy Dinan.

BUDDY DINAN: Good afternoon.

REP. FOX: Good afternoon.

BUDDY DINAN: My name is Buddy Dinan. I own a swimming pool company in Westport, Connecticut and I am also the president of the National Spa and Pool Institute, the Connecticut Chapter. Speaking for the trade group, I am president of, and personally, I'm in favor of this bill. HB 7044

I had a personal experience which was a very unpleasant experience in 1990, which was unfortunately settled last year in which I went out to a home and started a job with all the proper contracts in written, etc. etc., and there was a change made in the work order between the homeowner and the service person. It required the replacement of a swimming pool filter.

During the act of the work, it was all done in one day. The swimming pool filter was installed properly. It worked at the end of the weekend. The homeowner was happy. He gave me the \$50 for the service call which showed us he had a rotted out

000826

112
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GENERAL LAW

March 16, '1993

filter tank and he needed a new one. He called the office, asked how much they were, we gave him a price. At that point in time the service man came, he got the filter, he delivered it, he installed it properly, it worked, the guy swam in a clean pool said I'll pay you the balance in 30 and the rest of the money in 60 days. We said okay, (inaudible) the filter.

I had to sue the gentleman in small claim's court. The gentleman came into court with an attorney who said that the work was in excess of \$1,000 and I didn't have a contract in writing at that time to explain exactly what the work was.

The man did not have a complaint about the work that was done, simply about the fact that it was not done by contract and I lost. The gentleman received a free filter system from me. A day's work for two service personnel for me, and I had absolutely no right to recover that money, according to the law.

This law seems to give us at least the ability to recover what we threw into it. No profit, but in the event that a work order is done and a change is made and a service technician or myself or the homeowner requests something done and if the i is not dotted and the t is not crossed, we lose, and I think this bill might give us at least the ability, obviously it does, it gives us the ability to recover some of that unfortunate loss, that there are people out there who are legitimate contractors who get beat for reasons of simple law.

REP. FOX: As you can imagine, there's a balancing test there.

BUDDY DINAN: I'm sorry?

REP. FOX: It's a balancing standard. You appear to be a very honest businessman and you were doing your work and they didn't pay it. It's a lousy deal from your perspective. The law was put into effect in order to protect the consumers against people who would come out and do all kinds of work without ever having a contract and then go into court and say look, I did this amount of work and I'm entitled to be paid this amount.

000827

113
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GENERAL LAW

March 16, '1993

So it really comes down to a theory of quantum merit if you will as to whether or not we're going to enforce the law and say you must meet these standards to protect these people, or are we going to say that if you did the work, then you're entitled to get something. It's been very difficult trying to find some middle ground here.

BUDDY DINAN: If this is middle ground, we have no profit built into this. I wasted, I mean, the way I look at it now is five years down the road, this guy still has a free filter system installed for nothing.

REP. FOX: You got beat, there's no question about it and that's not fair. I understand that. That's a valid concern.

BUDDY DINAN: And I was told by our lobbyist that I would be able to speak on another bill, but because of time constraints I don't want to hang out too long.

REP. FOX: If you can do within the three minutes, you can speak on anything you want.

BUDDY DINAN: I wanted to speak on HB7212, AN ACT CONCERNING THE IMPOSITION OF SANCTIONS ON HOME IMPROVEMENT CONTRACTORS WHO FAIL TO OBTAIN CERTIFICATES OF REGISTRATION.

REP. FOX: Go ahead.

BUDDY DINAN: Part of that bill allows a consumer to get money from the home guarantee fund that the registered contractor has paid into, for services which were not done properly or for suits that were lost.

I can speak for my organization and for myself again, and say that I'm strongly opposed to that bill, which will give a consumer a right to take out of what I consider our home guarantee fund, money, because they hired a guy who was not registered and/or hopefully, some day, licensed. A colleague of mine will get into that in a minute.

000829

115
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GENERAL LAW

March 16, '1993

AL RIZZO: The first bill is HB7044, the second, HB7212, and the third is SB1037.

REP. FOX: Okay, go right ahead.

