

Legislative History for Connecticut Act

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2000

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kmg

Senate

Friday, April 28, 2000

Calendar. Without objection, so ordered.

THE CLERK:

Calendar Page 13. Calendar No. 443, Files Nos. 212 and 627, Substitute for HB5590 AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION. As amended by House Amendment Schedule A. Favorable report of the Committees on General Law, Finance Revenue and Bonding, and Judiciary. Committee recommends passage with House Amendment Schedule A, and adopts a new amendment LCO-4275.

THE CHAIR:

Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. I move the Joint Committee's favorable report and passage of the bill as amended by the House.

THE CHAIR:

Question is on passage. Will you remark? Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. At this time I would like to yield to Senator Williams for the purpose of an amendment.

THE CHAIR:

Senator Williams, do you accept the yield?

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Senate

Friday, April 28, 2000

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SEN. WILLIAMS:

Yes, Madam President, thank you. I'd like to move the amendment LCO-4275 at this time, please.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO-4275, which will be designated Senate Amendment Schedule A. It is offered by Senator Williams of the 29th district.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I move adoption.

THE CHAIR:

Question is on adoption. Will you remark?

SEN. WILLIAMS:

Yes, Madam President. This was a recommended amendment when the bill was referred to Judiciary. We didn't add it at that time so as not to slow the bill down. What it does is, it substitutes a civil penalty of treble damages for the underlying language, which is a criminal penalty for not returning a security deposit.

And it was determined that that was more in line with our statutes and our criminal versus civil penalties. And, therefore, I would then move adoption

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of the amendment.

THE CHAIR:

Question is on adoption. Will you remark further?
Will you remark further? If not, I will try your
minds. All those in favor indicate by saying -- excuse
me. Senator Upson.

SEN. UPSON:

Thank you, Madam President. Through you to Senator
Williams. Security deposits for leases or rental
property, or for personal property? Through you, Madam
President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I don't have the
underlying bill in front of me, since I really regarded
this as a technical amendment. But if we want to stand
at ease, I'll take a look at the bill and --

SEN. UPSON:

No, if you'll just explain --

THE CHAIR:

Senator Upson.

SEN. UPSON:

Through you, Madam President. Just explain it once
more then. You say, it's treble damages if someone

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doesn't return a security deposit? Through you, Madam President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Yes, Madam President, through you. Yes, it's treble damages right now, as opposed to a criminal penalty.

THE CHAIR:

Senator Upson.

SEN. UPSON:

So, I'm assuming, thank you. I'm assuming it applies to real estate transactions?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Or any transaction for which a security deposit would be appropriate, yes.

SEN. UPSON:

Thank you.

THE CHAIR:

Thank you, sir. Will you remark further? Will you remark further? If not, all those in favor indicate by saying aye?

SENATORS:

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Aye.

THE CHAIR:

Opposed nay? The aye's have it. Senate A is
adopted. Will you remark further on the bill as
amended? Will you remark further? Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. I would ask the Clerk
to call LCO-4760, please.

THE CLERK:

LCO-4760, which will be designated Senate Amendment
Schedule B. It is offered by Senator Colapietro of the
31st district.

THE CHAIR:

Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. The amendment here
allows the reimbursement of the fees that were paid
inadvertently due to the cause of what happened to a
bill last year which I would explain when the bill comes
out.

THE CHAIR:

Thank you, sir. Will you remark further? Will you
remark further on Senate Amendment B? Senator Upson.

SEN. UPSON:

I'll be over in a second.

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THE CHAIR:

I beg your pardon?

SEN. UPSON:

If you'd just stand at ease while I get a copy of the amendment.

THE CHAIR:

The Chamber will stand at ease for a moment.

SEN. UPSON:

Thank you very much, Madam President.

THE CHAIR:

Thank you, Senator Upson. Will you remark further? If not, I will try your minds. All those in favor indicate by saying aye?

SENATORS:

Aye.

THE CHAIR:

Opposed nay? The aye's have it. Senate B is adopted. Will you remark further on the bill as amended? Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. Last year we passed a bill that registered contractors for new home building, new home builders. And inadvertently they were paying registration fees. And that's what the amendment is doing, correcting that. And we are also correcting that

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Calendar Page 12. Calendar No. 237, Substitute for SB571.

Calendar Page 13. Calendar No. 443, Substitute for HB5590.

Calendar No. 476, Substitute for HB5531.

Calendar Page 14. Calendar No. 104, Substitute for SB154.

And, Calendar Page 15, Calendar No. 140, SB558.

Madam President, that completes today's Consent Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a roll call vote on the Consent Calendar. The machine will be open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. Clerk, please announce the tally.

THE CLERK:

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Motion is on adoption of Consent Calendar No. 1.

Total Number Voting	36
Those Voting Yea	36
Those Voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar is adopted. Are there any points of personal privileges or announcements? Senator Crisco.

SEN. CRISCO:

Thank you, Madam President. For the purpose of announcement. I'd like to inform the members of the Appropriations Committee that after adjournment we will meet in room 310 to take action on five bills referred from the House to the Senate. And the House will go into recess as soon as we adjourn.

THE CHAIR:

Thank you, sir. Are there other announcements?

SEN. PRAGUE:

Madam President?

THE CHAIR:

Senator Prague.

SEN. PRAGUE:

Thank you. I'd like to announce that the Labor Committee will hold a meeting on Monday, fifteen minutes

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2000

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PART 7
1962-2371

House of Representatives

Thursday, April 13, 2000

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

SPEAKER PRO TEMPORE HARTLEY:

Have all the members voted? Please check the roll call machine to see that your vote is recorded and properly.

If all the members have voted, the machine will now be locked. The Clerk will please take a tally.

The Clerk will please announce the tally.

CLERK:

House Bill 5884, as amended by House Amendment Schedule "A" and Senate Amendment "A" in concurrence with the Senate

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	141
Those voting Nay	7
Those absent and not Voting	3

SPEAKER PRO TEMPORE HARTLEY:

The bill, as amended is passed.

Will the Clerk please return to the call, Calendar 196.

CLERK:

On page 25, Calendar 196, Substitute for House Bill

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Number 5590, AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION. Favorable Report of the Committee on Finance, Revenue and Bonding.

SPEAKER PRO TEMPORE HARTLEY:

Representative Feltman, you have the floor, sir.

REP. FELTMAN: (6TH)

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

SPEAKER PRO TEMPORE HARTLEY:

The question before the Chamber is on acceptance and passage. Will you remark, sir?

REP. FELTMAN: (6TH)

Yes, Madam Speaker. This basically is a fine tuning of a bill that we passed last year for creating a new home warranty fund for buyers of new homes.

And this is just some technical amendments to that bill.

I would like to call LCO Number 3687 and that I be given permission to summarize.

SPEAKER PRO TEMPORE HARTLEY:

The Clerk is in possession of LCO 3687, to be designated House "A". Will the Clerk please call?

CLERK:

LCO Number 3687, House "A" offered by

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Representatives Feltman, Prelli, Fritz.

SPEAKER PRO TEMPORE HARTLEY:

Representative Feltman has asked leave to summarize. Without objection, please proceed.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. What this amendment does is clarify a couple of items in the underlying bill.

It clarifies that somebody who is building a home with no expectation of profit is not a new home contractor for the purpose of this act. It exempts mobile home installers from being considered new home contractors and it clarifies that workers' compensation coverage is only required for those new home contractors who are required by law to have workers' compensation coverage. Say that three times fast.

SPEAKER PRO TEMPORE HARTLEY:

You're doing very well.

REP. FELTMAN: (6TH)

So, that's the purpose of the amendment and I'd ask for approval of that amendment.

SPEAKER PRO TEMPORE HARTLEY:

The question is adoption of House Amendment "A". Will you remark on House Amendment "A"?

If not, I will try your minds.

All those in favor, please indicate by saying aye.

