



Senate

General Assembly

File No. 143

February Session, 2006

Substitute Senate Bill No. 172

Senate, March 28, 2006

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HOMEOWNERS, HOME IMPROVEMENT CONTRACTORS AND NEW HOME CONSTRUCTION CONTRACTORS.

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

1 Section 1. Section 20-417a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in this section, sections 20-417b to [20-417i] 20-417j,
4 inclusive, as amended by this act; [, and subsection (b) of section 20-
5 421:]

6 (1) "Certificate" means a certificate of registration issued under
7 section 20-417b, as amended by this act;

8 (2) "Commissioner" means the Commissioner of Consumer
9 Protection or any person designated by the commissioner to
10 administer and enforce this section, sections 20-417b to [20-417i] 20-
11 417j, inclusive, as amended by this act; [, and subsection (b) of section
12 20-421;]

13 (3) "Contract" means any agreement between a new home
14 construction contractor and a consumer for the construction or sale of a
15 new home or any portion of a new home prior to occupancy;

16 (4) "Engage in the business" means that the person engages in the
17 business for the purpose of compensation or profit;

18 (5) "New home construction contractor" means any person who
19 contracts with a consumer to construct or sell a new home or any
20 portion of a new home prior to occupancy;

21 (6) "New home" means any newly constructed (A) single-family
22 dwelling unit, (B) dwelling consisting of not more than two units, or
23 (C) unit, common element or limited common element in a
24 condominium, as defined in section 47-68a, or in a common interest
25 community, as defined in section 47-202;

26 (7) "Person" means one or more individuals, partnerships,
27 associations, corporations, limited liability companies, business trusts,
28 legal representatives or any organized group of persons;

29 (8) "Consumer" means the buyer or prospective buyer, or the
30 buyer's or prospective buyer's heirs or designated representatives, of
31 any new home or the owner of property on which a new home is being
32 or will be constructed regardless of whether such owner obtains a
33 building permit as the owner of the premises affected pursuant to
34 section 29-263; and

35 (9) "Completion" means the stage of construction of a new home in
36 which the new home construction contractor is in receipt of [such new
37 home's] the certificate of occupancy for such new home issued by the
38 municipality in which such new home is constructed.

39 Sec. 2. Subsection (a) of section 20-417b of the general statutes is
40 repealed and the following is substituted in lieu thereof (*Effective from*
41 *passage*):

42 (a) No person shall engage in the business of new home

43 construction or hold himself or herself out as a new home construction
44 contractor unless such person has been issued a certificate of
45 registration by the commissioner in accordance with the provisions of
46 sections 20-417a to [20-417i] 20-417j, inclusive, as amended by this act.
47 [, and subsection (b) of section 20-421.] No new home construction
48 contractor shall be relieved of responsibility for the conduct and acts of
49 its agents, employees or officers by reason of such new home
50 construction contractor's compliance with the provisions of sections
51 20-417a to [20-417i] 20-417j, inclusive, as amended by this act. [, and
52 subsection (b) of section 20-421.]

53 Sec. 3. Subsection (d) of section 20-417b of the general statutes is
54 repealed and the following is substituted in lieu thereof (*Effective from*
55 *passage*):

56 (d) All certificates issued under the provisions of sections 20-417a to
57 [20-417i] 20-417j, inclusive, as amended by this act, [and subsection (b)
58 of section 20-421] shall expire biennially. The fee for renewal of a
59 certificate shall be the same as the fee charged for an original
60 application, [except as provided in subsection (c) of section 20-417i,
61 and] except that no renewal fee is due if a person seeking renewal of a
62 certificate has paid the registration fee under section 20-427 during any
63 year in which such person's registration as a new home construction
64 contractor would be valid.

65 Sec. 4. Subsection (f) of section 20-417b of the general statutes is
66 repealed and the following is substituted in lieu thereof (*Effective from*
67 *passage*):

68 (f) Failure to receive a notice of expiration or a renewal application
69 shall not exempt a new home construction contractor from the
70 obligation to renew.