AL RIZZO: The first bill I've got a story to tell HB 7044 something similar to Buddy where we started a contract to build an indoor pool for a resident in Greenwich, Connecticut to the sum of about \$125,000. We were asked to do other jobs along the way, such as excavation for the foundation, and because the contract wasn't considered legal in the sense that it wasn't a beginning and starting date, he started on Friday, wanted us to start on Monday, there wasn't a rescission period.

At the end of the job, because it was, some of it was done on a cost plus basis, the owner disagreed with the billing and there was a disagreement. The bill was \$17,000 in extras and he agreed to pay \$12,000. He went to his attorney. His attorney said you don't have to pay a penny because he doesn't comply with the home solicitation act.

REP. FOX: Did you have a written contract?

AL RIZZO: Yes.

REP. FOX: But it just didn't meet the requirements of the home solicitation act.

AL RIZZO: It didn't have the section that was done to do the extras. The contract that we did the extras, I was called, an aperture agreement and it wasn't, it didn't have a rescission clause in it. Because it didn't have the rescission clause, we didn't follow the letter of the law. The owner had agreed that he owed at least \$12,000 and his lawyer told him don't pay anything and he didn't and the work was done in 1989.

If this bill gets passed, I still have a right to go back to court, I think, and collect some of that money that the owner agrees he owes me. If it isn't the \$17,000, at least the \$12,000.

000830

116
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GENERAL LAW

March 16, '1993

So as a businessman in Connecticut, and we don't have to tell you how bad it is, that kind of thing doesn't help us along and we'd appreciate it. I and other builders in Connecticut would appreciate it if you'd consider passing HB7044 based on some of those theories of getting some sort of compensation.

We agree that if we didn't do, if the work wasn't done exactly right, that's different. If the work was done right and we just, we're not lawyers and as much as we try to teach our salesmen to be lawyers, they're never going to do everything perfect, we feel that the worst we should do is slap our hands, take our profit away, but don't take our costs for labor and material away.

On HB7212, Buddy just spoke of our home guarantee fund. When we started this fund several years ago, the contractors in the State agreed to pay \$50 into this fund. The fund is now going this year, costing me \$165 from \$50. You pass a bill like this and that probably will start costing me \$400 or \$500 in order to keep the \$750,000 minimum that must be kept into that plan. It's getting ridiculous to do business in the State.

In fact, last year, 90% of my business was done out of the State of Connecticut because there's very little work left in this State to do. I think we did 75% of our work in New York and had to travel all the way to New Jersey to pick up the rest of it. The bill, HB7212 would only increase my costs of doing business.

HB1037. This doesn't address the problem of licensing. You're asking for a license and there's no proficiency exam which means that a person might know the letter of the law and yet might not be a very good contractor, a good home improvement contractor, might not even know his trade well, thereby getting into trouble and actually frauding the customer. All it does is make him a sharp businessman so that he fills out the contract exactly the way you think it should be filled out. It has no proficiency testing here whatsoever.

000835

121
gh

GENERAL LAW

March 16, '1993

AL RIZZO: That's what, if you pass it, that's what will happen.

REP. FOX: I'm sorry, you can go on with your presentation.

AL RIZZO: I just want to make it known that the Connecticut Swimming Pool Association has been in existence since 1966. I was its first president and it has grown from 20 members in those days to plus 100 today. People like Olin Manufacturing belong to it. We have manufacturer distributors, service companies, small operators, large builders in it.

The funds are there within that group to provide a license and that cost no money to the State whatsoever and we are pushing for a license program. We have talked to Miss Schaffer about this a couple of years ago and we could provide a source of funds for the State.

We feel that dealing with hazardous waste as we do in times, materials that are hazardous to the general public, a little bit more than grouping us in home improvement contractors might be needed and we have the testing available to do so. Thank you for your time.

REP. FOX: Okay, thank you, Sir. The next speaker is a Matasavage. How about Mr. Hanburg. Hanbury. Okay, it wasn't even close. Thank you.