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REPRESENTATIVES:

Aye.

SPEAKER PRO TEMPORE HARTLEY:

Those opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill?

Representative Feltman.

REP. FELTMAN: (6TH)

Okay, thank you. And basically what the bill does, as amended, is it clarifies when a new home is built it clarifies that this act takes effect from the time of completion when it obtains a certificate of occupancy, some technical things about what the builder has to report and expanding certain exemptions from the bill and I ask approval of the bill.

It's a good bill and it was unanimously approved by the General Law Committee and by the Finance Committee. It has been supported by the industry and by the Department of Consumer Protection and the Attorney General.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, Representative Feltman.

Will you remark further on the bill? Will you remark further on the bill?

Representative Prelli.

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REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, through you, question to the proponent.

SPEAKER PRO TEMPORE HARTLEY:

Please frame your question, sir.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Through you. Representative Feltman, I see on line 13 of the bill that a new home construction contractor is anyone who constructs or sells a new home. It seems to me that that would include any real estate agent that's out there working. How are we excluding them in this?

Through you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam Speaker. I refer Representative Prelli to line 32 through 35 of the bill that specifically includes realtors.

The reason that that language is up there in line 13 is in order to cover homes that are built on speculation where the contract isn't entered into until the home is completed. So in order to accomplish that we had to use the word "sale", but then we have exclusions down below.

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So we have to exempt it from the bill.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, sir.

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. And I just wanted to make sure that we stated that for legislative intent because I think if you read this out.

The only other question I would have then is if I decide to build a new home and I go out and hire a contractor and he builds the new home for me, but I never move into that home and I go and I sell that home before I ever move in, am I then a new home construction contractor?

Through you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam Speaker. I would refer you to the amendment that we adopted, line 3 and 4. If you're engaging in the business for the purpose of compensation or profit, if you haven't constructed the home for the purpose of achieving compensation or profit, then you're not a new home contractor under the bill.

SPEAKER PRO TEMPORE HARTLEY:

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Thank you, sir.

Representative Prelli.

REP. PRELLI: (63RD)

But, Madam Speaker, through you, again to continue this debate with Representative Feltman, it would seem to me that I might get a profit and I might make a profit and I might have constructed the home and I will get a profit and I just want to make sure that we're not -- again, I might have built the house. It might have cost me \$100,000 and I want to sell it for \$150,000 because I can't afford to move into it. I think that -- I just want, for legislative intent, that we're making sure that any individual who builds a house themselves and then sells it is not going to be included in this.

Through you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam Speaker. You have, Representative Prelli, correctly stated the intent of the bill and I think the bill is also reflected in the language for the purpose of and although there maybe an incidental profit for someone who engages in these kinds of activities without an intention to derive a profit, it's really the intent of the party building the house

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that governs here.

And I thank you for clarifying that on the record.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, sir.

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. And I thank the gentleman for clarifying the intent also. I just wanted to make sure that some place down the road we weren't going to nail somebody improperly.

Thank you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Thank you.

Will you remark further on the bill? Will you remark further on the bill?

Representative Johnston of the 51st district. You have the floor, sir.

REP. JOHNSTON: (51ST)

Thank you, Madam Speaker. Madam Speaker, I stand in strong support of this bill as it has been worked out. I thank Representative Feltman and Representative Fox.

I know that last year when we passed this bill we inadvertently pretty much put a double whammy on someone who is a home improvement contractor and also a new home

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contractor and we've gone back and we looked at it and we corrected this and I just wanted to offer my thanks to all involved in this and this certainly is a much better product.

Thank you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, sir.

Will you remark further?

If not, staff and guests, please come to the well.

Members, please take your seats. The machine will be opened now.

CLERK:

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

SPEAKER PRO TEMPORE HARTLEY:

Have all the members voted? Please check the roll call machine to see that your vote is recorded and properly.

If so, the machine will now be locked. The Clerk will please take a tally.

The Clerk will please announce the tally.

CLERK:

House Bill Number 5590, as amended by House Amendment Schedule "A"

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Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not Voting	5

SPEAKER PRO TEMPORE HARTLEY:

The bill, as amended is passed.

Will the Clerk please call Calendar 380.

CLERK:

On page 10, Calendar 380, Substitute for Senate Bill Number 376, AN ACT CONCERNING THE REGULATION OF FEES CHARGED BY LICENSED PUBLIC ACCOUNTANTS. Favorable Report of the Committee on General Law.

SPEAKER PRO TEMPORE HARTLEY:

Representative Pawelkiewicz, you have the floor, sir. If you depress your mic button, that would facilitate things.

REP. PAWELKIEWICZ: (49TH)

Is that better?

SPEAKER PRO TEMPORE HARTLEY:

That is perfect, sir.

REP. PAWELKIEWICZ: (49TH)

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

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GEN. ASSEMBLY
HOUSE

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2000

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House of Representatives

Monday, May 1, 2000

Elderly Services which gives a great history of elderly services here in Connecticut. It's a good resource document.

And finally, for those colleagues of mine who wish to learn about Older Americans Month activity in their locality, please contact anybody at the Elderly Services Division or the Area Agency on Aging in their districts.

Madam Speaker, thank you very much for your courtesy and time. We're through for now. Thank you.

SPEAKER LYONS:

Thank you, sir. We appreciate you're bringing this important issue to our attention and thank you for arranging this.

Would the Clerk please call Calendar 196.

CLERK:

On page 31, Calendar 196, Substitute for House Bill Number 5590, AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION, as amended by House Amendment Schedule "A" and Senate Amendment Schedules "A" and "B".

Favorable Report of the Committee on Judiciary.

SPEAKER LYONS:

Representative Feltman, you have the floor, sir.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. I ask for acceptance of the committee's joint favorable report and passage of

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the bill.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark?

REP. FELTMAN: (6TH)

Yes, Madam Speaker. This is the new home construction implentor that we had of the bill that we adopted last session. We set up a warranty fund for those who have been injured in some way by new home construction.

And we adopted this bill a couple of weeks ago. In its travels to the Senate, there were some amendments adopted which I would like to call and explain to this Chamber.

The Clerk has in his possession LCO Number 4275. Would the Clerk call that amendment and may I be allowed to summarize?

SPEAKER LYONS:

The Clerk has in his possession LCO 4275 previously designated Senate "A". Would the Clerk please call. The gentleman has asked leave to summarize.

CLERK:

LCO Number 4275, Senate "A" offered by Senator Williams and Representative Lawlor.

SPEAKER LYONS:

gmh

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Representative Feltman.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. This was an amendment suggested by the Judiciary Committee that suggested that this - rather than having a criminal penalty for failure to return a deposit, that it be a civil penalty and the rest of the matters involved in this bill are civil matters. So I would ask for approval of this amendment.

SPEAKER LYONS:

The question before the Chamber is on adoption of the amendment. Will you remark? Will you remark on adoption of the amendment that is before us?

If not, I will try your minds.

All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill, as amended?

Representative Feltman.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. The Senate has also adopted Senate Amendment "B" which is LCO 4760 and I ask for that to be called and for leave to summarize.

SPEAKER LYONS:

The gentleman has asked for LCO 4760, previously designed Senate "B". Would the Clerk please call and the question before us is on summarization.

CLERK:

LCO Number 4760, Senate "B" offered by Senator Colapietro.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. In the new version that we did this year, Madam Speaker, we limited the number of people who are required to register as new home construction contractors. What the Senate did in "B" was to allow those people who are now exempt from the act to retroactively get their refund back, to get their licensing fee back because they are no longer covered by the act. This seems reasonable. According to Fiscal Analysis, it has a minimal fiscal impact and I move adoption.

SPEAKER LYONS:

Thank you, sir. The question before the Chamber is on adoption. Will you remark? Will you remark on the amendment that is before us?

Representative Prelli.

