

Legislative History for Connecticut Act

PA 14-219

SB427

House	6959-6962	4
Senate	3117-3126, 3162-3164	13
<u>Public Safety</u>	<u>589-593, 680-683, 720-726</u>	<u>16</u>

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

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PART 21
6912 – 7260**

Those absent and not voting 6

DEPUTY SPEAKER GODFREY:

The bill, as amended, is passed.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

Mr. Speaker, I move that we immediately transmit to the Senate any items waiting further action.

DEPUTY SPEAKER GODFREY:

Without objection, so ordered.

Representative Aresimowicz, I understand we have another Consent Calendar.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

We are. We are about to list off the bills that will be included in our second Consent Calendar for the evening, sir.

DEPUTY SPEAKER GODFREY:

Proceed, sir.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

I move -- I'd to add the following to the Consent Calendar. Calendar 426, Calendar 308, Calendar 438, Calendar 488 --

SB281

SB19

SB182

SB330

DEPUTY SPEAKER GODFREY:

Whoa, whoa, whoa.

REP. ARESIMOWICZ (30th):

I apologize, Mr. Speaker. The first number was
427.

DEPUTY SPEAKER GODFREY:

So 427, thank you, sir. Proceed.

REP. ARESIMOWICZ (30th):

Calendar 476, as amended by Senate "A"; Calendar
445, Calendar 514, Calendar 505, as amended by Senate
"A"; Calendar 455, Calendar 456, as amended by Senate
"A"; Calendar 322, Calendar 536, as amended by Senate
"A" and Senate "B"; Calendar 430, Calendar 520, as
amended by Senate "A" and Senate "B"; Calendar 538, as
amended by Senate "A"; Calendar 424, as amended by
Senate "A"; Calendar 439, as amended by Senate "A";
Calendar 482, as amended by Senate "A"; Calendar 325,
as amended by Senate "A."

Calendar 526, as amended by Senate "A"; Calendar
509, as amended by Senate "A"; Calendar 532, Calendar
502, as amended by Senate "A"; Calendar 421, as
amended by Senate "A"; Calendar 431, as amended by
Senate "A"; and Calendar 539, as amended by Senate
"A."

- SB 194
- SB 402
- SB 324
- SB 45
- SB 221
- SB 257
- SB 201
- SB 389
- SB 418
- SB 438
- SB 427
- SB 260
- SB 208
- SB 424
- SB 241
- SB 14
- SB 106
- SB 322
- SB 410
- SB 217
- SB 477
- SB 429

DEPUTY SPEAKER GODFREY:

Is there objection to any of these items being placed on the Consent Calendar? If not, Representative Aresimowicz, would you like to move passage of the Consent Calendar?

REP. ARESIMOWICZ (30th):

Mr. Speaker, I want to remove Calendar 539.

SB429

DEPUTY SPEAKER GODFREY:

Please remove Calendar 539, Mr. Clerk.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I move passage of the bills on the second Consent Calendar of the day.

DEPUTY SPEAKER GODFREY:

The question is on passage of the items on Consent Calendar Number 2.

Staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll on the second Consent Calendar of the day, House Consent 2. Please report to the Chamber immediately.

DEPUTY SPEAKER GODFREY:

Have all the members voted? Have all the members
voted?

If all the members have voted, the machine will
be locked.

The Clerk will take a tally.

And the Clerk will announce the tally.

THE CLERK:

Consent Calendar Number 2.

Total Number Voting 147

Necessary for Passage 74

Those voting Yea 147

Those voting Nay 0

Those absent and not voting 4

DEPUTY SPEAKER GODFREY:

The items on the Consent Calendar are passed.

(Speaker Sharkey in the Chair.)

SPEAKER SHARKEY:

The House will please come back to order.

Will the Clerk please call Emergency Certified
Bill 5597.

THE CLERK:

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second bill under Matters Returned from Committee,
Calendar page 36, Calendar 188, Senate Bill 429.

Also from the Public Safety and Security Committee,
the third bill that we have ready to mark, Mr.
President, is on Calendar page 4, Calendar 300, Senate
Bill 417 from the Public Health Committee. So mark
those three items at this time, Mr. President.

THE CHAIR:

Thank you, Senator Looney. Madam Clerk.

THE CLERK:

On page 2, Calendar Number 166, Senate Bill 427. AN
ACT CONCERNING SMOKE DETECTORS AND CARBON MONOXIDE
DETECTORS IN CERTAIN RESIDENTIAL BUILDINGS AT THE TIME
THE TITLE IS TRANSFERRED, and there are amendments.