ROBERT HANBURY: Good afternoon, Mr. Chairman, members of General Law. I'm here, my name is Robert Hanbury, I'm a registered home improvement contractor in Connecticut. I also serve as president of the Home Builders Association in Hartford County, past chairman of the Remodelers Council, also a member of the Home Inspector Task Force. HB 7044

In regard to the Home Inspector Task Force question about financing, the reason that the licensing was perceived to be too expensive was, we were trying to create a revenue neutral thing where the member of the industry's registration fees would pay the cost of all the staff, to be the investigators, the legal, all the people involved in the implementation of that program, and with only 200

000836

122
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GENERAL LAW

March 16, '1993

people being registered, the numbers were unreasonable, perceived to be unreasonable to pay and make an inspector pay \$1,000 to be registered to make it revenue neutral, so that might answer some of those earlier questions as why it was perceived as too expensive.

But I'm writing and speaking today to express my support for the HB7044, AN ACT CONCERNING RECOVER OF HOME IMPROVEMENT CONTRACTORS which would amend the home improvement statutes in our remodeling industry.

This proposed legislation will cause home improvement contractors to be paid for work that was performed. Current Connecticut Supreme Court rulings have determined that home improvement contractors cannot collect on monies due for work performed unless their contract with the home owner is in strict compliance with all the applicable home improvement statutes in its contract requirements.

The inequity in the interpretation of this law occurs when a homeowner decides not to pay for work performed, for whatever reason it may be. The court system presently will first look to see if the home improvement contract is in compliance and thus would be enforceable. If there's the slightest omission from any of the required language, or any of the special requirements, the case will be thrown out as the contract is considered unenforceable.

The homeowner may receive a project that is perfect in all detail, he may not. But in any case, if the contract is not perfect, there is no payment enforceable by the contractor. Only a very moralistic homeowner would turn and pay this bill, knowing that the court is going to give its blessing to not paying the bill, as was mentioned earlier. Once the legal system tells you that you don't have to pay the bill, not too many people will take it upon themselves to do it.

These contract requirements do provide the homeowner with information before they perform the contract work and it's useful information. Once the work proceeds, though, the information required

000837

123
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GENERAL LAW

March 16, '1993

by the contract statutes have very little, if any impact, on the final project, the impact, the quality standards or the satisfaction with the customer.

The days of the handshake and a deal and consumer beware, is long past and I'm happy that it has because that's where a lot of the problem passed. We recognize the need for written contracts and a clear understanding between the parties involved. But I think the pendulum has swung too far in the direction of the consumer. It allows the homeowner to in essence, steal from the contractor with the blessing of the court system. If the contractor is unfortunate enough to not understand the law, or to have miswritten his contract, or through an omission of his own.

The Legislature created this very strict interpretation, or writing of the law in response to 1600 complaints that the DCP had registered. I think now we should recognize that the tide has turned and that perhaps the contractor is getting the short end of the deal, and as the supreme court judges said in their dissenting opinion, the statutes are being used by homeowners as a sword, rather than a shield, against contractors. In other words, they've turned the law against us. I know many people who have gotten taken by this interpretation.

I would also add that this interpretation by the Supreme Court creates what I call the home improvement lottery. Anyone in the State of Connecticut who happens to look at enough, talk to enough contractors will find some contractor who doesn't understand the law and will give you an incomplete contract that is unenforceable.

All you need to do is have the contractor do the work. At the end of the job your final statement or bill is due and you send a note that says you should check with your attorney to see if our contract has complied with the law. And then nine times out of ten it isn't going to be and at that point, the homeowner has hit the home improvement lottery. He's going to get something for free and the court's going to bless that opportunity to get that money for free.

000838

124
gh

GENERAL LAW

March 16, '1993

You go to a lawyer today and you say you think you want to collect money on a home improvement contract, the first thing they're going to do is check all the details. If you're missing one of the eight requirements for statutory requirement, the lawyer won't even take the case. He won't even do it on a contingency basis. He'll tell you to step out of line, get out of line, you're crazy, you're wasting your money. That's how far the pendulum has swung in the opposite direction.

Is this fair? No, I don't see how that could be the intention of the Legislature to create the situation where a project could turn out well and because of a technicality in the contract, that the contractor would receive no payment, or not no payment, but not a full payment. And that's the situation today.

