



House of Representatives

File No. 627

General Assembly

February Session, 2000

(Reprint of File No. 212)

Substitute House Bill No. 5590
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 14, 2000

An Act Concerning Consumer Protection For New Home Construction.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1 of public act 99-246 is repealed and the
2 following is substituted in lieu thereof:

3 As used in [this act] public act 99-246:

4 (1) "Certificate" means a certificate of registration issued under
5 section 3 of [this act] public act 99-246;

6 (2) "Commissioner" means the Commissioner of Consumer
7 Protection or any person designated by the commissioner to
8 administer and enforce [this act] public act 99-246;

9 (3) "Contract" means any agreement between a new home
10 construction contractor and a consumer for the construction or sale of a
11 new home;

12 (4) "Engage in the business" means that the person engages in the

13 business for the purpose of compensation or profit;

14 [(4)] (5) "New home construction contractor" means any person who
15 contracts with a consumer to construct or sell a new home or any
16 portion of a new home prior to occupancy;

17 [(5)] (6) "New home" means any newly constructed (A) single family
18 dwelling unit, [any] (B) dwelling consisting of not more than two
19 units, or (C) a unit, common element or limited common element in a
20 condominium, as defined in section 47-68a of the general statutes, or in
21 a common interest community, as defined in section 47-202 of the
22 general statutes;

23 [(6)] (7) "Person" means one or more individuals, partnerships,
24 associations, corporations, limited liability companies, business trusts,
25 legal representatives or any organized group of persons; [and]

26 [(7)] (8) "Consumer" means the [original] buyer or prospective
27 buyer, or the [original] buyer's or prospective buyer's heirs or
28 designated representatives, of any new home; and

29 (9) "Completion" means the stage of construction of a new home in
30 which the new home construction contractor is in receipt of such new
31 home's certificate of occupancy issued by the municipality in which
32 such new home is constructed.

33 Sec. 2. (NEW) Public act 99-246, as amended by this act, does not
34 apply to any of the following persons or organizations: (1) Any person
35 holding a current license as a real estate broker or salesperson issued
36 pursuant to chapter 392 of the general statutes, provided such person
37 engages only in work for which such person is licensed under chapter
38 392 of the general statutes; (2) any person licensed or otherwise
39 authorized under chapter 412 of the general statutes to sell or place a
40 mobile manufactured home, as defined in section 21-64 of the general
41 statutes, upon a mobile manufactured home park or mobile
42 manufactured space or lot, both as defined in section 21-64 of the
43 general statutes, provided such person engages only in work for which

44 such person is licensed or otherwise authorized under chapter 412 of
45 the general statutes; (3) any other person holding a professional or
46 occupational license, registration or certificate issued pursuant to the
47 general statutes, provided such person engages only in the work for
48 which such person is licensed, registered or certified; and (4) any new
49 home construction contractor who enters into one or more new home
50 construction contracts related to the same new home when such
51 contract or contracts in the aggregate with respect to that home has a
52 total price for work or services that is less than three thousand five
53 hundred dollars.

54 Sec. 3. Section 2 of public act 99-246 is repealed and the following is
55 substituted in lieu thereof:

56 (a) No person shall engage in the business of new home
57 construction or hold oneself out as a new home construction contractor
58 unless such person has been issued a certificate of registration by the
59 commissioner in accordance with the provisions of [this act] public act
60 99-246, as amended by this act. No new home construction contractor
61 shall be relieved of responsibility for the conduct and acts of its agents,
62 employees or officers by reason of such new home construction
63 contractor's compliance with the provisions of [this act] public act 99-
64 246, as amended by this act.

65 (b) Any person seeking a certificate of registration shall apply to the
66 commissioner, in writing, on a form provided by the commissioner.
67 The application shall include (1) the applicant's name, [residence or]
68 business street address, business telephone number, [and] (2) the
69 identity of the insurer that provides the applicant with insurance
70 coverage for liability, [based upon the errors and omissions of the new
71 home construction contractor] (3) if such applicant is required by any
72 provision of the general statutes to have workers' compensation
73 coverage, the identity of the insurer that provides the applicant with
74 such workers' compensation coverage, and (4) if such applicant is
75 required by any provision of the general statutes to have an agent for
76 service of process, the name and address of such agent. Each such

77 application shall be accompanied by a fee of one hundred twenty
78 dollars, except that no such application fee shall be required if such
79 person has paid the registration fee required under section 20-421 of
80 the general statutes, as amended, during any year in which such
81 person's registration as a new home construction contractor would be
82 valid.