THE CHAIR:

Senator Hartley. Good evening, Madam.

SENATOR HARTLEY:

Good evening to you, Madam President. I move
acceptance of the Joint Committee's Favorable Report,
Madam, and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark,
Madam?

SENATOR HARTLEY:

Thank you, Madam President. Madam President, the
Clerk is in possession of LCO 5524. I ask that the
Clerk please call, and that I be granted leave to
summarize, please.

THE CHAIR:

Mr. -- Madam Clerk, sorry.

THE CLERK:

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The Clerk is in possession of Amendment Schedule "A"
LCO 5524, sponsored by Hartley et al.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Thank you, Madam President, I move adoption.

THE CHAIR:

Motion is on adoption, Will you remark?

SENATOR HARTLEY:

Yes, indeed, thank you, Madam President. The amendment that we see before us is the result of much work by all of the involved parties. The proponents, realtors, Connecticut Bar Association.

The bill itself is the result of a tragic situation that happened several years ago in the Town of Stamford where a home was destroyed by fire as the occupants also perished. And there were not smoke or CO detectors.

Last year, 2013, we passed a bill requiring that upon the transfer of title for residential buildings occupied by one and two families that there would be an affidavit at the time of transfer attesting to the fact that there was a smoke detector and a CO detector that was in working order.

What we have before us today is some more defining language to be clear about that affidavit so that the seller, at time of closing, has the option of either attesting to the fact that the smoke and CO detectors are in working order or opting to pay a \$250 fee. With that, Madam, I move adoption.

THE CHAIR:

Will you remark? Will you remark? Senator Witkos.

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SENATOR WITKOS:

Thank you, Madam President. I rise in support of the amendment. In addition to the warranty, it also cleans up a little language as to how the carbon monoxide detector and/or smoke alarm actually works in the senses, the particulates in the air. So I urge the Chamber's adoption. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Will you remark?
Senator Chapin, good evening, sir.

SENATOR CHAPIN:

Good evening, Madam President. A couple of questions to the proponent, through you, please.

THE CHAIR:

Please proceed, sir.

SENATOR CHAPIN:

Thank you, Madam President. I believe I heard you say signing the affidavit, the transfer would be attesting to the fact that the smoke detector worked. Is that correct? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Through you, Madam President, yes, it is.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President. And as I read line 22 it says any smoke detection and warning equipment required pursuant to Subsection A of this section

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shall be cable of sensing visible or invisible smoke particles. Can the good Chairwoman tell me how somebody could attest to whether or not it was capable of doing that? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Thank you, Madam President, and through you to Senator Chapin, if the smoke detector is in working order, then that is its function to be sensing such particles, sir. If it was not working, it would not. Through you.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President, and again through you. So for a person to be able to tell if it was in working order, they would do that by pressing the button, and seeing if they could hear the alarm? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Through you, Madam President, yes, to Senator Chapin, that would be the way they would determine it functioning.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President, and again through you, the person is also attesting that the smoke detector or

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carbon monoxide detector, I assume, I happened to be reading the smoke detection section. But it says, be installed in accordance with the manufacturer's instructions. How would a person know whether or not it was actually installed in accordance with those instructions? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Through you, Madam President to Senator Chapin, by following the instructions on the packaging, sir.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President. But wouldn't people who purchased a home where they were already installed, and then subsequently went to sell that home, wouldn't they also fall under this provision? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Through -- through you, Madam President to Senator Chapin, yes, at the time of installation they would be following the manufacturer's instruction. But this is, I should point out to you, sir, existing statute, existing language. Through you, Madam.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President. And I think the good

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chair lady may recall that there was some discussion last year in the Circle about passage of that bill of this existing language. And I had actually requested that a bill go before the Public Safety Committee this year to include the words to the best of their belief and knowledge, because my concern that I actually heard from attorneys who do real estate transfers said that they were advising their clients to forfeit the \$250 rather than sign the affidavit.

So I'm trying to determine whether or not the language that is new this year somehow negates the existing section of the statute that caused me to ask for that very language. Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Yes, thank you Madam President, and through you to Senator Chapin, you are absolutely right, and that is the purpose of the underlying bill which, Senator Chapin, many hours of negotiation and vetting went into.

And this, as I indicated, is the product of the work by all of those entities as well as the Connecticut Bar Association and their real estate division, who have come to terms and feel that this language does, indeed, give the seller that option as opposed to coming to time of closing and feeling like they do not have that option and they have to just out of hand opt to pay the fee. Through you.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President. And lastly, I guess more for legislative intent, where it does say within the immediate vicinity of the bedroom, would that be in the hallway or could it be in the bedroom or could it be both? Through you, Madam President.