71 Sec. 5. Section 20-417c of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective from passage*):

73 The commissioner may revoke, suspend, or refuse to issue or renew

74 any certificate issued pursuant to sections 20-417a to [20-417i] 20-417j,
75 inclusive, as amended by this act, [and subsection (b) of section 20-421]
76 or place a registrant on probation or issue a letter of reprimand after
77 notice and hearing in accordance with the provisions of chapter 54
78 concerning contested cases if it is shown that the holder of such
79 certificate has: (1) Failed to comply with any provision of sections 20-
80 417a to [20-417i] 20-417j, inclusive, as amended by this act, [and
81 subsection (b) of section 20-421] or any regulation adopted pursuant to
82 said sections; [and subsection;] (2) obtained the certificate through
83 fraud or misrepresentation; (3) engaged in conduct of a character likely
84 to mislead, deceive or defraud the public or the commissioner; (4)
85 engaged in any untruthful or misleading advertising; (5) failed to
86 reimburse the New Home Construction Guaranty Fund established
87 pursuant to section 20-417i, as amended by this act, for any moneys
88 paid to a consumer pursuant to said section; (6) engaged in an unfair
89 or deceptive business practice under subsection (a) of section 42-110b;
90 (7) failed to timely complete any task, as specified in a written contract
91 of sale; (8) failed to remedy any violation of any provision of sections
92 47-116 to 47-121, inclusive, or any regulation adopted pursuant to said
93 sections; [47-116 to 47-121, inclusive;] (9) failed to remedy any violation
94 of any provision of the State Building Code; or (10) if applicable, failed
95 to maintain its certificate of good standing issued by the office of the
96 Secretary of the State.

97 Sec. 6. Section 20-417d of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective from passage*):

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

108 this state as a new home construction contractor, (ii) if any complaints
109 have been filed against such contractor, and (iii) the disposition of any
110 such complaints, and (C) advises the consumer to request from such
111 contractor a list of consumers of [the last twelve] new homes
112 constructed to completion by the contractor during the previous
113 twenty-four months [, or if the contractor has not constructed at least
114 twelve new homes to completion during the previous twenty-four
115 months, then a list of all consumers for whom the contractor has
116 constructed a new home to completion during the previous twenty-
117 four months,] and to contact several individuals on the list to discuss
118 the quality of such contractor's new home construction work, (2) state
119 in any advertisement, including any advertisement in a telephone
120 directory, the fact that such contractor is registered, and (3) include
121 such contractor's registration number in any such advertisement. The
122 new home construction contractor, or his agent, shall also discuss with
123 the consumer the installation of an automatic fire extinguishing system
124 in a new home.

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

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

135 "NEW HOME CONSTRUCTION CONTRACTOR

136 REGISTRATION NOTICE

137 A CERTIFICATE OF REGISTRATION AS A NEW HOME
138 CONSTRUCTION CONTRACTOR DOES NOT REPRESENT IN ANY
139 MANNER THAT THE CONNECTICUT DEPARTMENT OF

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

144 ACCORDINGLY, YOU ARE ADVISED TO:

145 (1) REQUEST FROM THE CONTRACTOR A LIST OF
146 CONSUMERS OF [THE LAST TWELVE] NEW HOMES
147 CONSTRUCTED TO COMPLETION BY THE CONTRACTOR
148 DURING THE PREVIOUS TWENTY-FOUR MONTHS, [OR IF THE
149 CONTRACTOR HAS NOT CONSTRUCTED AT LEAST TWELVE
150 NEW HOMES TO COMPLETION DURING THE PREVIOUS
151 TWENTY-FOUR MONTHS, THEN A LIST OF ALL CONSUMERS
152 FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW
153 HOME TO COMPLETION DURING THE PREVIOUS TWENTY-
154 FOUR MONTHS,]

155 (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO
156 DISCUSS THE QUALITY AND THE TIMELINESS OF THE
157 CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND

158 (3) CONTACT THE DEPARTMENT OF CONSUMER
159 PROTECTION TO VERIFY THE REGISTRATION INFORMATION
160 PRESENTED BY THE CONTRACTOR AND TO ASCERTAIN THE
161 CONTRACTOR'S COMPLAINT HISTORY WITH THE
162 DEPARTMENT.

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

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

169 (2) WHETHER THE CONTRACTOR WILL HOLD YOU
170 HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR

171 HIRED BY THE CONTRACTOR, AND

172 (3) THE INSTALLATION OF AN AUTOMATIC FIRE
173 EXTINGUISHING SYSTEM.