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

85 (d) All certificates issued under the provisions of [this act] public act
86 99-246, as amended by this act, shall expire biennially. The fee for
87 renewal of a certificate shall be the same as the fee charged for an
88 original application, except as provided in subsection (c) of section 9 of
89 [this act] public act 99-246, and that no renewal fee is due if a person
90 seeking renewal of a certificate has paid the registration fee under
91 section 20-427 of the general statutes during any year in which such
92 person's registration as a new home construction contractor would be
93 valid.

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

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

98 Sec. 4. Section 4 of public act 99-246 is repealed and the following is
99 substituted in lieu thereof:

100 (a) A new home construction contractor shall (1) prior to entering
101 into a contract with a consumer for new home construction, provide to
102 the consumer a copy of the new home construction contractor's
103 certificate of registration and a written notice that (A) discloses that the
104 certificate of registration does not represent in any manner that such
105 contractor's registration constitutes an endorsement of the quality of
106 such person's work or of such contractor's competency by the
107 commissioner, (B) advises the consumer to contact the Department of

108 Consumer Protection to determine (i) if such contractor is registered in
109 this state as a new home construction contractor, (ii) if any complaints
110 have been filed against such contractor, and (iii) the disposition of any
111 such complaints, and (C) advises the consumer to request from such
112 contractor a list of [each individual or the fifteen most recent
113 individuals, whichever is less for whom such contractor has engaged
114 in new home construction during the current and preceding calendar
115 year] consumers of the last twelve new homes constructed to
116 completion by the contractor during the previous twenty-four months,
117 or if the contractor has not constructed at least twelve new homes to
118 completion during the previous twenty-four months, then a list of all
119 consumers for whom the contractor has constructed a new home to
120 completion during the previous twenty-four months, and to contact
121 several individuals on the list to discuss the quality of such contractor's
122 new home construction work, (2) state in any advertisement, including
123 any advertisement in a telephone directory, the fact that such
124 contractor is registered, and (3) include such contractor's registration
125 number in any such advertisement.

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

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

136 "NEW HOME CONSTRUCTION CONTRACTOR
137 REGISTRATION NOTICE

138 A CERTIFICATE OF REGISTRATION AS A NEW HOME
139 CONSTRUCTION CONTRACTOR DOES NOT REPRESENT IN ANY

140 MANNER THAT THE CONNECTICUT DEPARTMENT OF
141 CONSUMER PROTECTION ENDORSES THE QUALITY OF THE
142 CONTRACTOR'S NEW HOME CONSTRUCTION WORK OR THE
143 CONTRACTOR'S COMPETENCY TO ENGAGE IN NEW HOME
144 CONSTRUCTION.

145 ACCORDINGLY, YOU ARE ADVISED TO:

146 (1) REQUEST FROM THE CONTRACTOR A LIST OF [EACH
147 INDIVIDUAL OR THE FIFTEEN MOST RECENT INDIVIDUALS,
148 WHICHEVER IS LESS, FOR WHOM THE CONTRACTOR HAS
149 ENGAGED IN NEW HOME CONSTRUCTION IN THIS STATE
150 DURING THE CURRENT AND PRECEDING CALENDAR YEAR]
151 CONSUMERS OF THE LAST TWELVE NEW HOMES
152 CONSTRUCTED TO COMPLETION BY THE CONTRACTOR
153 DURING THE PREVIOUS TWENTY-FOUR MONTHS, OR IF THE
154 CONTRACTOR HAS NOT CONSTRUCTED AT LEAST TWELVE
155 NEW HOMES TO COMPLETION DURING THE PREVIOUS
156 TWENTY-FOUR MONTHS, THEN A LIST OF ALL CONSUMERS
157 FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW
158 HOME TO COMPLETION DURING THE PREVIOUS TWENTY-
159 FOUR MONTHS,

160 (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO
161 DISCUSS THE QUALITY AND THE TIMELINESS OF THE
162 CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND

163 (3) CONTACT THE DEPARTMENT OF CONSUMER
164 PROTECTION TO VERIFY THE REGISTRATION INFORMATION
165 PRESENTED BY THE CONTRACTOR AND TO ASCERTAIN THE
166 CONTRACTOR'S COMPLAINT HISTORY WITH THE
167 DEPARTMENT.