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THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Yes, through you, Madam President to Senator Chapin, once again that is existing language. And it could be either. Or all in the bedroom and outside of the bedroom. Through you.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President, and I thank the good Chairwoman for her answers. Madam President, I think the amendment before us is as characterized. I think it's an improvement over existing statute, and I will be supporting it today. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Will you remark?
Senator Welch. Good evening, sir.

SENATOR WELCH:

Good evening, Madam President. I also will be supporting the amendment. It is a good amendment. I do have a question or two, because I really want to make sure I understand fully the practical implications of the change, particularly in lines 17 and 18. So if I may, through you, Madam President.

THE CHAIR:

These proceed, sir.

SENATOR WELCH:

Thank you, Madam President. Under current law -- I guess the first question I have, through you, Madam President, what would be the consequence under current

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law if one were to fill out one of these affidavits, and the information they attest to is not true? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Thank you, Madam President, and through you to Senator Welch, then they will be violating the underlying law of having a detector in a one or two family home.

They also, if they wrongly attest, will be violating the affidavit, sir. Through you, Madam.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President. Does that then require them to purchase fire detectors? Does it then require them -- does it unravel the transaction or is there some other civil liability that they might find themselves liable of? Through you, Madam President.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Through you, Madam President. So they would have to, if, in fact, they could not attest to the -- the viability, the efficacy of the unit, they would have to opt to pay the 250. That has been the problem.

The underlying problem, because at closing, counsel has basically been just out of hand advising that they could not make such a testament and therefore when we asked for an informal survey of how this new language was working, we found out that in certain counties, folks were just opting to pay the 250, which was not the intent of the legislation. Through you, Madam

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President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President. And that's what I understood the problem to be as well. While I do find some comfort in line 17 with respect to the fact the affidavit is not a warranty beyond the transfer of title.

So I think out of the potential remedies that I mentioned, I find comfort that the homeowner can't then go and ask you to put in these smoke detectors or the transaction itself is void.

I guess I do have some concern if there's any civil liability, and I'm not sure if this would address that. In fact, I'm not even sure if there is civil liability if they are wrong on the affidavit, and if, in fact, they do not work. In any event, thank you for your answers, Senator Hartley. I think this is a good amendment and it's one we all ought to support.

THE CHAIR:

Thank you. Will you remark? Will you remark? If not, I will try your minds on Senate "A." All those in favor of Senate "A," please say aye.

SENATORS:

Aye.

THE CHAIR:

Opposed. Senate "A" passes.

Will you remark? Senator Hartley.

SENATOR HARTLEY:

Yes, thank you, Madam President. If there is no objection I would ask that this be put to the Consent

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Calendar, madam.

THE CHAIR:

See no objections, so ordered, Madam. Mr. Clerk. Do you have any others on your -- thank you.

THE CLERK:

On page 36, Calendar 188. It's the Substitute for Senate Bill 429, AN ACT CONCERNING ASSAULT THAT RESULTS IN THE LOSS OF CONSCIOUSNESS. Favorable Report of the Committee on Public Safety, and there are amendments.

THE CHAIR:

Senator Hartley.

SENATOR HARTLEY:

Good evening, Madam President. I move acceptance of the Joint Committee's Favorable Report, madam, and passage of the bill.

THE CHAIR:

Motion on acceptance and passage. Will you remark, sir? Madam.

SENATOR HARTLEY:

Yes, thank you, Madam President. The Clerk is in possession of LCO 5274. I ask that the Clerk please call, and that I might be granted leave to summarize, Madam.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 5274, Senate "A," offered by Senators Hartley, Guglielmo, et al.

THE CHAIR:

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Opposed. Reconsideration is passed.

SENATOR LOONEY:

Right now since the matter is before us again, Madam President, I would move to mark it passed temporarily.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Now if the Clerk would call those Consent Calendar items so that we might move to a vote on the Consent Calendar, and then we might proceed to the items that were marked go.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 2 Calendar 166, Senate Bill 427.

Page 4 Calendar 300 Senate Bill 417.

Page 6, Calendar 331, House Bill 5248.

Page 7, Calendar 340, House bill 5273.

On page 10, Calendar 416, House Bill 5407. Calendar 415, House Bill 5518. Calendar 396, Senate Bill 114.

On page 11, Calendar 419, House Bill 5477.

Page 12, Calendar 426, House Bill 5023.