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

181 (d) No person shall: (1) Present, or attempt to present as such
182 person's own, the certificate of another; (2) knowingly give false
183 evidence of a material nature to the commissioner for the purpose of
184 procuring a certificate; (3) represent such person falsely as, or
185 impersonate, a registered new home construction contractor; (4) use or
186 attempt to use a certificate which has expired or [which has] been
187 suspended or revoked; (5) engage in the business of a new home
188 construction contractor or hold himself or herself out as a new home
189 construction contractor without having a current certificate of
190 registration under sections 20-417a to [20-417i] 20-417j, inclusive, as
191 amended by this act; [and subsection (b) of section 20-421;] (6)
192 represent in any manner that such person's registration constitutes an
193 endorsement of the quality of such person's work or of such person's
194 competency by the commissioner; or (7) fail to refund a deposit paid to
195 a new home construction contractor not later than ten days after a
196 written request mailed or delivered to the new home construction
197 contractor's last known address, if (A) the consumer has complied with
198 the terms of the written contract up to the time of the request, (B) no
199 substantial portion of the contracted work has been performed at the
200 time of the request, (C) more than thirty days has elapsed since the
201 starting date specified in the written contract or more than thirty days
202 has elapsed since the date of the contract if such contract does not
203 specify a starting date, and (D) the new home construction contractor

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

216 Sec. 7. Section 20-417e of the general statutes is repealed and the
217 following is substituted in lieu thereof (*Effective from passage*):

218 (a) In addition to any other remedy provided for in sections 20-417a
219 to [20-417i] 20-417j, inclusive, as amended by this act, [and subsection
220 (b) of section 20-421,] any person who violates any provision of
221 subsection (d) of section 20-417d, as amended by this act, shall be
222 guilty of a class A misdemeanor. Notwithstanding subsection (d) of
223 section 53a-29, as amended, or section 54-56e, as amended, if the court
224 determines that a new home construction contractor cannot fully repay
225 any victim of the violations committed by [the] such contractor within
226 the period of probation established in subsection (d) of section 53a-29,
227 as amended, or section 54-56e, as amended, the court may impose
228 probation for a period of not more than five years.

229 (b) Any person who violates the provisions of subdivision (7) of
230 subsection (d) of section 20-417d, as amended by this act, shall be liable
231 for treble damages.

232 Sec. 8. Section 20-417f of the general statutes is repealed and the
233 following is substituted in lieu thereof (*Effective from passage*):

234 (a) The commissioner may, after notice and hearing in accordance
235 with the provisions of chapter 54, impose a civil penalty on any person

236 who (1) engages in or practices the work for which a certificate of
237 registration is required by sections 20-417a to [20-417i] 20-417j,
238 inclusive, as amended by this act, [and subsection (b) of section 20-421]
239 without having first obtained such a certificate of registration, [or who]
240 (2) engages in or practices any of the work for which a certificate of
241 registration is required by [said sections and subsection] sections 20-
242 417a to 20-417j, inclusive, as amended by this act, after the expiration
243 of such person's certificate of registration, or [who] (3) violates any of
244 the provisions of sections 20-417a to [20-417i] 20-417j, inclusive, as
245 amended by this act, [and subsection (b) of section 20-421] or the
246 regulations adopted pursuant to said sections, [and subsection.]

247 (b) Such civil penalty shall not exceed (1) five hundred dollars for a
248 first violation, [of this subsection,] (2) seven hundred fifty dollars for a
249 second violation [of this subsection] occurring not more than three
250 years after a prior violation, and (3) one thousand five hundred dollars
251 for a third or subsequent violation [of this subsection] occurring not
252 more than three years after a prior violation.

253 (c) Any civil penalty collected pursuant to this [subsection] section
254 shall be deposited in the [Consumer Protection Enforcement Fund]
255 consumer protection enforcement account established in section
256 21a-8a.

257 Sec. 9. Section 20-417g of the general statutes is repealed and the
258 following is substituted in lieu thereof (*Effective from passage*):

259 A violation of any of the provisions of sections 20-417a to [20-417i]
260 20-417j, inclusive, as amended by this act, [and subsection (b) of section
261 20-421] shall be deemed an unfair or deceptive trade practice under
262 subsection (a) of section 42-110b.