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REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, through you, a question to the proponent.

SPEAKER LYONS:

Please frame your question, sir.

REP. PRELLI: (63RD)

Through you, Madam Speaker, do we know how many people this is going to effect?

Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. I do not have a numerical answer to that question. I just know that the changes that we made this year was that people who are licensed to conduct trades, but who do not undertake to be general contractors of the whole home, are no longer considered new home construction contractors as long as their work is limited to that trade, but if they do less than \$3,500 worth of work, they are no longer considered a new home construction contractor. And if they install a mobile home, they are no longer considered a new home construction contractor.

So those are the three classes of people who will be effected by this amendment. I don't have a numerical

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count as to how many they are. I do know the Department of Consumer Protection, which is responsible for depositing these funds is supportive of this amendment.

SPEAKER LYONS:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Then, through you, Madam Speaker, does the gentleman have a fiscal note on this?

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. The fiscal note says it will have a nominal effect.

SPEAKER LYONS:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. That's what I needed to know.

SPEAKER LYONS:

Thank you, sir.

Will you remark further on the amendment that is before us? Will you remark further?

If not, I will try your minds.

All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill, as amended?

Will you remark further on the bill, as amended?

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, I apologize for not getting up on the amendment before - on Senate "A" before we passed it. But I believe Senate "A" is flawed and maybe we can do it by legislative intent rather than having to redraw the whole amendment and run the bill.

Madam Speaker, through you to Representative Feltman.

SPEAKER LYONS:

Please proceed with your question. I'm assuming that's what we're doing.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Representative, in lines 3 and 4 of the amendment it says it will strike an opening bracket in 223 and omit this public -- and put in Public Act 99-246, as amended by this act.

Could you tell me where that fits in line 243?

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Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. It's after the word "subsection". And prior to the word "shall".

SPEAKER LYONS:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. So then just for intent and I'm not sure -- and hopeful we can say it's an error by LCO. What we're trying to do in that, that Senate Amendment, is to actually remove the closing bracket and Public Act 99-246 as amended by this act. Is that correct?

Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. Yes, I think the bracket is the wrong way. I think you're right, Representative Prelli and the purpose here - for purpose of legislative intent is to make a violation of subsection 7, a civil rather than a criminal penalty. In the original file copy it says class A misdemeanor. In

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the new Senate amendment it's a civil penalty up to a maximum of triple damages.

Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. And I wanted to get that on record for legislative intent before we run the bill because I think the gentleman is right. I think that was just an error by LCO and we can -- hopefully they can read in that we can strike that. If not, I think we're going to have take care of this in another bill. We were looking at redrawing this whole amendment, but we didn't get the amendment in time and I apologize to the gentleman for not bringing this up with him while we reading the amendment, but I believe by the legislative intent, I think we can take care of that.

Thank you.

SPEAKER LYONS:

Thank you, sir.

Will you remark further on the bill, as amended?

Representative Ward.

REP. WARD: (86TH)

Yes, Madam Speaker. Through you, a question to the proponent of the bill, as amended.

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SPEAKER LYONS:

Please frame your question, sir.

REP. WARD: (86TH)

Thank you, Madam Speaker. Through you.

Representative Feltman, with the addition of Senate "A" in providing for treble damages, and I was trying to quickly check it against the file section, can you tell me what the treble damages is measured against? In other words, does the person have to have suffered actual damages from a violation of the act or are there some minimum damages even if there is no actual loss to the consumer?

Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. The normal measure of treble damages is compensatory damages, the actual out of pocket - actual loss experienced by the homeowner and then multiplying that by a multiple for a punitive - to measure a punitive amount. So it would be whatever their loss would be. I would assume in this case, failure to refund a deposit would probably be the amount of the deposit and then multiply by three.

SPEAKER LYONS:

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Representative Ward.

REP. WARD: (86TH)

Through you, Madam. Speaker. Am I correct then, that this treble damage only applies to the failure to return the deposit when you're required to return the deposit?

Through you, Madam. Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Through you, Madam. Speaker. Yes.

SPEAKER LYONS:

Representative Ward.

REP. WARD: (86TH)

I thank the gentleman for his answer, Madam Speaker.

SPEAKER LYONS:

Will you remark further on the bill, as amended?

Will you remark further on the bill, as amended?

If not, will staff and guests come to the well?

Members, take your seats. The machine will be opened.

CLERK:

Have all the members voted? Have all the members voted? If all the members have voted, please check the board to make sure your vote is accurately recorded. If

gmh

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House of Representatives

Monday, May 1, 2000

all the members have voted, the machine will be locked and the Clerk will take a tally.

The Clerk will please announce the tally.

SPEAKER LYONS:

Have all members voted? If all members have voted, please check the machine to make sure your vote is properly recorded. The machine will be locked and the Clerk will take a tally. Representative Lawlor, how would you like to be recorded?

REP. LAWLOR: (99TH)

In the affirmative, Madam Speaker.

SPEAKER LYONS:

Representative Lawlor in the affirmative. Representative Martinez, how would you like to be recorded?

REP. MARTINEZ: (95TH)

In the affirmative, Madam Speaker.

SPEAKER LYONS:

Representative Martinez in the affirmative.

Will the Clerk please announce the tally?

CLERK:

House Bill Number 5590, as amended by House Amendment Schedule "A" and Senate Amendment Schedules "A" and "B" in concurrence with the Senate

Total Number Voting

151

gmh

57

House of Representatives

Monday, May 1, 2000

Necessary for Passage	76
Those voting Yea	150
Those voting Nay	1
Those absent and not Voting	0

SPEAKER LYONS:

The bill, as amended passes.

Will the Clerk please call Calendar 514.

CLERK:

On page 30, Calendar 514, Substitute for Senate Bill Number 613, AN ACT CONCERNING ASSIGNMENT OF MUNICIPAL TAX LIENS. Favorable Report of the Committee on Planning and Development.

SPEAKER LYONS:

Representative McDonald, you have the floor, Madam.

REP. MCDONALD: (148TH)

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

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark?

REP. MCDONALD: (148TH)

Yes, Madam Speaker. This bill is really quite simple. It bars any entity that the municipality hires to collect tax money from charging anymore than 18%

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STANDING
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HEARINGS

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You know, how come you're so kind to me and getting me out of here in a hurry?

REP. FOX: You're always nice to me.

SEN. GUNTHER: In all seriousness, thank you. But I hope you can take a look at it and get an amendment on the damn thing and get something done up here, instead of band aids.

REP. FOX: Thank you. Attorney General Blumenthal. Good morning.

ATTY GENERAL RICHARD BLUMENTHAL: Thank you, Chairman Fox, Chairman Colapietro, and members of the committee. I am honored, as always, to follow the distinguished senior Senator from the state of Connecticut.

My former, as a matter of fact, my former neighbor in the state Senate, Doc Gunther, and to be with you today on a number of the same proposals, actually, that he raised.

And I would simply join him at the outset in urging the Connecticut public to be more aware and knowledgeable about the numbers given every year in our report about the percentages of money actually going to charitable organizations that Connecticut consumers very generously want to support.

Those percentages are more or less the same every year. Have been for the last ten, twelve years. And show that only 30% on average, of dollars contributed through telephone solicitations, paid telephone solicitors, go to the charitable organizations.

Seven cents out of every dollar goes to the paid solicitor. And so, I thank Doc Gunther for once again raising that issue on which we very genuinely, and strongly agree.

I want to also say that I join him in my concern about telephone solicitation generally. And one of the proposals before you, SB365, would establish a, do not call, list for the state of Connecticut, so

HB 5591
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HB 5594
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HB 5587

HB 5593

Protections that are not preempted by federal law.

Protections that would, for example, prohibit minimum gallon purchase requirements that have been used by the big oil dealers from out of state in driving some of the smaller dealers, here in Connecticut, out of business.