It's happening every day. The homeowner has the ability to go to the home guarantee fund, up to \$10,000. As a contractor, when the homeowner goes bad and doesn't pay, and is uncooperative and tries to find ways not to pay you, what avenues do we have? We don't even have the judicial system any more. And unless we are fortunate enough to be lawyer and write a contract that's perfect, letter perfect every time.

And now, it's not even the contractor's problem. Now they're going after change orders, which are very difficult in our industry to monitor and to comply with all the requirements. All I can say is, we're at a distinct disadvantage and it's only getting worse and I would like to have you reconsider. The pendulum has swung too far in the other direction and we would ask your support of HB7044 and I'd be happy to answer any questions.

REP. FOX: Okay, thank you, Sir. How about Mr. Miller. Dan Miller?

: He had to leave.

REP. FOX: On the same bill, is there a Roy Dinan. Oh, we heard from you already.

BUDDY DINAN: I signed up outside.

000839

125
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GENERAL LAW

March 16, '1993

REP. FOX: Okay, thank you. How about on HB7044, Raphael Podolsky? All those home improvement contractors better sit around and listen to this one. (Laughter) This is the other side of the pendulum. I'll let Rafie speak for himself. Go ahead, Rafie.

RAPHAEL PODOLSKY: I'm Raphael Podolsky with the Legal Assistance Resource Center and I do want to speak in opposition to HB7044.

As, I agree with what Representative Fox said earlier about the fact this really is a balancing issue and, I mean, I don't disagree with the notion that it's the Legislature's job to try and figure out how to draw the balance in a case like this.

Historically, home improvement transactions have been a major, major source of consumer complaints. I don't know what the most recent Department of Consumer Protection data is, but it has been a long-standing problem. It led to the act, but that has led to many continuing problems with repairs, both from licensed and unlicensed home improvement contractors.

The statute has a number of specific things that every home improvement contract has to be. It has to be in writing. It has to include a number of provisions, and among others, for example, it now has to include a three day cancellation notice. One of the earlier speakers gave an example of a case where he did not include the notice.

Well, when you think about it, the reason for these provisions is to try and be protective up front. So for example, if you used a contract, if you don't use a written contract at all, then you don't get any of the notices. If you use a written contract but you don't put in the 3 day cancellation and later on you have problems, the consumer never knew that he could have cancelled within three days if he changed his mind, and it's not unusual once you're locked into the contract you feel you're locked in, you can't get out.

REP. FOX: Rafie, let me stop you for a second. I think we all know where you're coming from on this and you have a valid argument. You present it very well. You always do. But what do you say, I mean, as a matter of equity, to some group out there working hard to make a living. They do the job. They do it well.

Nobody's bitching about the quality of the work. But they have not met what is, I think you would agree, some fairly technical requirements and it does in my opinion, fall within the concept of dotting your i's and crossing your t's. They haven't done that. You're out of luck. You're out of there. The Supreme Court was pretty clear on that. They get zippo. I mean, is that really fair?

RAPHAEL PODOLSKY: No, I mean, I think that's in some cases going to lead to unfairness.

REP. FOX: I think the gentleman that spoke first, Mr. Dineen, Dinan, well, it's close to St. Patrick's Day so I'll get it right. That's unfair. What do we do for a guy like that?

RAPHAEL PODOLSKY: See, part of the difficulty I think is, if there were a way to distinguish between what you might call a purely technical violation and a substantive violation, and the Legislature could find a reasonable way to define that, I don't think I would have an in principle problem with making that distinction.

REP. FOX: If you were the Legislature and you wanted to do that, what would you tell them to do?

RAPHAEL PODOLSKY: One of the things I was thinking as I was listening, as I suppose conceivably you could have sort of a substantial compliance standard. You must have a contract substantially in compliance with these requirements. These would, number one, say that if you don't have a written contract at all, then the law remains the same. If you do have a written contract and your issue is, did you cross every t and dot every i, but you have substantially given the notice as required, then you might say, well, then that sanction shouldn't apply to you as distinct from a case where you leave out major essential parts of the contract.

000841

127
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GENERAL LAW

March 16, '1993

I mean, for example, to me if you leave out the cancellation notice, you're not in substantial compliance with the law. That's an important, substantive piece of the law.