On page 18, Calendar 489, House Bill 5227. Calendar 470, House Bill 5506. Calendar 490, House Bill 5113.

On page 19, Calendar 494, House Bill 5573.

Page 20, Calendar 498, House Bill 5467. Calendar 499, House Bill 5419.

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And on page 22 Calendar 513, House Bill 5353.
Calendar 515, House Bill 5361.

And on page 24, Calendar 526, House Bill 5556.
Calendar 524, House Bill 5219.

Page 25, Calendar 4 -- sorry, Calendar 530, House Bill 5368,
page 27, Calendar 546, House Bill 5061.
Calendar 543, House Bill 5037.

On page 28, Calendar 550, House Bill 5514.

Page 29, Calendar 554, House Bill 5148.

Page 30, Calendar 563, House Bill 5554.

Page 31, Calendar 567, House Bill 5229. Calendar 565,
House Bill 5028.

And on page 42, Calendar 384, Senate Bill 442.

THE CHAIR:

Senator Looney, do you have any more good news for us?

SENATOR LOONEY:

Yes, thank you, Madam President. One additional item
to add before we call for the actual vote on the
Consent Calendar, and that is item an Calendar page
33, Calendar 575, House Bill 5359. With that one
addition it would call for a vote on the Consent
Calendar.

THE CHAIR:

Mr. Clerk, please call for a vote on the Consent
Calendar, and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call on the second Consent Calendar
today has been ordered in the Senate.

THE CHAIR:

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If all members have voted? All membered voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

On the second Consent Calendar for today.

Total number voting	35
Those voting Yea	35
Those voting Nay	0
Absent not voting	1

THE CHAIR:

Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. If the Clerk would call the first item marked go to follow the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 33, Calendar 579, Substitute for House Bill Number 5348, AN ACT CONCERNING THE PAYMENT OF DELINQUENT PROPERTY TAXES. Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you. Thank you, Madam President. Pursuant to Rule 15 of the Joint Rules, I am recusing myself from consideration of this bill.

THE CHAIR:

Thank you, sir. Please leave the Chamber.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**PUBLIC
SAFETY
PART 2
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2014

SENATOR WITKOS: Right.

PAUL FORMICA: Sometimes people make it and sometimes they don't, but --

SENATOR WITKOS: And is that a -- if you're aware -- a State-certified program, or a State-accredited program, or is that just something that you just do in your community, you have a book and say okay you've done this test and you've done this, now you're ready to sit on the desk?

PAUL FORMICA: We -- we make sure they adhere to our standards.

SENATOR WITKOS: Okay. Thank you. Thank you, Madam Chair.

SENATOR HARTLEY: Thank you, Senator Witkos. Further comments? Seeing none, thank you so much for being with us, Paul.

PAUL FORMICA: Thank you.

SENATOR HARTLEY: And we're going to move on to invite Maryann Herbert. Is Maryann here? Yes. Maryann, you're still hanging with us. Thank you.

SB 427

MARYANN HEBERT: Good morning, Senator Hartley, Representative Dargan, and esteemed Members of the Committee. My name is Maryann Hebert. I am the immediate past president and a member of the Connecticut Realtors. The Connecticut Realtors would like to submit testimony in

support of Senate Bill 427, which is AN ACT CONCERNING SMOKE AND CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL BUILDINGS AT THE TIME THE TITLE IS TRANSFERRED.

The bill requires the affidavit regarding the smoke and carbon monoxide detectors to be based on the transferor's knowledge and believe at the time the title is transferred. The proposal also exempts certain property transfers.

The Connecticut Realtors are committed to the safety of homeowners in our state, and we're supportive of disclosure of working smoke and carbon monoxide detectors. The problem that Connecticut Realtors have encouraged -- have encountered is how current legislation is being interpreted by attorneys at the time of closing. Homeowners are being advised not to fill out the affidavit, and to pay the \$250 fine, even if the property has working smoke detectors.

The seller does this solely to avoid any possible liability. This action is causing problems at closing, and increasing sellers' costs unnecessarily. More importantly, as the statute currently exists, it defeats the primary purpose of the original act which was to protect the citizens of Connecticut.

The Connecticut Realtors have drafted a proposal which we believe will encourage our concerns while maintaining the goal of

protection. A summary of the proposal's points is as follows:

The bill improves the affidavit process by clarifying that the affidavit is not an implied or expressed warranty on the detector. It clarifies that the certification is only to the best knowledge and belief of the transferor, and is only related to the manufacturer's instructions for location and placement.

