



General Assembly

January Session, 2001

**Amendment**

LCO No. 6122

Offered by:

SEN. COLAPIETRO, 31<sup>st</sup> Dist.

To: Subst. Senate Bill No. 1074

File No. 241

Cal. No. 201

**"AN ACT CONCERNING THE LIQUOR CONTROL ACT, HEALTH CLUBS, LICENSING OF ARCHITECTS AND PHARMACISTS, ELECTRONIC SHELF LABELING, WELL DRILLERS AND THE NEW HOME CONSTRUCTION GUARANTY FUND."**

1 Strike lines 32 to 37, inclusive, in their entirety and renumber the  
2 remaining sections accordingly:

3 In line 38, strike "Subsection (c) of section" and insert "Section" in  
4 lieu thereof.

5 Strike lines 40 to 57 in their entirety and insert the following in lieu  
6 thereof:

7 "(a) The commissioner shall establish and maintain the New Home  
8 Construction Guaranty Fund.

9 (b) Each person who receives a certificate pursuant to sections 20-  
10 417a to 20-417i, inclusive, and subsection (b) of section 20-421 shall pay  
11 a fee of four hundred eighty dollars [biennially] to the fund and  
12 thereafter shall pay a renewal fee of four hundred eighty dollars

13 biennially to the fund. Said [fee] fees shall be payable with the fee for  
14 an application for a certificate or renewal of a certificate.

15 (c) Payments received under subsection (b) of this section shall be  
16 credited to the fund until the balance in such fund equals seven  
17 hundred fifty thousand dollars. Annually, if the balance in such fund  
18 exceeds seven hundred fifty thousand dollars, the first two hundred  
19 thousand dollars of the excess shall be deposited into the Consumer  
20 Protection Enforcement Fund established in section 21a-8a. [Any  
21 excess thereafter shall be applied by the commissioner to reduce the  
22 fees payable by new home construction contractors under the  
23 provisions of sections 20-417a to 20-417i, inclusive, and subsection (b)  
24 of section 20-421 for the subsequent fiscal year, provided the total  
25 amount of fees collected from new home construction contractors  
26 under the provisions of said sections and subsection shall not be less  
27 than three hundred sixty thousand dollars biennially.] Whenever any  
28 excess thereafter is at least fifty thousand dollars, the commissioner  
29 shall deposit such excess in the New Home Construction Guaranty  
30 Fund until such time as the commissioner uses such deposited excess  
31 to reduce renewal fees payable to the New Home Construction  
32 Guaranty Fund under the provisions of subsection (b) of this section  
33 for the subsequent biennial renewal cycle. Such excess shall be applied  
34 to reduce prospective renewal fees payable to the fund under  
35 subsection (b) of this section to the extent practicable based on an  
36 estimate of the number of new home construction contractors paying  
37 such renewal fees and other related factors. Such reduced renewal fees  
38 may be rounded pursuant to the discretion of the commissioner. Any  
39 money in the New Home Construction Guaranty Fund may be  
40 invested or reinvested in the same manner as funds of the state  
41 employees retirement system and the interest arising from such  
42 investments shall be credited to the fund.

43 (d) Beginning one year after October 1, 1999, whenever a consumer  
44 obtains a court judgment against any new home construction  
45 contractor holding a certificate or who has held a certificate under  
46 sections 20-417a to 20-417i, inclusive, and subsection (b) of section 20-