263 Sec. 10. Section 20-417h of the general statutes is repealed and the
264 following is substituted in lieu thereof (*Effective from passage*):

265 No new home construction contractor shall commence work unless
266 each applicable building or construction permit has been obtained

267 under the general statutes or local ordinances. No building official
268 shall issue [a contractor] a building or construction permit to a new
269 home construction contractor unless [the] such contractor has
270 presented to such building official the certificate of registration and
271 registration number of [the new home construction] such contractor.

272 Sec. 11. Section 20-417i of the general statutes is repealed and the
273 following is substituted in lieu thereof (*Effective from passage*):

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

276 (b) Each person who receives a certificate pursuant to sections 20-
277 417a to [20-417i] 20-417j, inclusive, as amended by this act, [and
278 subsection (b) of section 20-421] shall pay a fee of four hundred eighty
279 dollars biennially to the fund. [Said] Such fee shall be payable with the
280 fee for an application for a certificate or renewal of a certificate.

281 [(c) (1) For fiscal years commencing prior to July 1, 2002, payments
282 received under subsection (b) of this section shall be credited to the
283 fund until the balance in such fund equals seven hundred fifty
284 thousand dollars. Annually, if the balance in such fund exceeds seven
285 hundred fifty thousand dollars, the first two hundred thousand dollars
286 of the excess shall be deposited into the Consumer Protection
287 Enforcement Fund established in section 21a-8a. Any excess thereafter
288 shall be applied by the commissioner to reduce the fees payable by
289 new home construction contractors under the provisions of sections
290 20-417a to 20-417i, inclusive, and subsection (b) of section 20-421 for
291 the subsequent fiscal year, provided the total amount of fees collected
292 from new home construction contractors under the provisions of said
293 sections and subsection shall not be less than three hundred sixty
294 thousand dollars biennially.

295 (2) For the fiscal year commencing July 1, 2002, payments received
296 under subsection (b) of this section shall be credited to the fund until
297 the balance in such fund equals seven hundred fifty thousand dollars.
298 Any balance in such fund in excess of seven hundred fifty thousand

299 dollars on July 31, 2002, shall be deposited in the General Fund. From
300 August 1, 2002, to May 31, 2003, any excess in the fund, not to exceed
301 three hundred thousand dollars, shall be deposited in the consumer
302 protection enforcement account established in section 21a-8a. Any
303 balance in the New Home Construction Guaranty Fund, in excess of
304 seven hundred fifty thousand dollars on June 1, 2003, shall be
305 deposited in the General Fund.]

306 [(3)] (c) (1) For fiscal years commencing on or after July 1, 2003,
307 payments received under subsection (b) of this section shall be
308 credited to the [fund] New Home Construction Guaranty Fund until
309 the balance in [such] the fund equals seven hundred fifty thousand
310 dollars. Annually, if the balance in [such] the fund exceeds seven
311 hundred fifty thousand dollars, the first three hundred thousand
312 dollars of the excess shall be deposited in the consumer protection
313 enforcement account established in section 21a-8a. On June 1, 2004,
314 and each June first thereafter, if the balance in the [New Home
315 Construction Guaranty Fund] fund exceeds seven hundred fifty
316 thousand dollars, the excess shall be deposited in the General Fund.

317 [(4)] (2) Any money in the New Home Construction Guaranty Fund
318 may be invested or reinvested in the same manner as funds of the state
319 employees retirement system and the interest arising from such
320 investments shall be credited to the fund.

321 (d) Beginning [one year after October 1, 1999] October 1, 2000,
322 whenever a consumer obtains a court judgment against any new home
323 construction contractor holding a certificate or who has held a
324 certificate under sections 20-417a to [20-417i] 20-417j, inclusive, as
325 amended by this act, [and subsection (b) of section 20-421] within the
326 past two years of the date of entering into the contract with the
327 consumer, for loss or damages sustained by reason of any violation of
328 the provisions of sections 20-417a to [20-417i] 20-417j, inclusive, as
329 amended by this act, [and subsection (b) of section 20-421] by a person
330 holding a certificate under said sections, [and subsection,] such
331 consumer may, upon the final determination of, or expiration of time