The bill clarifies that residential properties includes cooperatives and condominium units, and adds exceptions for strict foreclosures, short sales, and relocations.

Again, the Association wants to make the current law work better, and the concern by the legal community about the requirements of the affidavit, specifically that a low-cost fix has created more of a liability than the statute ever intended, needs to be addressed.

Homeowners with working detectors have been routinely advised to pay the \$250 which defeats the purpose of this statute on homeowner protection.

Connecticut Realtors represent over 15,000 members involved in all aspects of real estate in Connecticut. For this reason, the Connecticut Realtors asks for your support in this proposal, and I thank you for your attention and support of this important matter.

SENATOR HARTLEY: Thank you so much, Maryann, for being here, and really for representing the

realtors who have been such a -- such partners to Members of the General Assembly in all of our communities.

Yes, so with regard to S.B. 427, so -- and you'll have to pardon me, Representative Jutila, but leave it to the attorneys to muck it up. No offense taken and to (inaudible.) Right, so, you know, we -- I have one in the family and we call him Liability Bill. There's always some liability somewhere, somehow.

So this is important clarifying language, actually to shore up the true intentions of the bill. We went through great pains to address the public safety issue to do a common sense approach to what's the right time, the appropriate time, and the reasonable time to do something like this, and we kind of went through many iterations. Many on this Committee worked with us on all sides of the aisle and we came down to the time of the transfer of property, which seemed like a reasonable time that things of this nature are addressed. And so we went forward with that proposal last year, saying that at the time of closing, to the best of our knowledge, the seller is representing that there is a working unit. However, enter the -- the legal -- the legal touch.

So this, I think, is -- makes sense, and hopefully makes a good bill better.

But thank you so much for being here, and always being, you know, at our fingertips to clarify, answer questions, and provide insight.

Are there questions from the committee members? If not, thank you so much, and --

MARYANN HEBERT: Thank you so much.

SENATOR HARTLEY: -- maybe we'll get it right this time.

MARYANN HEBERT: We appreciate it. Thank you.

SENATOR HARTLEY: Okay. Take care. Thank you. We would like to now move on to Christine Rاپillo. Is she still here? No? Oh, yes, okay. I thought I saw you.

CHRISTINE RAPILLO: Good afternoon. Senator Hartley, Representative Dargan, Members of the Committee, my name is Christine Rapillo, and I'm the Director of Delinquency Defense and Child Protection for the Office of the Chief Public Defender.

The Public Defender's Office has concerns about Raised Bill 429, AN ACT CONCERNING PUBLIC SAFETY. This proposal seeks to specifically criminalize activity that has been colloquially described as a "knockout game," and make this a Class D felony automatically transferable to the adult court for youth under the age of 16, and to set a two-year mandatory minimum prison term.

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March 11, 2014
9:30 A.M.

SENATOR HARTLEY: Yes. Thanks very much, and I know that you've been here before to tell us our story and keep us focused on this, and so we now have the legislation in place, but clearly it needs some refinement, so we will continue to have this conversation.

Are there questions from Members? Seeing none, thank you very much for being here and sorry for the wait.

CHARLIE DOWD: Thank you very much.

SENATOR HARTLEY: Bud Harvey.

BUD HARVEY: Good afternoon, Senator Hartley and Members of the Committee. My name is Elton B. Harvey. I'm the -- I'm a transactional lawyer. You were speaking about me before.

SENATOR HARTLEY: Oh. No offense.

BUD HARVEY: I'm a transactional lawyer with -- with Baillie and Hirshman, P.C. I'm also chair of the real property section of the Connecticut Bar Association. While the Connecticut Bar Association has not weighed in on this in support of Senate Bill 427, it is expected that we will this week and submit written support shortly.

I am here today as a lawyer who represents buyers and sellers of real estate in Connecticut, and I am here in support of Senate Bill 427. On its face, Public Act 13-272 seemed like a good thing. It protects people

and especially children by requiring working smoke detectors and carbon monoxide detectors in every home. However, when we take a look at the law, we can see where it becomes unworkable and needs amending.

First and foremost, unlike the Residential Property Condition Disclosure Report required in most sales, there is no safe harbor that provides that representations are not warranties, and are only made to the best of the seller's knowledge and belief. Few sellers have the technical knowledge or expertise necessary to ensure that the smoke and carbon monoxide detectors have been installed in accordance with manufacturer's instructions, do not exceed the standards to which they were tested, and approved, and whether the carbon monoxide detector measures in parts per million.