REP. FOX: (inaudible) supposed to become separate to a lawsuit and how a given judge on a given day interprets substantial compliance or non-substantial compliance. But I suppose it's better than (inaudible)

RAPHAEL PODOLSKY: I'm not, I don't think, I guess what I'm agreeing with is, that trying to figure out how to draw a line is difficult. But let's say you drew the line the other way. Let's say you did what the bill says and the bill says even though you don't comply with the law, which might be a minor non-compliance or it might be a total non-compliance, you can go ahead and sue him anyway for the value of your work.

REP. FOX: Then you run into the question of why have legislation at all?

RAPHAEL PODOLSKY: Right. And more than that, because the value of the work, I mean, what if the contract is at bargain price? I mean, I've seen quantum meruit situations where somebody is able, I've sort of seen this in the landlord/tenant situation where you're comparing fair rental value against contract rent, where the value may actually be more than the contract price. You could end up, because the contract's invalid, you could be liable for more. That's not going to be the typical situation.\

REP. FOX: That possibility doesn't really trouble me (inaudible)

RAPHAEL PODOLSKY: As you said, then why bother to comply with the law. How, then, do you get people to use the contracts that they're supposed to use? You should know that, I mean, in Barry Builders v. Miller, one of the things the Supreme Court majority says was, that that approach "would defeat and nullify the statute".

000842

128
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GENERAL LAW

March 16, '1993

There are other, this is not the only industry where this kind of a rule applies and I think it's important that the Committee realize that although this applies to the home improvement industry, it's not unique. For example, real estate brokers contracts if they're not in writing, the real estate broker cannot collect a commission, period, whether on a contract theory or fair value theory.

If you do car repair work without a written authorization, you cannot recover for the repair work no matter how good a job you did on any theory because the law prohibits you doing the work without the authorization, the law has some exceptions, unless you follow the exceptions.

If you --

REP. FOX: The likelihood of it happening in a real estate transaction's a little bit different, though.

RAPHAEL PODOLSKY: You see cases in the law, it should be all the time.

REP. FOX: I know cases that are interpreted very stringently and it's the first thing a lawyer looks for if they're trying to defend a case like that. But I will also say to you that if you're my real estate broker, you either did the deal or you didn't do the deal. It's not a quantum merita theory, unlike if you had a contract to build a pool and you put in the foundation, you had a disagreement, there were extras that you were fighting over. There's a lot more grey area in that kind of a contract.

RAPHAEL PODOLSKY: One of the things that the statute provides, some of this, and a couple of people mentioned change orders, and the sort of special problems where you have say, a good contract, and then during the course of working on the contract, the contract gets changed and yet the changes don't get incorporated in the way they're supposed to be incorporated.

000843

129
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GENERAL LAW

March 16, '1993

At some point in the past, the Legislature actually tried to deal with this. If you look at the bill itself, lines 28 to 31 in the bill, say the Commissioner, may, by regulation, dispense with the necessity for complying with the requirement that each change in the home improvement contract shall be in writing and signed by the owner and contractor.

I don't know, I was asking one of the other people whether there are any regulations and I'm told that there may not be. I don't know one way or the other whether the commissioner ever promulgated any regulations on that, but that was actually designed to be a way of letting the agency deal with change orders as sort of a separate issue. I mean, possibly, if they have not and you feel it's important they should, you might want us to change the may to shall and tell the agency you want them to address change orders. That doesn't address everything else, though. I suppose you'd say that's a small piece of the problem.

I guess I'm not sure what to add to it. You can't get a deficiency judgment under the retail installment sales financing act if you don't comply. If you do illegal leasing you can't recover rent or use and occupancy. I mean, there are a whole number of areas where we say we are putting the burden on the contractor, on the business person, to comply with the law and failure to comply puts them at their own risk.

But I would agree that if the requirements become, if what we're talking about is kind of hyper-technical violation rather than a substantive one, it might make sense to find some way out. In a sense, maybe my hyper-technical is your substantive or the other way around and drawing those lines are very, very difficult.