And, on charitable solicitations that Doc Gunther raised, we have some amendments. We'd be happy to work with him or others on requirements that meet the constitutional test that would provide for additional protections.

But HB5593 are largely technical requirements. And we have worked with ECP on those technical changes.

And, HB5590, likewise we worked with the Department of Consumer Protection, which had last week, a very, very successful sting operation involving the state police, local police forces.

The Department of Consumer Protection, very fortunately and commendably is pursuing these cases more aggressively. And along with my office prosecuting them, and we believe sending a message, Doc Gunther didn't mention, but very importantly, in the wake of this sting operation, more than 150 of the home improvement contractors called to register.

And so, these prosecutions have an important deterrent effect. And we hope that the changes that we're proposing in the new home construction act, for example, applying these requirements to spec homes, will broaden the protections for consumers.

Let me finish on what I think is the most important, although these all are important, of the areas that I want to bring to your attention embodied in HB5587, AN ACT PROTECTING SENSITIVE FINANCIAL INFORMATION OF CONSUMERS AND PROHIBITING JUNK ELECTRONIC MAIL.

This committee is no stranger to this topic. We have discussed it, you and I. In past years you have taken the lead in approving legislation that

important. We've already taken care of that. But we will find out, to help Peter with his questions.

REP. METZ: Thank you. And I just want to say, I'm very pleased to hear that you're looking into the other areas. If indeed these cards are now associated with this additional information which, you know, the overwhelming majority of Americans would certainly deem as personal, to say that people have a right to protect that information, I think would be a great step. Thank you.

TOM CASEY, SR.: Chairman Fox, Senator Colapietro. I didn't know that I was going to get called right away, but. I have two that I'm concerned about, HB5590. On bill HB5590 the modification lines 40 through 42, talk about persons who have license registered under SB393, have to have a guaranteed fund.

(SB367)

My objection to this is, we all have to go before the Department of Consumer Protection, of which I'm a member of the hearing board. And we're already required to pay restitution.

I have a, one of the complaints here so I can just -- the board for the 390 through licenses can impose a civil penalty. It can impose a order of restitution, revocation or suspension of your license, reprimand of probation or the issuance of immediate discontinuance of the violations found.

So in this contractor's bill, I don't see why licensed people, that are licensed under the SB393 regulation need to be included in bill HB5590. And I would oppose the bill if they're included.

And if we could make a modification that people that are already licensed under the SB393 regulation, are not included. Then I could support that bill.

REP. FOX: We actually have you down to talk on SB367.

TOM CASEY, SR.: On SB367, I'm here just to say, I support it in the condition it's in as of this time.

000157



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
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860/232-1905 • Fax 860/232-3102
<http://www.hbact.com>

February 24, 2000

To: Senator Thomas A. Colapietro, Co-Chairman
Representative John W. Fox, Co-Chairman
Members of the General Law Committee

From: William H. Ethier, Executive Vice President & General Counsel

Re: **Raised Bill No. 367, AAC Sheet Metal Workers And New Home Construction**

The HBA of Connecticut is a professional trade association with eight hundred fifty (850) member firms statewide, representing approximately 44,000 employees. Our members are residential and commercial builders, land developers, general contractors, remodelers, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We are the voice of the home building industry in this state. We have also established local and state Remodelers Councils that are affiliated with the National Remodelers Council of the National Association of Home Builders. Remodelers are a major class of registered home improvement contractors and one of the HBA of Connecticut's core constituencies.

Section 2 of this bill provides an exemption from the new home construction contractors act that went into effect on October 1, 1999. **However, the exemption proposed by this bill is much greater than the exemption contained in Raised Bill 5590.** We have filed written comments on Raised Bill 5590 explaining our support of that bill. We believe the exemption of certain types of contractors contained in Raised Bill 5590 serves both the home building industry and consumers better than the exemption contained in this bill. **We respectfully urge the committee to compare the two exemptions (lines 37 to 42 of Raised Bill 5590 and section 2 of Raised Bill 367) and pass out that contained in bill 5590.**

Thank you for considering our views on this important matter.

Connecticut Association of REALTORS® , Inc.

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February 24, 2000

Statement on

Raised Bill No. 5590: An Act Concerning Consumer Protection for New Home Construction

Statement in Favor of Bill

Submitted to the General Law Committee

By

Connecticut Association of REALTORS®, Inc.

The Association supports the passage of Bill 5590. The Bill has a number of improvement to the legislation passed last year.

1. In redefining the term "consumer" the "original" buyer loophole is eliminated.
2. The definition of "Contract" is changed to include the wording "or sale" of a new home thus including all new construction, both contract and speculative new homes.
3. The term "new home" is more clearly defined eliminating applicability to existing two unit buildings and condominiums.
4. Real Estate licensees and licensed trades are exempted as are contractors where the total aggregate contract amount is less than \$5,000.
5. In that the contractor is required to provide the consumer a copy of the certificate of registration it is reasonable to eliminate the requirement of including the registration number in advertising.
6. Advising the consumer to ask for a list of references is more practical than providing a list of the most 15 recent customers.

The Bill clarifies the intent of the legislation passed last year eliminating areas of conflict and confusion. The Association urges your support.

Contact: Timothy J. Calnen
Vice President of Government Affairs



The Voice for Real Estate™ in Connecticut
REALTOR® -- is a registered mark which identifies a professional
In real estate who subscribes to a strict Code of Ethics as a member of the National Association of REALTORS®

**STATE OF CONNECTICUT***DEPARTMENT OF CONSUMER PROTECTION***TESTIMONY OF THE DEPARTMENT OF
CONSUMER PROTECTION
GENERAL LAW COMMITTEE
THURSDAY, FEBRUARY 24, 2000**H.B. No. 5590 (RAISED) An Act Concerning Consumer
Protection For New Home Construction.

Agency position: support portions of bill

The agency supports the exempting out of those licensed occupations and professions for the purposes of performing the jobs for which they are qualified, tested and licensed. This has been simply and accurately done in Senate Bill 367, for new home construction as well as sheet metal licensing.

The department also supports closing the loophole for "spec" builders, who were unfortunately exempted in the enabling act last year.

The department opposes the following portions of this bill:

1. Section 2: exempted occupational and professional licensees should not be required to contribute to the guaranty fund;
2. Section 4: for consistency with the home improvement act, new home builders should not be exempt from including registration numbers in their advertising.

Attached is additional language offered by the department to strengthen and clarify the act. Chief among these suggestions is a proposal to exempt home improvement contractors from the \$120 general fund renewal fee for obtaining an additional registration from the state to engage in new home construction. These 800 or so contractors were exempted from this fee when they initially applied for this registration

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and will be quite unhappy at the prospect of paying an additional \$120 fee on top of the \$480 guaranty fund fee when they renew.

PROPOSED AMENDMENTS TO PA 99-246

An Act Concerning Consumer Protection for New Home Construction.
Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. As used in this act:

- (1) "Certificate" means a certificate of registration issued under section 3 of this act;
- (2) "Commissioner" means the Commissioner of Consumer Protection or any person designated by the commissioner to administer and enforce this act;
- (3) "Contract" means any agreement between a new home construction contractor and a consumer for the construction of a new home;
- (4) "New home construction contractor" means any person who contracts with a consumer to construct a new home or any portion of a new home prior to **occupancy, OR ANY PERSON WHO BUILDS OR ARRANGES THE BUILDING OF A HOME OR HOMES FOR FUTURE SALE OR RENT, COMMONLY KNOWN AS A DEVELOPER OR SPECULATION HOUSE BUILDER;**
- (5) "New home" means any newly constructed single family dwelling unit, any dwelling consisting of not more than two units, or a unit, common element or limited common element in a condominium, as defined in section 47-68a of the general statutes, or in a common interest community, as defined in section 47-202 of the general statutes;
- (6) "Person" means one or more individuals, partnerships, associations, corporations, limited liability companies, business trusts, legal representatives or any organized group of persons; and
- (7) "Consumer" means the original or prospective buyer, or the original or prospective buyer's heirs or designated representatives, of any new home.