332 for [] taking, an appeal in connection with any such judgment, apply
333 to the commissioner for an order directing payment out of [said] the
334 New Home Construction Guaranty Fund of the amount not exceeding
335 thirty thousand dollars unpaid upon the judgment for actual damages
336 and costs taxed by the court against [the] such contractor, exclusive of
337 punitive damages. The application shall be made on forms provided
338 by the commissioner and shall be accompanied by a certified copy of
339 the court judgment obtained against the new home construction
340 contractor together with a notarized affidavit, signed and sworn to by
341 the consumer, affirming that the consumer has: (1) Complied with all
342 the requirements of this subsection; (2) obtained a judgment, stating
343 the amount of the judgment and the amount owing on the judgment at
344 the date of application; and (3) made a good faith effort to satisfy any
345 such judgment in accordance with the provisions of chapter 906 which
346 effort may include causing to be issued a writ of execution upon [said]
347 such judgment, but the officer executing the same has made a return
348 showing that no bank accounts or real property of [the] such contractor
349 liable to be levied upon in satisfaction of the judgment could be found,
350 or that the amount realized on the sale of them or of such of them as
351 were found, under the execution, was insufficient to satisfy the actual
352 damage portion of the judgment or stating the amount realized and
353 the balance remaining due on the judgment after application on the
354 judgment of the amount realized, except that the requirements of this
355 subdivision shall not apply to a judgment obtained by the consumer in
356 small claims court. A true and attested copy of [said] such executing
357 officer's return, when required, shall be attached to such application
358 and affidavit. Whenever the consumer satisfies the commissioner or
359 the commissioner's designee that it is not practicable to comply with
360 the requirements of subdivision (3) of this subsection and that the
361 consumer has taken all reasonable steps to collect the amount of the
362 judgment or the unsatisfied part of the judgment and has been unable
363 to collect the same, the commissioner or the commissioner's designee
364 may, in the commissioner's discretion, dispense with the necessity for
365 complying with such requirement. No application for an order
366 directing payment out of the [New Home Construction Guaranty

367 Fund] fund shall be made later than two years from the final
368 determination of, or expiration of time for [,] taking, an appeal of [said]
369 such court judgment, and no such application [for an order directing
370 payment out of the New Home Construction Guaranty Fund shall
371 exceed] shall be for an amount in excess of thirty thousand dollars.

372 (e) Upon receipt of [said] such application together with [said] such
373 certified copy of the court judgment, notarized affidavit and, except as
374 otherwise provided in subsection (d) of this section, true and [, except
375 as otherwise provided in subsection (d) of this section,] attested copy
376 of the executing officer's return, the commissioner or the
377 commissioner's designee shall inspect such documents for their
378 veracity and upon a determination that such documents are complete
379 and authentic [,] and [a determination] that the consumer has not been
380 paid, the commissioner shall order payment out of the New Home
381 Construction Guaranty Fund of the amount not exceeding thirty
382 thousand dollars unpaid upon the judgment for actual damages and
383 costs taxed by the court against the contractor, exclusive of punitive
384 damages.

385 (f) Beginning [one year after October 1, 1999] October 1, 2000,
386 whenever a consumer is awarded an order of restitution against any
387 new home construction contractor for loss or damages sustained as a
388 result of any violation of the provisions of sections 20-417a to [20-417i]
389 20-417j, inclusive, as amended by this act, [and subsection (b) of section
390 20-421] by a person holding a certificate or who has held a certificate
391 under said sections [and subsection] within the past two years of the
392 date of entering into the contract with the consumer, in (1) a
393 proceeding brought by the commissioner pursuant to subsection (h) of
394 this section or subsection (d) of section 42-110d, [or in] (2) a proceeding
395 brought by the Attorney General pursuant to subsection (a) of section
396 42-110m or subsection (d) of section 42-110d, or (3) a criminal
397 proceeding pursuant to section [20-417d] 20-417e, as amended by this
398 act, such consumer may, upon the final determination of, or expiration
399 of time for [,] taking, an appeal in connection with any such order of
400 restitution, apply to the commissioner for an order directing payment

401 out of [said] the New Home Construction Guaranty Fund of the
402 amount not exceeding thirty thousand dollars unpaid upon the order
403 of restitution. The commissioner may issue [said] such order upon a
404 determination that the consumer has not been paid.