We get to the closing table. I say, "Seller, do you got smoke detectors or carbon monoxide?" "Oh yeah, I got them." "Do they measure in parts per million?" "I don't know." So what ends up happening is -- is when faced with this, and the necessity of certifying, even if the client is willing to guess, as a lawyer representing their interests, my fellow attorneys and I will advise the clients that the liability risk that they run from making a false statement, even if they innocently make it, far outweighs the penalty of \$250 for refusing or -- or declining to make that representation.

Accordingly, the law, which as written, provides a disincentive for home owners to purchase and install working smoke detectors and carbon monoxide detectors in favor of paying the penalty and not installing the same.

I'd urge the Committee to support Raised Bill 427, for it makes it clear that the representations are not new or expressed -- implied or expressed warranties, expands the list of transfers to include short sales where there is no extra money, strict foreclosures, foreclosures by sale, and relocation sales, where the relocation company has no idea what, you know, what -- what the thing is. And also doesn't require sellers to make certifications about subjects for which they're not qualified.

Thank you very much, and I'll take any questions if you have them.

SENATOR HARTLEY: Questions from Committee Members?

So, Bud, so I'm at the closing, and you ask me those questions, and I say to you, yes, to the best of my knowledge at this date my CO detector, smoke detectors are in working order. That's not good enough?

BUD HARVEY: No, today you can't do that. Today you actually have to certify it, and -- and when you certify it, in fact, the new buyer burns up that night because there was a defect, it wasn't installed properly, it didn't emit a proper signal, you're looking at liability.'

SENATOR HARTLEY: So the certification process is the form where I go through and check it off.

BUD HARVEY: Right.

SENATOR HARTLEY: Right.

BUD HARVEY: But the form -- the form as it exists right now doesn't provide that it's to the best of your knowledge and belief. It says "it is." And the statute says "it is." So what we're asking for and what the realtors are asking for is to say "to the best of our knowledge and belief, we believe that it complies."

SENATOR HARTLEY: Okay. Thank you very much.

BUD HARVEY: All right?

SENATOR HARTLEY: So you're in agreement with what the realtors are hoping?

BUD HARVEY: We are in support with the -- with the realtors and Past-President Hébert.

SENATOR HARTLEY: Good. Thank you. Thanks for being with us, Bud.

BUD HARVEY: Thank you.

SENATOR HARTLEY: I appreciate it. If there are no questions, we're going to invite Tom Nagle. Is Tom still here? Tom, yes.

TOM NAGLE: Good afternoon.



State of Connecticut

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REGULATIONS REVIEW COMMITTEE

**TESTIMONY IN SUPPORT OF SB 427
AN ACT CONCERNING SMOKE AND CARBON MONOXIDE DETECTORS IN
CERTAIN RESIDENTIAL BUILDINGS AT THE TIME THE TITLE IS
TRANSFERRED.**

**Public Safety and Security Committee Public Hearing
March 11, 2014**

Chairs Hartley and Dargan, Ranking Members Guglielmo and Giegler and members of the Public Safety and Security Committee, thank you for the opportunity to testify in support of SB 427, AN ACT CONCERNING SMOKE AND CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL BUILDINGS AT THE TIME THE TITLE IS TRANSFERRED.

This bill looks to adjust CGS 29-453 of the 2014 supplement to create the highest possible standards for public safety in relation to fire and carbon monoxide emergencies. Section (a) will be expanded to include cooperatives and condominiums as residences in addition to requiring the transferor of properties to certify property safety in affidavits to the best of their knowledge and belief to the transferee in property exchanges. These additions will help Connecticut maintain the highest possible standards for public safety.

The changes passed last year required sellers to attest to installation and operation in accordance with the manufacturer's instructions and 'standards under which such equipment was tested and approved.' The vast majority of homeowners are not qualified to make such a determination. Therefore, it is my understanding that attorneys are advising clients to avoid signing such an affidavit. Adding language that allows for such an attestation to include 'to the best knowledge and belief of the transferor' may help to address this problem.

Thank you again for the opportunity to offer testimony. I respectfully request that you give favorable consideration to move this bill forward.

Public Safety and Security Committee Public Hearing

Tuesday, March 11, 2014

This testimony is in support of Raised Bill No. 427 (LCO No. 2087) amending Public Act 13-272, An Act Requiring Working Smoke and Carbon Monoxide Detectors in Certain Residential Buildings at the Time Title is Transferred.

The title of the law clearly expresses the purpose of the 2013 legislation. The seller of certain property containing a residential building designed to be occupied by one or two families, when the property transfer occurs on or after January 1, 2014, must provide an affidavit to the buyer certifying:

- that the building permit for new occupancy was issued on or after October 1, 1985; or
- that the residential building is equipped with smoke detectors that comply with the new law.