Sec. 2. (a) No person shall engage in the business of new home construction or hold oneself out as a new home construction contractor unless such person has been issued a certificate of registration by the commissioner in accordance with the provisions of this act. No new home construction contractor shall be relieved of responsibility for the conduct

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and acts of its agents, employees or officers by reason of such new home construction contractor's compliance with the provisions of this act.

(b) Any person seeking a certificate of registration shall apply to the commissioner, in writing, on a form provided by the commissioner. The application shall include the applicant's name, residence or business address, business telephone number and the identity of the insurer that provides the applicant with insurance coverage for liability based upon the errors and omissions of the new home construction contractor. Each such application shall be accompanied by a fee of one hundred twenty dollars, except that no such application fee shall be required if such person has paid the registration fee required under section 20-421 of the general statutes, as amended by this act, during any year in which such person's registration as a new home construction contractor would be valid.

(c) Certificates issued to new home construction contractors shall not be transferable or assignable.

(d) All certificates issued under the provisions of this act shall expire biennially. **The fee for renewal of a certificate shall be the same as the fee charged for an original application, except as provided in subsection (c) of section 9 of this act, AND EXCEPT THAT NO RENEWAL FEE SHALL BE REQUIRED IF SUCH PERSON HAS PAID THE REGISTRATION FEE UNDER SECTION 40-427 OF THE GENERAL STATUTES DURING ANY YEAR IN WHICH SUCH PERSON'S REGISTRATION AS A NEW HOME CONSTRUCTION CONTRACTOR WOULD BE VALID.**

[(e) A certificate shall not be restored unless it is renewed not later than one year after its expiration.]

[(f)] (e) Failure to receive a notice of expiration or a renewal application shall not exempt a contractor from the obligation to renew.

Sec. 3. The commissioner may revoke, suspend, or refuse to issue or renew any certificate issued pursuant to this act or place a registrant on probation or issue a letter of reprimand after notice and hearing in accordance with the provisions of chapter 54 of the general statutes concerning contested cases if it is shown that the holder of such certificate has: (1) Failed to comply with any provision of this act or any regulation adopted pursuant to this act; (2) obtained the certificate through fraud or misrepresentation; (3) engaged in conduct of a character likely to mislead, deceive or defraud the public or the commissioner; (4) engaged in any untruthful or misleading advertising; (5) failed to reimburse the New Home Construction Guaranty Fund established pursuant to section 9 of this act for any moneys paid to a consumer pursuant to section 9 of this act; (6) engaged in an unfair or deceptive business practice under subsection (a) of section 42-110b of

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the general statutes; (7) failed to timely complete any task, as specified in a written contract of sale; (8) failed to remedy any violation of any provision of sections 47-116 to 47-121, inclusive, of the general statutes or any regulation adopted pursuant to said sections 47-116 to 47-121, inclusive; (9) failed to remedy any violation of any provision of the State Building Code; or (10) if applicable, failed to maintain its certificate of good standing issued by the office of the Secretary of the State.

Sec. 4. (a) A new home construction contractor shall (1) prior to entering into a contract with a consumer for new home construction, provide to the consumer a copy of the new home construction contractor's certificate of registration and a written notice that (A) discloses that the certificate of registration does not represent in any manner that such contractor's registration constitutes an endorsement of the quality of such person's work or of such contractor's competency by the commissioner, (B) advises the consumer to contact the Department of Consumer Protection to determine (i) if such contractor is registered in this state as a new home construction contractor, (ii) if any complaints have been filed against such contractor, and (iii) the disposition of any such complaints, and (C) advises the consumer to request from such contractor a list of each individual or the fifteen most recent individuals, whichever is **[less] FEWER** for whom such contractor has engaged in new home construction during the current and preceding calendar year and to contact several individuals on the list to discuss the quality of such contractor's new home construction work, (2) state in any advertisement, including any advertisement in a telephone directory, the fact that such contractor is registered, and (3) include such contractor's registration number in any such advertisement.

(b) A new home construction contractor shall include in every contract with a consumer a provision advising the consumer that the consumer may be contacted by such contractor's prospective consumers concerning the quality and timeliness of such contractor's new home construction work, unless the consumer advises such contractor, in writing, at the time the contract is executed, that the consumer prefers not to be contacted.

(c) The written notice required in subsection (a) of this section shall be in capital letters not less than ten-point bold face type, and may include a statement in substantially the following form:

"NEW HOME CONSTRUCTION CONTRACTOR
REGISTRATION NOTICE

A CERTIFICATE OF REGISTRATION AS A NEW HOME CONSTRUCTION
CONTRACTOR DOES NOT REPRESENT IN ANY MANNER THAT THE
CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION

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ENDORSES THE QUALITY OF THE CONTRACTOR'S NEW HOME CONSTRUCTION WORK OR THE CONTRACTOR'S COMPETENCY TO ENGAGE IN NEW HOME CONSTRUCTION.

ACCORDINGLY, YOU ARE ADVISED TO:

- (1) REQUEST FROM THE CONTRACTOR A LIST OF EACH INDIVIDUAL OR THE FIFTEEN MOST RECENT INDIVIDUALS, WHICHEVER IS **[LESS] FEWER**, FOR WHOM THE CONTRACTOR HAS ENGAGED IN NEW HOME CONSTRUCTION IN THIS STATE DURING THE CURRENT AND PRECEDING CALENDAR YEAR,
- (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO DISCUSS THE QUALITY AND THE TIMELINESS OF THE CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND
- (3) CONTACT THE DEPARTMENT OF CONSUMER PROTECTION TO VERIFY THE REGISTRATION INFORMATION PRESENTED BY THE CONTRACTOR AND TO ASCERTAIN THE CONTRACTOR'S COMPLAINT HISTORY WITH THE DEPARTMENT.

IN ADDITION, YOU ARE ADVISED TO DISCUSS WITH THE NEW HOME CONSTRUCTION CONTRACTOR:

- (1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE POLICY AND IF SO, THE IDENTITY OF THE PERSON DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT ABOUT THE CONTRACTOR'S WORK, AND

(2) [WHETHER THE CONTRACTOR WILL HOLD YOU HARMLESS] THE CONTRACTOR'S RESPONSIBILITY FOR WORK PERFORMED BY ANY SUBCONTRACTOR HIRED BY THE CONTRACTOR.

THIS NOTICE DOES NOT CONTAIN AN EXHAUSTIVE LIST OF THE INQUIRIES YOU SHOULD MAKE BEFORE CONTRACTING WITH A NEW HOME CONSTRUCTION CONTRACTOR. ADDITIONAL INFORMATION TO ASSIST YOU IN YOUR SELECTION OF A NEW HOME CONSTRUCTION CONTRACTOR MAY BE OBTAINED BY CONTACTING THE CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION."

- (d) No person shall: (1) Present, or attempt to present as such person's own, the certificate of another; (2) knowingly give false evidence of a material nature to the commissioner for the purpose of procuring a certificate; (3) represent such person falsely as, or impersonate, a registered new home construction contractor; (4) use or attempt to use a certificate which has expired or which has been suspended or revoked; (5) engage in the business of a new home construction contractor or hold oneself out as a new home construction contractor without having a current certificate of registration under this act; (6) represent in any manner that such person's registration constitutes an endorsement of the quality of such person's work or of such person's competency by the commissioner; or (7) fail to refund a deposit paid to a new home construction contractor not later than ten days after a written request

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mailed or delivered to the new home construction contractor's last known address, if (A) the consumer has complied with the terms of the written contract up to the time of the request, (B) no substantial portion of the contracted work has been performed at the time of the request, (C) more than thirty days has elapsed since the starting date specified in the written contract or more than thirty days has elapsed since the date of the contract if such contract does not specify a starting date, and (D) the new home construction contractor has failed to provide a reasonable explanation to the consumer concerning such contractor's failure to perform a substantial portion of the contracted work. For purposes of this subdivision, "substantial portion of the contracted work" includes, but is not limited to, work performed by the new home construction contractor to (i) secure permits and approvals, (ii) redraft plans or obtain engineer, architect, surveyor or other approvals for changes requested by the consumer or made necessary by site conditions discovered after the contract is executed, (iii) scheduling site work or arranging for other contractors to perform services related to the construction of the consumer's new home, and (iv) any other work referred to in the contract as a "substantial portion of the contracted work."