405 (g) Before the commissioner may issue any order directing payment
406 out of the New Home Construction Guaranty Fund to a consumer
407 pursuant to subsection (e) or (f) of this section, the commissioner shall
408 first notify the new home construction contractor of the consumer's
409 application for an order directing payment out of the [New Home
410 Construction Guaranty Fund] fund and of the new home construction
411 contractor's right to a hearing to contest the disbursement in the event
412 that [the new home construction] such contractor has already paid the
413 consumer. Such notice shall be given to the new home construction
414 contractor not later than fifteen days from the receipt by the
415 commissioner of the consumer's application for an order directing
416 payment out of the fund. If the new home construction contractor
417 requests a hearing, in writing, by certified mail not later than fifteen
418 days from receipt of the notice from the commissioner, the
419 commissioner shall grant such request and shall conduct a hearing in
420 accordance with the provisions of chapter 54. If the commissioner does
421 not receive a written request for a hearing by certified mail from the
422 new home construction contractor on or before the fifteenth day from
423 the contractor's receipt of such notice, the commissioner shall conclude
424 that the consumer has not been paid, and the commissioner shall issue
425 an order directing payment out of the fund for the amount not
426 exceeding thirty thousand dollars unpaid upon the judgment for
427 actual damages and costs taxed by the court against the new home
428 construction contractor, exclusive of punitive damages, or for the
429 amount not exceeding thirty thousand dollars unpaid upon the order
430 of restitution.

431 (h) The commissioner or the commissioner's designee may proceed
432 against any new home construction contractor holding a certificate or
433 who has held a certificate under sections 20-417a to [20-417i] 20-417j,
434 inclusive, as amended by this act, [and subsection (b) of section 20-421]

435 within the past two years of the effective date of entering into the
436 contract with the consumer, for an order of restitution arising from loss
437 or damages sustained by any consumer as a result of any violation of
438 the provisions of said sections 20-417a to 20-417j, inclusive. [and
439 subsection.] Any such proceeding shall be held in accordance with the
440 provisions of chapter 54. In the course of such proceeding, the
441 commissioner or the commissioner's designee shall decide whether to
442 (1) exercise the powers specified in section [20-417b; whether to] 20-
443 417c, as amended by this act, (2) order restitution arising from loss or
444 damages sustained by any consumer as a result of any violation of the
445 provisions of sections 20-417a to [20-417i] 20-417j, inclusive, as
446 amended by this act, [and subsection (b) of section 20-421; and whether
447 to] and (3) order payment out of the New Home Construction
448 Guaranty Fund. Notwithstanding the provisions of chapter 54, the
449 decision of the commissioner or the commissioner's designee shall be
450 final with respect to any proceeding to order payment out of the fund
451 and the commissioner and the commissioner's designee are exempted
452 from the requirements of chapter 54 as [they] such requirements relate
453 to an appeal from any such decision. The commissioner or the
454 commissioner's designee may hear complaints of all consumers
455 submitting claims against a single new home construction contractor in
456 one proceeding.

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

463 (j) In order to preserve the integrity of the New Home Construction
464 Guaranty Fund, the commissioner, in the commissioner's sole
465 discretion, may order payment out of [said] the fund of an amount less
466 than the actual loss or damages incurred by the consumer or less than
467 the order of restitution awarded by the commissioner or the Superior
468 Court. In no event shall any payment out of [said] the fund be in excess

469 of thirty thousand dollars for any single claim by a consumer.

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

476 (l) [When] Whenever the commissioner has caused any sum to be
477 paid from the New Home Construction Guaranty Fund to a consumer,
478 the commissioner shall be subrogated to all of the rights of the
479 consumer up to the amount paid plus reasonable interest, and prior to
480 receipt of any payment from the fund, the consumer shall assign all of
481 [this] the consumer's right, title and interest in the claim up to such
482 amount to the commissioner, and any amount and interest recovered
483 by the commissioner on the claim shall be deposited to the fund.

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

492 (n) If the commissioner orders the payment of an amount as a result
493 of a claim against a new home construction contractor, the
494 commissioner may, after notice and hearing in accordance with the
495 provisions of chapter 54, revoke the certificate of [the new home
496 construction] such contractor and such contractor shall not be eligible
497 to receive a new or renewed certificate until such contractor has repaid
498 such amount in full, plus interest from the time [said] such payment is
499 made from the New Home Construction Guaranty Fund, at a rate to be
500 in accordance with section 37-3b, except that the commissioner may, in
501 the commissioner's sole discretion, permit a new home construction

502 contractor to receive a new or renewed certificate after such [new
503 home construction] contractor has entered into an agreement with the
504 commissioner whereby [the new home construction] such contractor
505 agrees to repay the fund in full in the form of periodic payments over a
506 set period of time. Any such agreement shall include a provision
507 providing for the summary suspension of any and all certificates held
508 by the new home construction contractor if payment is not made in
509 accordance with the terms of the agreement.