In addition, for dwellings for which a building permit for new occupancy was issued before October 1, 2005, the affidavit must also certify:

- that the building is equipped with carbon monoxide detectors that comply with the law; or
- that there is no risk of carbon monoxide poisoning because the residential building does not contain a fuel burning appliance, fireplace or attached garage.

To comply with the law, the seller must be able to affirmatively state that the smoke detection equipment is capable of sensing visible or invisible smoke particles, and that the carbon monoxide detectors are capable of showing the amount of carbon monoxide present in parts per million. In addition, the seller must be able to state that any smoke detector and carbon monoxide detector is:

- installed in accordance with the manufacturer's instructions;
- operating within the standards under which the equipment was tested and approved; and
- capable of providing an alarm suitable to warn occupants when the equipment is activated.

The existing law also requires the seller to state in the affidavit that a smoke detector is installed in the immediate vicinity of each bedroom.

The existing law also contains a list of transfers that are exempt from the affidavit requirement. The proposal adds a few new exemptions.

If a seller is unwilling or unable to provide the requisite affidavit to the buyer at the time of transfer, the law requires the seller to provide a credit to the buyer in the amount of two hundred fifty dollars (\$250.00).

The law serves a commendable and important purpose of protecting the safety of those residing in dwellings constructed prior to the dates when the law required the installation of smoke and carbon monoxide detectors. The existing law, however, imposes what could be interpreted as an unreasonable burden on the average seller of a residential dwelling. The typical seller is not one who buys and sells residential homes for a living. The typical seller is not an expert on equipment for detecting smoke and carbon monoxide.

Many attorneys representing sellers in residential real estate transactions have been advising their clients to give the buyer the \$250.00 credit rather than fill out the affidavit. This is not necessarily because the home lacks smoke and carbon monoxide detectors in working condition, but rather because of the representations that the sellers have to make concerning those devices. Specifically, the existing law requires the seller to affirmatively state that any needed smoke detection equipment and carbon monoxide equipment required to be on the premises comply with the law. In order to state that the equipment complies with the law, the seller must essentially certify that the equipment does "not exceed the standards under which the equipment was tested and approved." Apart from the fact that this language appears to be taken directly from a technical manual, it is difficult if not impossible for any person who is not involved in either the design, production or testing of this equipment to make this representation. Moreover, the average sellers can only attest to something based upon their personal knowledge, absent the professional opinion from an expert.

Raised Bill No. 427 makes modest changes to Public Act 13-272 in order to make it more practical and to increase the likelihood that a seller will provide the affidavit to a buyer. Now the seller can present an affidavit certifying, to the best of their knowledge and belief, that any smoke detection equipment and carbon monoxide equipment that is required is both present and legally compliant. The changes facilitate the seller's ability to state that the detection equipment complies with the law, since the seller will no longer be required to state that the smoke and carbon monoxide detectors do "not exceed the standards under which the equipment was tested and approved." The proposed revision removes that language.

The proposed revision in Raised Bill No. 427 does remove the seller's representation that the smoke detector complies with the law because smoke detection equipment is installed in the immediate vicinity of each bedroom. The revision keeps the important representation that the smoke detectors are installed in accordance with the manufacturer's instructions, and these instructions include directions on the location of the detection equipment in the home. Moreover, as the law presently exists, it may be interpreted as simply requiring that any smoke detectors in the home are installed in the immediate vicinity of each bedroom, thereby omitting the need for representations about smoke detectors placed elsewhere in the residence.

CATIC respectfully suggests another change to clarify the existing law's provisions so that real estate professionals, sellers and buyers can better ascertain the law's applicability. Although the original law seems to apply to transactions involving residential units in a condominium,

cooperative or planned community, CATIC suggests placing additional language in subsection (a) of Section 1 to confirm that the law applies to transactions involving the transfer of residential units in a common interest community.

The remaining changes in the Raised Bill include additional exclusions for other parties or situations where the grantor is unfamiliar with the property but where public policy has identified an interest in facilitating the property's transfer. To be more specific, the revision adds an exclusion for transfers by a judgment of strict foreclosure or by foreclosure by sale. There are also new suggested exclusions for short sale and relocation transfers.

CATIC supports Raised Bill No. 427, with one minor addition to clarify the law's applicability to transactions involving residential units in a common interest community.