Sec. 5. In addition to any other remedy provided for in this act, any person who violates any provision of subsection (d) of section 4 of this act, except subdivision (7) of said subsection (d) shall be guilty of a class A misdemeanor. Notwithstanding subsection (d) of section 53a-29 or section 54-56e of the general statutes, if the court determines that a contractor cannot fully repay any victim of the violations committed by the contractor within the period of probation established in subsection (d) of section 53a-29 or section 54-56e of the general statutes, the court may impose probation for a period of not more than five years.

Sec. 6. The commissioner may, after notice and hearing in accordance with the provisions of chapter 54 of the general statutes, impose a civil penalty on any person who engages in or practices the work for which a certificate of registration is required by this act without having first obtained such a certificate of registration or who engages in or practices any of the work for which a certificate of registration is required by this act after the expiration of such person's certificate of registration or who violates any of the provisions of this act or the regulations adopted pursuant to this act. Such penalty shall not exceed (1) five hundred dollars for a first violation of this subsection, (2) seven hundred fifty dollars for a second violation of this subsection occurring not more than three years after a prior violation, and (3) one thousand five hundred dollars for a third or subsequent violation of this subsection occurring not more than three years after a prior violation. Any civil penalty

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collected pursuant to this subsection shall be deposited in the Consumer Protection Enforcement Fund established in section 21a-8a of the general statutes.

Sec. 7. A violation of any of the provisions of this act shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b of the general statutes.

Sec. 8. No new home construction contractor shall commence work unless [each applicable building or construction permit] A PERMIT FOR SUCH WORK under the general statutes or local ordinances HAS BEEN OBTAINED. No building official shall issue a contractor a building or construction permit unless the contractor has presented to such building official the certificate of registration and registration number of the new home construction contractor.

Sec. 9. (a) The commissioner shall establish and maintain the New Home Construction Guaranty Fund.

(b) Each person who receives a certificate pursuant to this act shall pay a fee of four hundred eighty dollars biennially to the fund. Said fee shall be payable with the fee for an application for a certificate or renewal of a certificate.

(c) Payments received under subsection (b) of this section shall be credited to the fund until the balance in such fund equals seven hundred fifty thousand dollars. Annually, if the balance in such fund exceeds seven hundred fifty thousand dollars, the first two hundred thousand dollars of the excess shall be deposited into the Consumer Protection Enforcement Fund established in section 21a-8a of the general statutes. Any excess thereafter shall be applied by the commissioner to reduce the fees payable by new home construction contractors under the provisions of this act for the subsequent fiscal year, provided the total amount of fees collected from new home construction contractors under the provisions of this act shall not be less than three hundred sixty thousand dollars biennially. Any money in the New Home Construction Guaranty Fund may be invested or reinvested in the same manner as funds of the state employees retirement system and the interest arising from such investments shall be credited to the fund.

(d) Beginning one year after the effective date of this act, whenever a consumer obtains a court judgment against any new home construction contractor holding a certificate or who has held a certificate under this act within the past two years of the date of entering into the contract with the consumer, for loss or damages sustained by reason of any violation of the provisions of this act by a person holding a certificate under this act, such consumer may, upon the final determination of, or

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expiration of time for, appeal in connection with any such judgment, apply to the commissioner for an order directing payment out of said New Home Construction Guaranty Fund of the amount not exceeding thirty thousand dollars unpaid upon the judgment for actual damages and costs taxed by the court against the contractor, exclusive of punitive damages. The application shall be made on forms provided by the commissioner and shall be accompanied by a certified copy of the court judgment obtained against the contractor together with a notarized affidavit, signed and sworn to by the consumer, affirming that the consumer has: (1) Complied with all the requirements of this subsection; (2) obtained a judgment, stating the amount of the judgment and the amount owing on the judgment at the date of application; and (3) made a good faith effort to satisfy any such judgment in accordance with the provisions of chapter 906 of the general statutes, which effort may include causing to be issued a writ of execution upon said judgment, but the officer executing the same has made a return showing that no bank accounts or real property of the contractor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the actual damage portion of the judgment or stating the amount realized and the balance remaining due on the judgment after application on the judgment of the amount realized, except that the requirements of this subdivision shall not apply to a judgment obtained by the consumer in small claims court. A true and attested copy of said executing officer's return, when required, shall be attached to such application and affidavit. Whenever the consumer satisfies the commissioner or the commissioner's designee that it is not practicable to comply with the requirements of subdivision (3) of this subsection and that the consumer has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part of the judgment and has been unable to collect the same, the commissioner or the commissioner's designee may, in the commissioner's discretion, dispense with the necessity for complying with such requirement. No application for an order directing payment out of the New Home Construction Guaranty Fund shall be made later than two years from the final determination of, or expiration time for, appeal of said court judgment, and no application for an order directing payment out of the New Home Construction Guaranty Fund shall exceed thirty thousand dollars.

(e) Upon receipt of said application together with said certified copy of the court judgment, notarized affidavit and true and, except as otherwise provided in subsection (d) of this section, attested copy of the executing officer's return, the commissioner or the commissioner's designee shall inspect such documents for their veracity and upon a determination that

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such documents are complete and authentic, and a determination that the consumer has not been paid, the commissioner shall order payment out of the New Home Construction Guaranty Fund of the amount not exceeding thirty thousand dollars unpaid upon the judgment for actual damages and costs taxed by the court against the contractor, exclusive of punitive damages.

(f) Beginning one year after the effective date of this act, whenever a consumer is awarded an order of restitution against any contractor for loss or damages sustained as a result of any violation of the provisions of this act by a person holding a certificate or who has held a certificate under this act within the past two years of the date of entering into the contract with the consumer, in a proceeding brought by the commissioner pursuant to subsection (h) of this section or subsection (d) of section 42-110d of the general statutes, or in a proceeding brought by the Attorney General pursuant to subsection (a) of section 42-110m of the general statutes or subsection (d) of section 42-110d of the general statutes, or a criminal proceeding pursuant to section 4 of this act, such consumer may, upon the final determination of, or expiration of time for, appeal in connection with any such order of restitution, apply to the commissioner for an order directing payment out of said New Home Construction Guaranty Fund of the amount not exceeding thirty thousand dollars unpaid upon the order of restitution. The commissioner may issue said order upon a determination that the consumer has not been paid.

(g) Before the commissioner may issue any order directing payment out of the New Home Construction Guaranty Fund to a consumer pursuant to subsection (e) or (f) of this section, the commissioner shall first notify the new home construction contractor of the consumer's application for an order directing payment out of the New Home Construction Guaranty Fund and of the new home construction contractor's right to a hearing to contest the disbursement in the event that the new home construction contractor has already paid the consumer. Such notice shall be given to the new home construction contractor not later than fifteen days from the receipt by the commissioner of the consumer's application for an order directing payment out of the fund. If the new home construction contractor requests a hearing, in writing, by certified mail not later than fifteen days from receipt of the notice from the commissioner, the commissioner shall grant such request and shall conduct a hearing in accordance with the provisions of chapter 54 of the general statutes. If the commissioner does not receive a written request for a hearing by certified mail from the contractor on or before the fifteenth day from the contractor's receipt of such notice, the commissioner shall conclude that the consumer has not been paid, and the commissioner shall issue an order directing payment out of the fund for the amount not exceeding

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thirty thousand dollars unpaid upon the judgment for actual damages and costs taxed by the court against the new home construction contractor, exclusive of punitive damages, or for the amount not exceeding thirty thousand dollars unpaid upon the order of restitution.