REP. FOX: I'm just concerned about these individual contractors who are trying to keep their head above water who may have to drive around with their lawyer in the car with them. I mean, I don't want to get crazy. It may well be that your concept of substantial compliance may be a first step, may give those folks something, may help them out a little bit.

It's a difficult issue, it really is. And I understand your argument. I guess I have a little more sympathy, maybe especially in this economy, with the groups that are out there trying to make a living and are having such difficulty. And then even if they've done their work and they've done it well, they work hard at it on a, what I think you would also agree is a technical concept, they get thrown out. There's something inequitable about that that (inaudible) me.

RAPHAEL PODOLSKY: I guess what I would say is, there may be pieces that seem technical and there can be what you might call technical violation of a substantive piece, but I think the underlying requirements that are in the act are there for very important reasons.

The, I'm sorry, as you were speaking a thought went through my head and then I've lost it.

REP. FOX: Alright. We thank you for your testimony.

RAPHAEL PODOLSKY: Thank you.

REP. FOX: Next bill HB7048, Jack Brooks.

JACK BROOKS: Chairman Fox, members of the General Law Committee, I'm Jack Brooks, executive director of the Connecticut Society of Certified Public Accountants. I'm appearing on behalf of HB7048, AN ACT CONCERNING LICENSE RENEWAL FEES FOR ACCOUNTANTS.

Our organization is grateful to Representative Fred Gelsi for introducing this bill on behalf of our smaller practitioners who are, as you may guess, are enduring some difficult economic times.

The present \$450 annual fee in addition to the cost of professional requirements they willingly accept, continuing education, quality review of their firm, is causing some hardship these days. And we do place this --

(cass 4) (cassettes 3 and 4 don't connect, small gpa)



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March 16, 1993

SENATOR TOM COLAPIETRO
REPRESENTATIVE JOHN FOX

MEMBERS OF THE GENERAL LAW COMMITTEE

SB 1037

Public Hearing Statement

S.B. No. 824 (Raised) An Act Concerning The Enforcement Of
Occupational Licensing Laws.

Industry position: Support

The housing and construction industry believes that establishing a dedicated fund for enforcement begins to strengthen the licensed trades to better serve the consumers of Connecticut.

S.B. No. 826 (Raised) An Act Concerning Uniform Building
Permit Applications.

Industry position: Support

The building industry supports this proposal and would like to offer an amendment to add all building permits to the list.

H.B. No. 7044 (Raised) An Act Concerning Recovery Of Home
Improvement Contractors.

Industry position: Support

The building industry supports the provision that work performed should be paid for.

Legal Assistance Resource Center 000935
❖ of Connecticut, Inc. ❖

Janet L. Van Tassel ❖ Executive Director

Raphael L. Podolsky
Staff Attorney

Wendy Kwalwasser
Training Coordinator

H.B. 7044 -- HOME IMPROVEMENT CONTRACTS
General Law Committee Public Hearing
March 16, 1993

Recommended Committee action: REJECTION OF THE BILL

Home improvement complaints have long been among the most common types received by DCP. The Home Improvement Act was a partial response. It requires that home improvement contractors be registered and that their contracts be in writing, contain all terms of the agreement, and include certain notices, including (since 1988) notice of the right to cancel the contract within three days. A registered contractor is expected to know these basic rules and acts at his peril if he does not follow them. The act specifically says that "no contract shall be valid or enforceable against an owner" if it fails to comply with the law.

Some contractors, however, have tried to argue that, even though they cannot be paid under the contract, they can still get paid on some other legal theory, e.g., that the consumer received benefit from the work. Our Supreme Court has rejected these arguments because they "would defeat and nullify the statute," Barrett Builders v. Miller, 215 Conn. 316 (1990), at 325. If the contractor can recover for his work anyway, what is the point of saying that the contract is void and unenforceable? A policy which allows the contractor indirectly to validate the contract undercuts the act's compliance requirement.