47 421 within the past two years of the date of entering into the contract  
48 with the consumer, for loss or damages sustained by reason of any  
49 violation of the provisions of sections 20-417a to 20-417i, inclusive, and  
50 subsection (b) of section 20-421 by a person holding a certificate under  
51 said sections and subsection, such consumer may, upon the final  
52 determination of, or expiration of time for, appeal in connection with  
53 any such judgment, apply to the commissioner for an order directing  
54 payment out of said New Home Construction Guaranty Fund of the  
55 amount not exceeding thirty thousand dollars unpaid upon the  
56 judgment for actual damages and costs taxed by the court against the  
57 contractor, exclusive of punitive damages. The application shall be  
58 made on forms provided by the commissioner and shall be  
59 accompanied by a certified copy of the court judgment obtained  
60 against the contractor together with a notarized affidavit, signed and  
61 sworn to by the consumer, affirming that the consumer has: (1)  
62 Complied with all the requirements of this subsection; (2) obtained a  
63 judgment, stating the amount of the judgment and the amount owing  
64 on the judgment at the date of application; and (3) made a good faith  
65 effort to satisfy any such judgment in accordance with the provisions  
66 of chapter 906 which effort may include causing to be issued a writ of  
67 execution upon said judgment, but the officer executing the same has  
68 made a return showing that no bank accounts or real property of the  
69 contractor liable to be levied upon in satisfaction of the judgment  
70 could be found, or that the amount realized on the sale of them or of  
71 such of them as were found, under the execution, was insufficient to  
72 satisfy the actual damage portion of the judgment or stating the  
73 amount realized and the balance remaining due on the judgment after  
74 application on the judgment of the amount realized, except that the  
75 requirements of this subdivision shall not apply to a judgment  
76 obtained by the consumer in small claims court. A true and attested  
77 copy of said executing officer's return, when required, shall be  
78 attached to such application and affidavit. Whenever the consumer  
79 satisfies the commissioner or the commissioner's designee that it is not  
80 practicable to comply with the requirements of subdivision (3) of this  
81 subsection and that the consumer has taken all reasonable steps to

82 collect the amount of the judgment or the unsatisfied part of the  
83 judgment and has been unable to collect the same, the commissioner or  
84 the commissioner's designee may, in the commissioner's discretion,  
85 dispense with the necessity for complying with such requirement. No  
86 application for an order directing payment out of the New Home  
87 Construction Guaranty Fund shall be made later than two years from  
88 the final determination of, or expiration time for, appeal of said court  
89 judgment, and no application for an order directing payment out of the  
90 New Home Construction Guaranty Fund shall exceed thirty thousand  
91 dollars.

92 (e) Upon receipt of said application together with said certified copy  
93 of the court judgment, notarized affidavit and true and, except as  
94 otherwise provided in subsection (d) of this section, attested copy of  
95 the executing officer's return, the commissioner or the commissioner's  
96 designee shall inspect such documents for their veracity and upon a  
97 determination that such documents are complete and authentic, and a  
98 determination that the consumer has not been paid, the commissioner  
99 shall order payment out of the New Home Construction Guaranty  
100 Fund of the amount not exceeding thirty thousand dollars unpaid  
101 upon the judgment for actual damages and costs taxed by the court  
102 against the contractor, exclusive of punitive damages.

103 (f) Beginning one year after October 1, 1999, whenever a consumer  
104 is awarded an order of restitution against any contractor for loss or  
105 damages sustained as a result of any violation of the provisions of  
106 sections 20-417a to 20-417i, inclusive, and subsection (b) of section 20-  
107 421 by a person holding a certificate or who has held a certificate  
108 under said sections and subsection within the past two years of the  
109 date of entering into the contract with the consumer, in a proceeding  
110 brought by the commissioner pursuant to subsection (h) of this section  
111 or subsection (d) of section 42-110d or in a proceeding brought by the  
112 Attorney General pursuant to subsection (a) of section 42-110m or  
113 subsection (d) of section 42-110d or a criminal proceeding pursuant to  
114 section 20-417d, such consumer may, upon the final determination of,  
115 or expiration of time for, appeal in connection with any such order of

116 restitution, apply to the commissioner for an order directing payment  
117 out of said New Home Construction Guaranty Fund of the amount not  
118 exceeding thirty thousand dollars unpaid upon the order of restitution.  
119 The commissioner may issue said order upon a determination that the  
120 consumer has not been paid.

