



**HOME BUILDERS & REMODELERS ASSOCIATION  
OF CONNECTICUT, INC.**

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*Your Home  
Is Our  
Business*

March 3, 2015

To: Senator Edwin Gomes, Co-Chairman  
Representative Peter A. Tercyak, Co-Chairman  
Members of the Labor and Public Employees Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: SB 1039, AAC General Contractor Liability for Wages and Workers' Compensation

The HBRA of Connecticut is a professional trade association with about eight hundred (800) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. We build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

**The HBRA of CT strongly opposes SB 1039 as it grossly disrupts the business relationships among general contractors and their legitimate independent subcontractors.**

To construct a home today, it often takes upwards of 25 independent subcontractors who have highly specialized skills to perform various construction tasks. These tasks are "managed" by the general contractor (i.e., home builder or home improvement contractor). While we have commented elsewhere (SB 912 and HB 6793) about the difficulty we experience with CT's ABC Test in classifying workers, please assume for the moment there are legitimate independent subcontractors who contract with a home builder (GC) to perform various aspects of a home's construction. Subcontracts may be a set price for the task or a time and materials cost plus contract. Often, subcontractors may have more employees and be a larger entity than the home builder or remodeler. In addition, while the GC will purchase a workers' compensation insurance policy, many also require all their subcontractors to purchase their own WC policies. By doing so, GCs can obtain a reduced WC premium. Nonetheless, WC coverage is difficult enough to obtain as it stands today.

**SB 1039 severely disrupts these standard practices and business relationships. If a subcontractor has an issue with one of its own employees such that the employee disputes his or her pay with the subcontractor employer, this bill places joint liability for that employee's wages on the GC. Joint liability is untenable because the GC has no relationship or control over the subcontractor's employees. The sub's employee's claim for wages should remain solely with the subcontractor. This bill would also destroy the prudence of the practice of GCs requiring subcontractors to obtain WC insurance because under this bill no insurance carrier would offer a reduced premium to the GC for doing so. This will, in turn, substantially raise the costs on a home builder's or home remodeler's business, hurting tens of thousands of small businesses in CT.**

We strongly urge the committee to not pursue this legislation. Thank you.

**"Building CT's Economy, Communities and Better Lives with Advocacy and Knowledge  
that Solves Our Member's Problems."**

Bianca, Pam

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From: Bill Ethier <bethier@hbact.org>  
Sent: Wednesday, March 04, 2015 11:46 AM  
To: LABTestimony  
Subject: HBRA's Supplemental Testimony on SB 1039

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To: Senator Gomes, Representative Tercyak and Members of the Labor and Public Employees Committee

This is to supplement our testimony submitted on March 3 regarding SB 1039, AAC General Contractor Liability for Wages and Workers' Compensation.

First, I want to apologize for and explain my misunderstanding that SB 1039 dealt with the misclassification issue. I wrongly assumed that since SB 912 and HB 6793, heard last week, dealt with penalties for misclassification and possibly other violations of labor law without expressing mentioning worker classification, that SB 1039 was a different approach to the same issue. On SB 912 and HB 6793, Sen. Winfield invited me to submit supplemental information regarding our difficulty with the ABC Test, which I did and can be found in the files on those bills. I also thought my assumption regarding SB 1039 was confirmed after reviewing the proponent's testimony on SB 1039, which states "The intent of the proposal is to address the issue of unscrupulous contractors who win work by misclassifying their employees and fail to pay worker's compensation insurance and the appropriate state and federal taxes."

Second, now that it is clear the bill is not related to misclassification but rather is about ensuring general contractors are responsible for engaging legitimate, law-abiding subcontractors, we offer the following comments in opposition to SB 1039. We continue to assert the bill is an overreach to address the responsibility of general contractors when engaging subcontractors. The bill makes general contractors "jointly liable to any employee of such subcontractor" for both the employee's wages and workers compensation insurance coverage. General contractors should not be held liable for matters about which they have no knowledge and over which they have no control.

At the hearing, in response to Rep Tercyak's question regarding safety issues, I attempted to draw a distinction between a GC's responsibility for safety issues on a job site and a GC's responsibility for a subcontractor's employee's wages and WC insurance. Regarding safety issues, a GC has control over a job site. The GC can ensure, and therefore be held responsible for, all work conditions on a construction site. The GC also has direct control over their own employees to ensure proper safety training has been conducted and can require of its subcontractors that they produce safety training certificates regarding the subcontractor's employees. GCs can also require that subcontractors participate in on-site safety briefings. So, when it comes to job site safety, the GC has knowledge about and direct control over site safety conditions – and, therefore, should be held responsible for such issues.

However, regarding a subcontractor's employee's wages, a GC has no knowledge of current or past issues between any subcontractor and the sub's employees, and regarding a subcontractor's WC insurance coverage for the benefit of a sub's employees, the GC's knowledge is limited to only the certificate of insurance the GC may (and should) require of its subcontractors. A certificate of insurance is only a snapshot in time of applicable insurance coverage held by the subcontractor. A GC would have no knowledge of a subcontractor's subsequent failure to pay premiums or even if the subcontractor canceled its policy.

So, because a GC cannot know about and has no control over how a subcontractor pays its employees and a GC's knowledge about and control over a subcontractor's WC insurance policy is limited to a certificate of insurance, SB 1039's holding a GC "jointly liable" for wages and WC insurance is a liability for which a GC cannot predict, likely cannot insure for, and would greatly disrupt, if not shut down, construction work in this state. At the very least, GCs would have to substantially raise their charges to their customers to cover this unknown contingent liability. This will substantially raise the cost of both new home construction and home remodeling projects. In residential construction,

CT has tens of thousands of general contractors (for example, there are about 23,000 home improvement contractors, all GCs, registered at the Dept of Consumer Protection). There are many thousands more subcontractors who work in the residential construction industry. We are comprised almost exclusively of very small businesses, all of whom would struggle with how to handle this new statutory liability.

In conclusion, corrected assumptions about the intent of the bill noted, we urge you to not pass SB 1039. Thank you for considering this supplemental testimony,

Bill

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