510 Sec. 12. Section 20-417j of the general statutes is repealed and the
511 following is substituted in lieu thereof (*Effective from passage*):

512 (a) Sections 20-417a to 20-417i, inclusive, as amended by this act,
513 [and subsection (b) of section 20-421] do not apply to any of the
514 following persons or organizations: (1) Any person holding a current
515 license as a real estate broker or salesperson issued pursuant to chapter
516 392, provided such person engages only in work for which such
517 person is licensed under chapter 392; (2) any person licensed or
518 otherwise authorized under chapter 412 to sell or place a mobile
519 manufactured home, as defined in section 21-64, upon a mobile
520 manufactured home park or mobile manufactured space or lot, both as
521 defined in section 21-64, provided such person engages only in work
522 for which such person is licensed or otherwise authorized under
523 chapter 412; (3) any other person holding a professional or
524 occupational license, registration or certificate issued pursuant to the
525 general statutes, provided such person engages only in the work for
526 which such person is licensed, registered or certified; and (4) any new
527 home construction contractor who enters into one or more new home
528 construction contracts related to the same new home when such
529 contract or contracts in the aggregate with respect to that home has a
530 total price for work or services that is less than three thousand five
531 hundred dollars.

532 (b) The commissioner shall reimburse the amount of the fees paid
533 for a certificate issued under section 20-417b, as amended by this act,
534 and the amount of fees paid into the New Home Construction

535 Guaranty Fund pursuant to section 20-417i, as amended by this act, if
536 such person for whom reimbursement is requested (1) is a person
537 exempt from registration as a new home construction contractor
538 pursuant to subsection (a) of this section, and (2) makes such request in
539 writing to the Department of Consumer Protection on a form supplied
540 by the department and such request is received by the department on
541 or before June 30, 2001.

542 Sec. 13. Subsection (b) of section 20-421 of the general statutes is
543 repealed and the following is substituted in lieu thereof (*Effective from*
544 *passage*):

545 (b) Each application for a certificate of registration as a home
546 improvement contractor shall be accompanied by a fee of sixty dollars,
547 except that no such application fee shall be required in any year during
548 which such person has paid the registration fee required under section
549 [~~20-417c~~] 20-417b, as amended by this act, or in any year in which such
550 person's registration as a new home construction contractor is valid.

551 Sec. 14. Section 20-429 of the general statutes is repealed and the
552 following is substituted in lieu thereof (*Effective from passage*):

553 (a) No home improvement contract shall be valid or enforceable
554 against an owner unless it: (1) Is in writing, (2) is signed by the owner
555 and the contractor, (3) contains the entire agreement between the
556 owner and the contractor, (4) contains the date of the transaction, (5)
557 contains the name and address of the contractor and the contractor's
558 registration number, (6) contains a notice of the owner's cancellation
559 rights in accordance with the provisions of chapter 740, (7) contains a
560 starting date and completion date, and (8) is entered into by a
561 registered salesman or registered contractor. Each change in the terms
562 and conditions of a contract shall be in writing and shall be signed by
563 the owner and contractor, except that the commissioner may, by
564 regulation, dispense with the necessity for complying with the
565 requirement that each change in a home improvement contract shall be
566 in writing and signed by the owner and contractor.

567 (b) The start and completion dates contained in a home
568 improvement contract shall be contingent on: (1) Changes to the
569 contracted work requested by the owner after the contract is executed,
570 when such requested changes cause a delay in the start or completion
571 date, and (2) the failure of an owner to make decisions before the
572 contractor can proceed with the work, or any part thereof, when such
573 failure causes a delay in the start or completion date.

574 [(b)] (c) No home improvement contract shall be valid if it includes
575 any provision obligating the owner to instruct the home improvement
576 contractor, by a date determined by such contractor, that periodic
577 home improvements are not to be performed unless it also includes a
578 provision requiring the contractor to remind the owner of that
579 obligation by means of a card or letter mailed to the owner and
580 postmarked not earlier than twenty days, and not later than ten days,
581 prior to such date.