Respectfully submitted,

Jonathan Anderson
Senior Title Counsel
CATIC

Testimony of Elton B. Harvey

In SUPPORT of

**SB 427, An Act Concerning Smoke and Carbon Monoxide Detectors in
Certain Residential Buildings at the Time the Title Is Transferred**

Public Safety and Security Committee
March 11, 2014

Sen. Hartley, Rep. Dargan, members of the Committee:

My name is Elton B. Harvey, III and I am a transactional lawyer with the law firm of Baillie & Hershman, P.C. I am also the Chair of the Connecticut Bar Association Real Property Section. While the Connecticut Bar Association has not yet taken an official position in support of the proposed amendment to PA 13-272, it is expected that we will support such changes and forward written support shortly. I am here today as a lawyer who represents buyers and sellers of real property in Connecticut.

On its face, PA 13-272 seems like a good thing, to protect people and especially children by requiring working smoke detectors and carbon monoxide detectors in every home. However, when we take a look at this law, we can see where it becomes unworkable and needs amending.

First and foremost, unlike the Residential Property Condition Disclosure Report, required in most sales, there is no safe harbor that provides that the representations are not warranties and are only made to the best of the seller's knowledge and belief.

Few sellers have the technical knowledge or expertise necessary to ensure that the smoke or carbon monoxide detectors have been installed in accordance with the manufacturer's instructions, do not exceed the standards under which they were tested and approved, and whether the carbon monoxide detector measures in parts per million.

Accordingly, when faced with the necessity of "certifying" to the above items, even if the client is willing to guess, as the lawyer representing their interests in a sale, my fellow attorneys and I will advise our clients that the liability risk that they run for making a false statement, even if innocently made, far outweighs the penalty of \$250.00 for refusing to make such representation. Accordingly, the law, as written, provides a disincentive for homeowner's to purchase and install working smoke detectors and carbon monoxide detectors, in favor of paying a penalty and not installing the same.

I would urge the Committee to support Raised Bill No. 427, "An Act Concerning Smoke and Carbon Monoxide Detectors in Certain Residential Buildings at the Time the Title Is Transferred" which makes it clear that the representations of the Seller will not be construed to create any new implied or express warranties and expands the list of exempted transfers to include short sales, strict foreclosures, foreclosures by sale, and relocation sales, and does not require sellers of homes to make certifications about subjects for which they are not qualified.

Thank you for your consideration.

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Statement on

S.B. 427 (Raised): AN ACT CONCERNING SMOKE AND CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL BUILDINGS AT THE TIME THE TITLE IS TRANSFERRED

SUPPORT

Submitted to the Public Safety and Security Committee
March 11, 2014

By Maryann Hebert, Past President
Connecticut REALTORS®

The Connecticut REALTORS® would like to submit testimony in support of SB 427, AN ACT CONCERNING SMOKE AND CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL BUILDINGS AT THE TIME THE TITLE IS TRANSFERRED. The bill requires the affidavit regarding smoke and carbon monoxide detectors to be based on the transferor's knowledge and belief at the time the title is transferred. The proposal also exempts certain property transfers.

The Connecticut REALTORS® are committed to the safety of homeowners in our state and we are supportive of disclosure of working smoke and carbon monoxide detectors

The problem Connecticut REALTORS® have encountered is how current legislation is being interpreted by attorneys at the time of closing. Homeowners are being advised not to fill out the affidavit and to pay the \$250 fine, even if the property has working detectors. The seller does this solely to avoid any possible liability. This action is causing problems at closing and increasing seller costs unnecessarily. More importantly, as the statute currently exists, it defeats the primary purpose of the original act which was to protect the citizens of Connecticut.

The Connecticut REALTORS® have drafted a proposal which we believe will address our concerns while maintaining the goal of protection. A summary of the proposal's points is as follows:

- This bill improves the affidavit process by clarifying that the affidavit is not an implied or express warranty on the detector; clarifies that certification is only to the best knowledge and belief of the transferor; and is only related to the manufacturer's instructions for location and placement.
- The bill clarifies that residential properties includes cooperative and condominium units; and adds exceptions for strict foreclosures, short sales and relocations.

- Again, the Connecticut REALTORS® wants to make the current law work better. And the concern by the legal community about the requirements of the affidavit; specifically, that a low-cost fix has created more of a liability issue than the statute ever intended needs to be addressed. Homeowners with working detectors have been routinely advised to pay the \$250 which defeats the purpose of the statute; Homeowner protection.

Connecticut REALTORS® represents over 15,000 members involved in all aspects of real estate in Connecticut. For this reason, the Connecticut REALTORS® ask for your support this proposal.

Thank you for your attention and support of this important matter.