It is not unusual for a law to preclude a business from collecting, both directly and indirectly, when a consumer protection law has been violated. For example, a real estate agent cannot get paid a commission unless there is a written contract which complies with C.G.S. (20-325a, Thornton Real Estate, Inc. v. Lobdell, 439 A.2d 946 (1981); Good v. Paine Furniture Co., 35 Conn.Sup. 24 (1978). A car repair shop cannot be paid for work performed without the written authorization required by C.G.S. (14-65f, DiBiase v. Garnsey, 103 Conn. 21 (1925). A finance company cannot obtain a deficiency judgment after repossession of a car if it fails to comply with C.G.S. (42-98, Mack Financial Corp. v. Crossley, 209 Conn. 163 (1988).

The doctrine is a critical way of insisting that the law be complied with. The Home Improvement Act is a sufficiently important piece of consumer protection legislation that its strength should not be impaired.

-- Submitted by Raphael L. Podolsky

H.B. 7044

000936



HOUSE OF HANBURY BUILDERS INC.

THREE GENERATIONS OF PROFESSIONAL BUILDING

Additions, Remodeling & Design

3/16/93

Honorable Wayne Fox, Co-Chairman
Honorable Thomas Colapietro, Co-Chairman
Members of the General Law Committee

Re: Raised H.B. 7044, "An Act Concerning Recovery of Home Improvement Contractors".
Public Hearing Statement

My name is Robert Hanbury and I'm a registered CT Home Improvement contractor. I also serve as President of the Home Builders Association of Hartford County and past Chairmen of the Remodelors Council.

I'm writing and speaking today to express my support for H.B. 7044, an "An Act Concerning Recovery of Home Improvement Contractors" which would amend the home improvement statutes on the Remodeling Industry. This proposed legislation will cause home improvement contractors to be paid for work performed. Current CT Supreme Court rulings have determined that Home Improvement Contractors cannot collect on monies due for work performed unless their "contract" with the homeowner is in strict compliance with the applicable Home Improvement Act statutes and its contract requirements.

The inequity in the interpretation of the law occurs when a homeowner decides to not pay for work performed for what ever reason. The Court system presently will first look to see if this home improvement contract is in compliance with the statutes and thus enforceable without even looking at the merits of the contractor's claims for payment or work performed. The slightest commission of required language or the special contract requirements required of Home Improvement contractors only, will disallow the contractor's claim for payment. The homeowner may receive a project that is perfect in every construction detail but lacking a legal technicality. The end result is the homeowner doesn't have to pay the contractor and they have the court's blessing to steal from the contractor. Only a very moralistic homeowner would pay for this home improvement knowing full well that the courts would condone their "stiffing" their contractor because he didn't have an enforceable contract.

These contract requirements provide the homeowner with information that may be useful to the homeowner's decision making process when they are choosing a contractor. Once they have chosen a contractor and work has preceded, this required information or lack of information rarely impacts the progress of or final product the homeowner receives.

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The days of a "hand shake and a deal" and "consumer beware" have long passed and gratefully so. I recognize the need for written contracts and clear understanding between the parties to an agreement. But, I think the pendulum has swung to far towards the homeowner's ability to steal from the contractor with impunity and the court's blessing. When the legislature created the requirements for the home improvement act, it was striving to react to a reported 1600 or more complaints against home improvement contractors. It is now time that the legislature recognize the imbalance they have created and noted by the dissenting Supreme Court Justices in applicable court cases. These "statutes are being used by homeowners as a sword rather than a shield against contractors".

Many homeowners in the state of CT have already hit the "Home Improvement Lottery". All they did was solicit bids from contractors. Have the work performed for them. In the mean time, they heard at a cocktail party, country club gathering or bar meeting that you don't have to pay your contractor if his contract isn't in compliance with state statutes. A quick call to their lawyer revealed that their contractor's contract was not technically in compliance. Come up with any excuse for not paying and tell your contractor. Your an INSTANT WINNER!!! You can legally "stiff" your contractor and have the law on your side.

Is this fair??? Of course not and the legislature never intended this to happen. But it is happening every day to home improvement contractors in CT. Bring some fairness back into this business and allow contractors to be paid for work performed. Let the impartiality of a Judge decide the merits of a case rather than compliance with a check list of requirements unrelated to the quality of the work or the performance of the contractor.

Thank you for your time and attention. I earnestly urge you to support H.B. 7044.

Sincerely

Robert D. Hanbury

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President

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