(h) The commissioner or the commissioner's designee may proceed against any new home construction contractor holding a certificate or who has held a certificate under this act within the past two years of the effective date of entering into the contract with the consumer, for an order of restitution arising from loss or damages sustained by any consumer as a result of any violation of the provisions of this act. Any such proceeding shall be held in accordance with the provisions of chapter 54 of the general statutes. In the course of such proceeding, the commissioner or the commissioner's designee shall decide whether to exercise the powers specified in section 2 of this act; whether to order restitution arising from loss or damages sustained by any consumer as a result of any violation of the provisions of this act; and whether to order payment out of the New Home Construction Guaranty Fund.

Notwithstanding the provisions of chapter 54 of the general statutes, the decision of the commissioner or the commissioner's designee shall be final with respect to any proceeding to order payment out of the fund and the commissioner and the commissioner's designee are exempted from the requirements of chapter 54 of the general statutes as they relate to appeal from any such decision. The commissioner or the commissioner's designee may hear complaints of all consumers submitting claims against a single contractor in one proceeding.

(i) No application for an order directing payment out of the New Home Construction Guaranty Fund shall be made later than two years from the final determination of, or expiration of time for, appeal in connection with any judgment or order of restitution, and no such application for an order directing payment out of the fund shall exceed thirty thousand dollars.

(j) In order to preserve the integrity of the New Home Construction Guaranty Fund, the commissioner, in the commissioner's sole discretion, may order payment out of said fund of an amount less than the actual loss or damages incurred by the consumer or less than the order of restitution awarded by the commissioner or the Superior Court. In no event shall any payment out of said fund be in excess of thirty thousand dollars for any single claim by a consumer.

(k) If the money deposited in the New Home Construction Guaranty Fund is insufficient to satisfy any duly authorized claim or portion of a claim, the commissioner shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions of claims not exceeding thirty thousand dollars, in the order that such claims or portions of claims were originally determined.

DCP 5590 cont'd

(l) When the commissioner has caused any sum to be paid from the New Home Construction Guaranty Fund to a consumer, the commissioner shall be subrogated to all of the rights of the consumer up to the amount paid plus reasonable interest, and prior to receipt of any payment from the fund, the consumer shall assign all of this right, title and interest in the claim up to such amount to the commissioner, and any amount and interest recovered by the commissioner on the claim shall be deposited to the fund.

(m) If the commissioner orders the payment of any amount as a result of a claim against a new home construction contractor, the commissioner shall determine if the new home construction contractor is possessed of assets liable to be sold or applied in satisfaction of the claim on the New Home Construction Guaranty Fund. If the commissioner discovers any such assets, the commissioner may request that the Attorney General take any action necessary for the reimbursement of the fund.

(n) If the commissioner orders the payment of an amount as a result of a claim against a new home construction contractor, the commissioner may, after notice and hearing in accordance with the provisions of chapter 54 of the general statutes, revoke the certificate of the new home construction contractor and such contractor shall not be eligible to receive a new or renewed certificate until such contractor has repaid such amount in full, plus interest from the time said payment is made from the New Home Construction Guaranty Fund, at a rate to be in accordance with section 37-3b of the general statutes, except that the commissioner may, in the commissioner's sole discretion, permit a new home construction contractor to receive a new or renewed certificate after such new home construction contractor has entered into an agreement with the commissioner whereby the new home construction contractor agrees to repay the fund in full in the form of periodic payments over a set period of time. Any such agreement shall include a provision providing for the summary suspension of any and all certificates held by the new home construction contractor if payment is not made in accordance with the terms of the agreement.

Sec. 10. Subsection (b) of section 20-421 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) Each application for a certificate of registration as a home improvement contractor shall be accompanied by a fee of sixty dollars, except that no such application fee shall be required in any year during which such person has paid the registration fee required under section 3 of this act or in any year in which such person's registration as a new home construction contractor is valid.

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**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE GENERAL LAW COMMITTEE
FEBRUARY 24, 2000**

I appreciate the opportunity to speak in support of House Bill 5590, An Act Concerning Consumer Protection for New Home Construction.

Last year, I worked with the General Assembly on developing and passing landmark legislation to create a new home construction guaranty fund and registration requirement in order to address some of the problems which were the basis of consumer complaints to my office. Public Act 99-246 is modeled on the provisions of the home improvement contractor law which has provided significant protections to consumers who have been victims of fraudulent home improvement contractors.

I support the mainly technical amendments to House Bill 5590. Most important, this bill would clarify and extend coverage of the new home construction act to homes where the consumer acts as the general contractor -- known as "spec homes". In addition, there are three exemptions to the law, which are not designed to reduce any protections for consumers. For example, the proposal would exempt realtors and people who are only performing a small part of construction of a new home, such as a cabinet maker. The proposal would also exempt from registration people who are already licensed by the state in another trade but importantly, this group of people must still pay into the guaranty fund.

One of the major provisions of Public Act 99-246 was to require the contractor to provide the consumer with a list of the most recent fifteen customers. This provision has raised some practical problems so we support changing it to a list of the most recent 12 homes constructed to completion. This change is consistent with the original provision in that the new home construction contractor does not have the ability to unilaterally remove from his list any buyer -- including one the contractor knows has experienced problems.

I am willing to continue to work with the committee to address any legitimate problems with the language of Public Act 99-246 while maintaining the important public policy of protecting new home purchasers.



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February 24, 2000

To: Senator Thomas A. Colapietro, Co-Chairman
 Representative John W. Fox, Co-Chairman
 Members of the General Law Committee

From: William H. Ethier, Executive Vice President & General Counsel

Re: **Raised Bill No. 5590, AAC Consumer Protection For New Home Construction**

The HBA of Connecticut is a professional trade association with eight hundred fifty (850) member firms statewide, representing approximately 44,000 employees. Our members are residential and commercial builders, land developers, general contractors, remodelers, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We are the voice of the home building industry in this state. We have also established local and state Remodelers Councils that are affiliated with the National Remodelers Council of the National Association of Home Builders. Remodelers are a major class of registered home improvement contractors and one of the HBA of Connecticut's core constituencies.

The HBA of Connecticut fully supports Raised Bill 5590. The proposed changes to PA 99-246 address both major and minor problems and interpretation issues that have arisen since the law became effective October 1, 1999. The following is an explanation of each of the proposed changes and the reasons why they should be supported. *In two places we respectfully ask for further amendments. We also ask that this bill be made effective upon passage.* The explanations here are taken in order of appearance of the proposed changes in the bill.

Sections 1(3) and 1(4): The addition of "or sale" and "or sell" will close a loophole in the statute that allows a builder to build a home on speculation (i.e., constructing a home without a customer under contract) without having to register under this statute. Current law is interpreted by DCP and various legal counsel as requiring registration only when there is a contract to "construct" a home. If a builder completes the construction of a spec home prior to contracting with a consumer, any contract with a consumer post construction is one to "sell" the new home rather than to "construct" it. We believe spec home builders should be on the same playing field as custom home builders and that consumers should have the protection of the statute regardless of when they contract with a home builder.

Section 1(5): These are technical changes to clear up an interpretation made by some legal counsel that requires work on existing two unit dwellings and condominiums to be done by a registered new home construction contractor. The assertion is that the language "newly constructed" in the current law modifies only "single family dwelling unit" and not the remainder of the provision. Rather than leave it for a court to decide, we suggest clarifying it by statute.