121 (g) Before the commissioner may issue any order directing payment  
122 out of the New Home Construction Guaranty Fund to a consumer  
123 pursuant to subsection (e) or (f) of this section, the commissioner shall  
124 first notify the new home construction contractor of the consumer's  
125 application for an order directing payment out of the New Home  
126 Construction Guaranty Fund and of the new home construction  
127 contractor's right to a hearing to contest the disbursement in the event  
128 that the new home construction contractor has already paid the  
129 consumer. Such notice shall be given to the new home construction  
130 contractor not later than fifteen days from the receipt by the  
131 commissioner of the consumer's application for an order directing  
132 payment out of the fund. If the new home construction contractor  
133 requests a hearing, in writing, by certified mail not later than fifteen  
134 days from receipt of the notice from the commissioner, the  
135 commissioner shall grant such request and shall conduct a hearing in  
136 accordance with the provisions of chapter 54. If the commissioner does  
137 not receive a written request for a hearing by certified mail from the  
138 contractor on or before the fifteenth day from the contractor's receipt of  
139 such notice, the commissioner shall conclude that the consumer has  
140 not been paid, and the commissioner shall issue an order directing  
141 payment out of the fund for the amount not exceeding thirty thousand  
142 dollars unpaid upon the judgment for actual damages and costs taxed  
143 by the court against the new home construction contractor, exclusive of  
144 punitive damages, or for the amount not exceeding thirty thousand  
145 dollars unpaid upon the order of restitution.

146 (h) The commissioner or the commissioner's designee may proceed  
147 against any new home construction contractor holding a certificate or  
148 who has held a certificate under sections 20-417a to 20-417i, inclusive,  
149 and subsection (b) of section 20-421 within the past two years of the

150 effective date of entering into the contract with the consumer, for an  
151 order of restitution arising from loss or damages sustained by any  
152 consumer as a result of any violation of the provisions of said sections  
153 and subsection. Any such proceeding shall be held in accordance with  
154 the provisions of chapter 54. In the course of such proceeding, the  
155 commissioner or the commissioner's designee shall decide whether to  
156 exercise the powers specified in section 20-417b; whether to order  
157 restitution arising from loss or damages sustained by any consumer as  
158 a result of any violation of the provisions of sections 20-417a to 20-417i,  
159 inclusive, and subsection (b) of section 20-421; and whether to order  
160 payment out of the New Home Construction Guaranty Fund.  
161 Notwithstanding the provisions of chapter 54, the decision of the  
162 commissioner or the commissioner's designee shall be final with  
163 respect to any proceeding to order payment out of the fund and the  
164 commissioner and the commissioner's designee are exempted from the  
165 requirements of chapter 54 as they relate to appeal from any such  
166 decision. The commissioner or the commissioner's designee may hear  
167 complaints of all consumers submitting claims against a single  
168 contractor in one proceeding.

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

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

182 (k) If the money deposited in the New Home Construction

183 Guaranty Fund is insufficient to satisfy any duly authorized claim or  
184 portion of a claim, the commissioner shall, when sufficient money has  
185 been deposited in the fund, satisfy such unpaid claims or portions of  
186 claims not exceeding thirty thousand dollars, in the order that such  
187 claims or portions of claims were originally determined.

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

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

204 (n) If the commissioner orders the payment of an amount as a result  
205 of a claim against a new home construction contractor, the  
206 commissioner may, after notice and hearing in accordance with the  
207 provisions of chapter 54, revoke the certificate of the new home  
208 construction contractor and such contractor shall not be eligible to  
209 receive a new or renewed certificate until such contractor has repaid  
210 such amount in full, plus interest from the time said payment is made  
211 from the New Home Construction Guaranty Fund, at a rate to be in  
212 accordance with section 37-3b, except that the commissioner may, in  
213 the commissioner's sole discretion, permit a new home construction  
214 contractor to receive a new or renewed certificate after such new home  
215 construction contractor has entered into an agreement with the

216 commissioner whereby the new home construction contractor agrees  
217 to repay the fund in full in the form of periodic payments over a set  
218 period of time. Any such agreement shall include a provision  
219 providing for the summary suspension of any and all certificates held  
220 by the new home construction contractor if payment is not made in  
221 accordance with the terms of the agreement."

222 In line 225, after "location" insert ", except with the approval of the  
223 commissioner"

224 After line 242, insert the following:

225 "Sec. 14. This act shall take effect July 1, 2001."