582 [(c)] (d) The contractor shall provide and deliver to the owner,
583 without charge, a completed copy of the home improvement contract
584 at the time such contract is executed.

585 [(d)] (e) The commissioner may, by regulation, require the inclusion
586 of additional contractual provisions.

587 [(e)] (f) Each home improvement contract entered into shall be
588 considered a home solicitation sale pursuant to chapter 740 and shall
589 be subject to the requirements of said chapter regardless of the location
590 of the transaction or of the signing of the contract. Each home
591 improvement contract in which the owner agrees to repay the
592 contractor an amount loaned or advanced to the owner by the
593 contractor for the purposes of paying for the goods and services
594 provided in such contract, or which contains a finance charge, (1) shall
595 set forth the information required to be disclosed pursuant to the
596 Truth-in-Lending Act, sections 36a-675 to 36a-685, inclusive, as
597 amended, (2) shall allow the owner to pay off in advance the full
598 amount due and obtain a partial refund of any unearned finance
599 charge, and (3) may contain a finance charge set at a rate of not more

600 than the rate allowed for loans pursuant to section 37-4. As used in this
 601 subsection, "finance charge" means the amount in excess of the cash
 602 price for goods and services under the home improvement contract to
 603 be paid by the owner for the privilege of paying the contract price in
 604 installments over a period of time.

605 [(f)] (g) Nothing in this section shall preclude a contractor who has
 606 complied with subdivisions (1), (2), (6), (7) and (8) of subsection (a) of
 607 this section from the recovery of payment for work performed based
 608 on the reasonable value of services which were requested by the
 609 owner, provided the court determines that it would be inequitable to
 610 deny such recovery.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	20-417a
Sec. 2	<i>from passage</i>	20-417b(a)
Sec. 3	<i>from passage</i>	20-417b(d)
Sec. 4	<i>from passage</i>	20-417b(f)
Sec. 5	<i>from passage</i>	20-417c
Sec. 6	<i>from passage</i>	20-417d
Sec. 7	<i>from passage</i>	20-417e
Sec. 8	<i>from passage</i>	20-417f
Sec. 9	<i>from passage</i>	20-417g
Sec. 10	<i>from passage</i>	20-417h
Sec. 11	<i>from passage</i>	20-417i
Sec. 12	<i>from passage</i>	20-417j
Sec. 13	<i>from passage</i>	20-421(b)
Sec. 14	<i>from passage</i>	20-429

GL *Joint Favorable Subst.*

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: None

Municipal Impact: None

Explanation

The bill makes various changes in laws regarding home improvement contracts and new home construction contractors. None of these changes have a fiscal impact.

The Out Years

There is no fiscal impact in the out years.

OLR Bill Analysis
sSB 172

AN ACT CONCERNING HOMEOWNERS, HOME IMPROVEMENT CONTRACTORS AND NEW HOME CONSTRUCTION CONTRACTORS.

SUMMARY:

In order for a home improvement contract to be enforceable against a homeowner in court, the law requires it to include, among other things, start and completion dates. Under this bill, a contractor is not liable for failing to meet these dates if a homeowner (1) requests a change after the contract is signed that causes a delay in the start or completion of a project or (2) fails to make a decision before a contractor can begin to work on the project or any part of it if that cause a delay in the project's start or completion.

In addition, the bill revises the disclosures that the law requires new home contractors to make to prospective customers. Among other things, current law requires contractors to advise customers to ask for a list of the consumers 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 instead simply requires the contractor to advise customers to request a list of the consumers of the new homes built to completion by the contractor during the previous 24 months.

The bill also requires home improvement contractors to include their registration numbers in their contracts with consumers. Finally, the bill makes numerous technical changes to the new home construction contractor law.

EFFECTIVE DATE: Upon passage

BACKGROUND***Home Improvement Contracts***

For a home improvement contract to be valid and enforceable against a homeowner, a court must determine that it would be inequitable to deny recovery and the contract must (1) be written, (2) be signed by both the contractor and homeowner, (3) include a notice of a consumer's three-day right to rescind the contract after signing it, (4) include a start and completion date, and (5) be between a registered contractor or salesman and a homeowner. The law also requires all change orders to be written and signed by both parties (CGS § 20-429).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 0 (03/14/2006)