Section 1(7): The definition of consumer needs to be changed from “original or prospective buyer” to “buyer or prospective buyer.” The current language creates a loophole in the situation where a consumer contracts to have a home constructed but then dies or otherwise backs out of the deal. The builder must resell the home but the next buyer would not be the “original” buyer and, thus, not enjoy the protection of the act. Since the definition of new home construction contractor refers to a new home “prior to occupancy” there is also no need for the term “original” buyer.

New Section 1(8): This is a new definition necessitated by the changes made to section 4 of the act (see below).

New Section 2. Exemptions. By adding “or sell” in section 1(4) (see above), the statute must then exempt licensed real estate brokers and salespersons from the act because they have listing contracts related to the sale of new homes and should not have to register as new home construction contractors. Thus the first exemption clarifies that licensed real estate brokers and salespersons are not covered by this act. However, since many home builders are also licensed real estate brokers, the exemption is written in a way that does not exempt the builder/broker.

The remaining exemptions in new section 2 address the broad scope of businesses that must register as a new home construction contractor due to the current definition of new home construction contractor referring to constructing “any portion of a new home.” Without the proposed exemptions in new subsections 2(2) and 2(3), many smaller tradesman and other businesses that are not home builders must register under the act. We do not believe this was the legislature’s intent. **Thus, two types of businesses are exempted by the proposal:** The first are those who are separately licensed or registered under another statute and pay into their own consumer guarantee fund. We believe the guaranty fund payment is an important element to maintain the integrity of a consumer’s chance of recovering from damage causing actions by a contractor. This exemption is not as broad as that contained in section 2 of SB 367. The second type of business exempted are those who enter into contracts of less than \$5,000 in value in the aggregate on a single home. We do not believe that contractors who separately contract with consumers for small portions of a new home should be regulated as home builders.

Existing Section 2(b): *We respectfully request that at line 59 residence address be deleted from the required information on an application for registration.* We find no legitimate reason to invade the privacy of a person trying to conduct business in Connecticut. The addition of a street address for the business, along with listing an agent for service of process, should be sufficient.

Also, the reference to errors and omissions insurance at lines 62 - 63 should be deleted as proposed because such insurance does not exist for construction contractors. Thus, some home builders have been advised by their legal counsel to not fill in the name of their general liability insurance carrier on DCP’s application form because the statute references errors and omissions insurance (although the DCP application does not). Thus, the builder is

caught between filing an incomplete registration application, risking denial of registration, and filing an application that is in error or even fraudulent. The amendment clarifies that the insurer identified is for liability and workers compensation.

Existing Section 4(a)(1)(C) and section 4(b)(lines 96 - 107): No other regulated business of which we are aware is required by law to provide references to its potential customers, especially a specific number of references from over a specific time frame. The act requires contractors to offer a list of the most recent fifteen (15) persons who have engaged in new home construction or all such persons over the current and previous year, whichever is less, to all prospective customers. The industry has unanimously considered this one provision to be the most unworkable and onerous of all provisions in this act. It is a conclusion shared by many consumers as well as others with whom we have discussed the act. It causes confusion among contractors and consumers, cannot be complied with in many situations, and is useless to consumers in most situations. *While the proposed change makes a much needed improvement to this requirement, we respectfully urge the committee to repeal the requirement of any specific number of references or from over any specific time frame and replace it with a requirement to simply advise consumers that they should ask for a list of the contractor's references.*

The proposed change at lines 97 to 105 clarifies only one of the concerns raised on this issue. Having consumers on a reference list other than for homes that have been constructed to completion makes no sense and we welcome the clarifying language. However, maintaining a specific number of references, changed from 15 to 12, and from over a specific time-frame, changed from 18 months to 24 months, does not solve the underlying concerns. What happens if all a contractor's buyers opt out of being on the list (as most have done)? What list then does the contractor offer to new prospective customers? How does the contractor explain it to prospects when the list is requested? Furthermore, our experience since the act became effective is that almost no consumer asks for the list. Thus, the existing provision and its proposed amendment has little to no utility in protecting consumers.

Existing Section 4(a)(2) and (3): These provisions require advertisements, including phone directory listings, to note both the fact that the contractor is registered and the registration number in the advertisements. For small ads (typically 3 line ads) in newspapers and for other purposes, such as business cards, letterhead, certain signage, etc., this requirement causes unnecessary expense and concern when compliance must be delayed (e.g., adding to a 3 line ad in the newspaper substantially increases the ad cost due to newspaper pricing policies; phone directory listings cannot be changed overnight). Builders also have many varying pieces of paper that could be construed as marketing material. Changing all of them is an administrative and financial burden and merely sets up good, honest contractors for violations. This requirement is also unnecessary given the requirements in section 4(a)(1) to provide a copy of the contractor's registration certificate and the statutory notice to all prospective customers.

We thank the Chairs for raising this important bill, urge the committee to consider our recommended changes to the bill and vote favorably on it. Thank you for considering our views on this bill.

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Chairman.

SEN. COLEMAN: Thank you. Thank you, Sally. Next is Bill Ethier followed by Diane Lumbar.

BILL ETHIER: Thank you Senator Coleman, Representative Flaherty and members of the committee. My name is Bill Ethier, I'm the executive vice-president and general consul of the HomeBuilders Association of Connecticut. We're a non-profit professional trade group of, made up of for-profit builders, land developers and remodelers and home improvement contractors.

I'm here and I've submitted written testimony. I'm here to talk about two bills that we really haven't heard too much about, today. The first is Bill #5426 AN ACT CONCERNING APPLICATIONS TO PLANNING AND ZONING COMMISSIONS, and I want to thank Chairman Flaherty for raising these, both of these bills. These are repeat bills from last year. They passed this committee last year and they passed the Planning and Development committee and just sort of ran out of time on the House floor, but we urge your support of these bills.

This first bill, #5426 would allow project applicants of any size to confer with zoning commissions, planning commissions, inland wetland commissions, police chiefs, you name it. Anyone that has a decision making role in the town, on the project would allow the project applicant to go in and to discuss the project prior to filing the application. Because once the application is filed, it sets up a whole legal, it is a legal process and really shuts down, almost, the communication process because it becomes any communication outside of a public hearing would be exparte and so forth and so on.

So, this bill would authorize what is already done in a lot of towns, but some towns have taken the position that they can't do it because it's not specifically authorized. So, we, we urge your support of this. The bill as crafted this year would, is a little bit better in that it would not confer any liability on any of the parties. Any

crafted applies only to contractors registered under Chapter 400. Those are home improvement contractors. There's another chapter under a new law, I'm not sure what the chapter is because I don't know how it's been codified yet, but a law was passed last year that requires home builders to register. They're distinct from home improvement contractors.

That law went into effect October 1st of '99. We are now seeking an amendment, some clarifying language through the General Law committee currently with bill #5590 that would close some loopholes in that law. Right now, not all home builders have to be registered and we think they should be.

Anyone that builds a house for a customer should be registered under that program. If we can get that clarifying language, we think that home builders should be added to this law so that when they pull permits, they also have to give their registration number to the building official. So, those are the two changes that we'd like to see and I'd be happy to answer any questions on this.

SEN. COLEMAN: Are there any questions? Representative Googins?

REP. GOOGINS: Bill, thank you for coming and thank you HB 5426 for your testimony. The town of Glastonbury is one of those towns which, in fact, has this pre-, pre-presentation process in place for 15, maybe 20, years as part of it's proposals and it really works very, very well. Particularly after applicants as well as the people in town get to understand it, because there is always the thought of secret meetings, secret deals that go on and it's their public meetings held with staff and so on to help that. Can you identify other towns for me, or do you know of other towns off-hand that do that, have that process, too, as part of their --

BILL ETHIER: I can't name any specific towns off the top of my head --

REP. GOOGINS: I'd be interested what other towns there