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

170 (1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE

171 POLICY AND IF SO, THE IDENTITY OF THE PERSON
172 DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT
173 ABOUT THE CONTRACTOR'S WORK, AND

174 (2) WHETHER THE CONTRACTOR WILL HOLD YOU
175 HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR
176 HIRED BY THE CONTRACTOR.

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

184 (d) No person shall: (1) Present, or attempt to present as such
185 person's own, the certificate of another; (2) knowingly give false
186 evidence of a material nature to the commissioner for the purpose of
187 procuring a certificate; (3) represent such person falsely as, or
188 impersonate, a registered new home construction contractor; (4) use or
189 attempt to use a certificate which has expired or which has been
190 suspended or revoked; (5) engage in the business of a new home
191 construction contractor or hold oneself out as a new home construction
192 contractor without having a current certificate of registration under
193 [this act] public act 99-246, as amended by this act; (6) represent in any
194 manner that such person's registration constitutes an endorsement of
195 the quality of such person's work or of such person's competency by
196 the commissioner; or (7) fail to refund a deposit paid to a new home
197 construction contractor not later than ten days after a written request
198 mailed or delivered to the new home construction contractor's last
199 known address, if (A) the consumer has complied with the terms of the
200 written contract up to the time of the request, (B) no substantial
201 portion of the contracted work has been performed at the time of the
202 request, (C) more than thirty days has elapsed since the starting date
203 specified in the written contract or more than thirty days has elapsed

204 since the date of the contract if such contract does not specify a starting
205 date, and (D) the new home construction contractor has failed to
206 provide a reasonable explanation to the consumer concerning such
207 contractor's failure to perform a substantial portion of the contracted
208 work. For purposes of this subdivision, "substantial portion of the
209 contracted work" includes, but is not limited to, work performed by
210 the new home construction contractor to (i) secure permits and
211 approvals, (ii) redraft plans or obtain engineer, architect, surveyor or
212 other approvals for changes requested by the consumer or made
213 necessary by site conditions discovered after the contract is executed,
214 (iii) scheduling site work or arranging for other contractors to perform
215 services related to the construction of the consumer's new home, and
216 (iv) any other work referred to in the contract as a "substantial portion
217 of the contracted work."

218 Sec. 5. Section 5 of public act 99-246 is repealed and the following is
219 substituted in lieu thereof:

220 In addition to any other remedy provided for in [this act] public act
221 99-246, as amended by this act, any person who violates any provision
222 of subsection (d) of section 4 of [this act, except subdivision (7) of said
223 subsection (d)] public act 99-246, as amended by this act, shall be guilty
224 of a class A misdemeanor. Notwithstanding subsection (d) of section
225 53a-29 or section 54-56e, if the court determines that a contractor
226 cannot fully repay any victim of the violations committed by the
227 contractor within the period of probation established in subsection (d)
228 of section 53a-29 or section 54-56e, the court may impose probation for
229 a period of not more than five years.

230 Sec. 6. This act shall take effect from its passage.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Future Revenue Loss

Affected Agencies: Department of Consumer Protection

Municipal Impact: None

Explanation

State Impact:

The bill as amended exempts those individuals who are dually registered as new home construction contractors and home improvement contractors from the biennial registration renewal fee of \$60 for new home construction contractors. Department of Consumer Protection records indicate that approximately half of the current 1600 new home construction contractors are also registered as home improvement contractors. Thus, a future revenue loss of \$48,000 (\$60 X 800) is anticipated. This exemption will not impact the fees required to be paid to the Home Construction Guaranty Fund.

The bill as amended exempts anyone holding a professional or occupational license, registration or certificate from the requirement that they obtain a new home construction license if the individual is going to work within the scope of his current license on new home construction. (This definition does not exempt those registered as home improvement contractors from obtaining a new home construction contractor registration if the individual is going to engage in new home construction work, because such work is outside the scope of the home improvement registration.) To the extent an

individual is currently licensed for another occupation, and will not seek a new home construction license, a minimal, future potential revenue loss may result. However, in practice few, if any, individuals currently licensed for another occupation have sought a new home construction license, thus there is no current fiscal impact. Additionally, the bill exempts contractors with contracts valued at less than \$3,500 for a particular home from the requirement that the individual register as a new home construction contractor. It is anticipated that few, if any, contractors engage exclusively in new home construction contracts valued at less than \$3,500, thus no current fiscal impact is anticipated.

