



The State Tree,
The White Oak

THE LUMBER DEALERS ASSOCIATION OF CONNECTICUT

Testimony of Robert Sanford, Jr.

**On Behalf of the
Lumber Dealers Association of Connecticut
Before the Legislature's Judiciary Committee
1:00 PM, Friday, March 3, 2006
Room 2C, Legislative Office Building
Hartford, Connecticut**

Good afternoon. My name is Bob Sanford and I am the President of Sanford & Hawley Inc. I am also here today as the Co-Chairman of the Legislative Committee for the Lumber Dealers Association of Connecticut (LDAC), which is comprised of nearly 100 retail lumber dealers and associated business. Our membership is made up of independent, family owned businesses that have been operating in this state for nearly a century. My own company has been in business for 123 years and has locations in Unionville, Avon, Manchester and Norwich. I employ over 90 Connecticut residents.

I am here today to express the Association's strong support for: *Senate Bill 358, "An Act Concerning Express Trusts for the Payment of Claims for Materials Furnished or Services Rendered in Building Projects."*

LDAC requested this legislation to make Connecticut law work in conjunction with the new Federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The federal law created a new section (1328 of the Uniform Code) to give building material suppliers recourse when a contractor, "commits fraud or defalcation while acting in a fiduciary capacity." An example of this would be if a homeowner gave a contractor funds intended for a particular job, and the funds were used for another purpose. That is a violation of section 1328, which entitles the supplier to 100 percent of the debt owed.



Section 1328 must work with the state statute that clarifies an “express trust” is created each time a contractor purchases material for a particular project. The “express trust” does not require that a separate bank account be established for each project. The “express trust” simply creates a fiduciary relationship between the contractor and supplier. The significance of the fiduciary relationship is that whenever a contractor has been paid for materials for a specific job, the contractor has an obligation to pay the material supplier for those supplies. If the contractor commits three acts including: misappropriation of funds, refusal to pay the supplier, and files for bankruptcy protection, then the “express trust” has been violated. Under those specific circumstances, the federal law makes debt owed to the building material supplier non-dischargeable.

The states of New York, Michigan, Texas, Oklahoma, Wisconsin, and New Jersey to a limited extent, adopted this statutory protection. The Committee should also be aware that similar legislation has been introduced in the Vermont and Rhode Island legislatures.

The bill before you today needs substitute language to achieve our legislative intent. In lines 9, 18, 23, 33 and 40, we request that you insert the word, “express” before the word “trust” and add a definition of “express trust” in Section 1 of the bill. It is our recommendation that “express trust” be defined as, “the relationship necessary to establish a fiduciary obligation between the contractor and the supplier of materials and services furnished under the provisions of this act.” In the simplest terms, SB 358 is a necessary step to protect the suppliers of building materials. As an integral part of the building industry, we respectfully ask for your support.

I would also like to inform the Committee that we are working closely with the Home Builders Association of Connecticut on this issue and they do not oppose the legislation.

In closing, I appreciate the opportunity to speak to you today on this important legislation and again respectfully request the Committee to support the retail lumber and building material supply industry and allow us to utilize the protections passed by Congress with the Bankruptcy Abuse and Protection Act by voting in favor of this amendment to the Connecticut statute.

This completes my testimony. Thank you for your consideration. At this time, I would be happy to answer any questions you may have.