The bill as amended specifies that individuals licensed or otherwise authorized to sell or place mobile manufactured homes are exempt from the registration as new home construction contractors. To the extent an individual who sells or places mobile manufactured homes will not seek a new home construction registration, a minimal, future potential revenue loss may result. However in practice few, if any, individuals who sell or place mobile manufactured homes have sought a new home construction license, thus there is no current fiscal impact.

The bill as amended makes it a class A misdemeanor for failure to return a deposit by a new home construction contractor when properly requested. The extent to which this may occur is unknown. Any increase in workload is anticipated to be absorbable within the current budgetary structure of the criminal justice system. The amendment would also result in a potential minimum revenue gain from criminal fines.

House "A" adds the provisions: 1) exempting individuals who sell or place mobile manufactured homes from the new home registration requirements; and 2) makes it a class A misdemeanor for failure to return a deposit by a new home construction contractor under certain circumstances. The associated fiscal impacts for these changes are discussed above.

OLR Amended Bill Analysis

sHB 5590 (as amended by House "A")*

AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION.**SUMMARY:**

This bill makes anyone with a contract to sell a new home register as a new home contractor, but it exempts anyone with a state-issued license, registration, or certificate working within the scope of his or her credential. It also exempts contractors with contracts valued at less than \$3,500 for a particular home. The law requires anyone engaging in the business of new home construction or holding himself out as a new home construction contractor to register. The bill defines "engage in the business" to mean doing so for the purpose of pay or profit.

The bill also (1) revises the requirement for contractors to provide consumers with a list of references; (2) defines when a new home is completed; (3) requires registration applicants to state (a) the identity of their worker's compensation insurance provider, if required by state statute to have coverage, and (b) the name and address of any agent for service of process required by law; and (4) revises the law's criminal penalty provision.

Finally, it requires registration applicants to provide their business street address rather than provide either their business or home address.

*House Amendment "A" (1) defines "engage in the business," (2) exempts licensed or authorized mobile manufactured home sellers, (3) clarifies an exemption in the bill for credentialed workers, (4) refines a requirement concerning applicants and proof of worker's compensation insurance, and (5) revises the law's criminal penalty provision.

EFFECTIVE DATE: October 1, 2000

LIST OF REFERENCES

The law requires new home contractors to give consumers a notice that, in part, advises them to ask for a list of the 15 most recent individuals for whom the contractor has engaged in home construction. The bill, instead, requires this part of the notice to advise consumers to request a list of the last 12 new homes built to completion by the contractor during the previous 24 months, or, if the contractor has not completed 12 new homes during this period, a list of all consumers for whom he has built a new home to completion during the previous 24 months. The bill defines “completion” as the construction stage in which the contractor has obtained a municipal certificate of occupancy.

The effect of this change is to (1) reduce the number of references the consumer is advised to request from 15 to 12, (2) advise the consumer to request a list of homes rather than individuals for whom the contractor worked, (3) exclude from the list homes that are not completed by the contractor, and (4) make the requirement inapplicable to subcontractors who work on a new home but do not build it to completion.

EXEMPTIONS

The bill exempts (1) licensed real estate brokers and salespeople from the new home construction contractor law if the real estate licensee has not provided any services or work toward the construction of the new home; (2) anyone licensed or authorized under mobile manufactured home law to sell or place such a home in a mobile manufactured home park, space, or lot if he only works within the scope of his license or authorization; (3) licensed, registered, or certified professionals or tradesmen if they are working within the scope of their credential; and (4) any new home construction contractor who enters into contracts that have an aggregate value of less than \$3,500 with respect to a single home.

PENALTY PROVISIONS

The bill makes a violation of the law requiring a contractor to refund a deposit within 10 days a class A misdemeanor. Class A misdemeanors are punishable by a prison term of up to 1 year, fine of up to \$2,000, or both. The law already makes other violations of the new home

construction contractor law a class A misdemeanor.

BACKGROUND

Related Bill

SB 367, reported favorably by the General Law Committee, also exempts tradesmen and professionals working within the scope of their state-issued license from the new home contractor registration law.

Legislative History

The House referred the bill (File 212) to the Finance, Revenue and Bonding Committee on March 29. On April 5, the committee favorably reported it without change.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 15 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report
Yea 44 Nay 0