

**HBA of CT Testimony to State Legislature's General Law Committee
(the proposed legislation in question was not adopted)**

February 1, 2005

To: Senator Thomas A. Colapietro, Co-Chairman
Representative Christopher R. Stone, Co-Chairman
Members of the General Law Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 951, AAC New Home Construction Contractors**

The HBA of Connecticut is a professional trade association with almost one thousand three hundred (1,300) member firms statewide with tens of thousands of employees. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry.

Several of my members will appear before the committee to express our opposition to certain provisions in Raised Bill 951. This bill is similar to HB 5160 from the 2004 session. The Department of Consumer Protection and the HBA of Connecticut reached a compromise on the 2004 legislation, but RB 951 before you is not it.

Specifically, we strongly object to the three-day right of rescission included at line 34. New home buyers should not have the benefit of a 3-day right of cancellation since a home builder in a highly competitive business could receive additional offers to purchase or construct a home and would be subject to losing those offers while the first one waits to decide if they are going to cancel. The three day right of rescission comes from the home solicitation sales act that was passed years ago to protect the existing home owner from the door to door salesman. It has no place in regulating new home construction contracts.

Also, we objected last year, as did members of the Judiciary Committee, to the provision at lines 36 to 38 that would invalidate the entire new home construction contract if any verbal change order was not reduced to writing by the completion of the home. **If this bill is to move forward, we strongly suggest using alternative language that limits the invalidity to just the change order in question.** The legislation must also recognize the realities of the home building process, where home builders and their clients often communicate changes, progress reports and other matters through e-mail, fax and phone conversations. This works to the convenience of a builder's clients to move a complicated building process along.

We offer the following alternative language for lines 29 to 51 to reflect our objections and the work done on this bill last year:

“(b) No new home construction contract shall be valid or enforceable against a consumer unless: (1) The original contract: (A) is in writing and is signed by the consumer and the new home construction contractor, and (B) contains the date of the transaction, the name and business address of such new home construction contractor and a starting date and estimated completion

date as described in this subsection, (2) the original contract and all written and oral change orders contain the entire agreement between the consumer and the new home construction contractor, and (3) it is entered into by a registered new home construction contractor. No oral change order shall be valid or enforceable against a consumer unless such change order is reduced to writing signed by the consumer and the new home construction contractor prior to the actual completion date, except that such writing may also include facsimile copies of change orders and e-mail or other digital communications between the new home construction contractor and the consumer that do not contain the parties' physical signature. For the purpose of this subsection, "starting date" means the date upon which the new home construction contractor begins to perform its obligations under the contract, including any work that constitutes a substantial portion of the contracted work, as defined in subsection (e) of this section, and "estimated completion date" means the date on which the new home construction contractor substantially completes its obligations under the contract and includes any change in such date due to change orders agreed upon by the new home construction contractor and the consumer or due to government intervention or an act of God.

The new subsection (f) at lines 143 to 149 incorporates comments raised by the Judiciary Committee in 2004 that home builders should have the ability to recover from a consumer the value of services and material provided to a consumer even if there is a failure to comply with the registration requirements and we support this change.

Section 2 of this bill changes the penalty provision for certain violations of the new home construction contractor registration act. **Section 3** does the same for the home improvement contractor registration act. **We have always supported strong enforcement of these registration acts.** We were the only interest group to lobby for increasing the Department of Consumer Protection's enforcement fund from \$150,000 to \$400,000 in 1997, and we have supported other efforts to strengthen enforcement of our laws. **But any enforcement and the penalties imposed for violating our laws should be reasonable and fit the violation.** These two sections increase the penalties for various violations from a class B misdemeanor to a class A misdemeanor. With no criminal law background, we would want to know why the Department believes these increased penalties are warranted or if there is another reason behind these proposed changes before agreeing that they are justified.

Finally, since this bill is before you, we would propose that the provisions requiring a builder to offer a list of the last 12 customers to all prospective customers be repealed (see lines 15 to 21, lines 52 to 58, and lines 72 to 81). This requirement is not imposed on any other business and has proven unworkable, ineffective and unnecessary.

We thank you for considering our views on this legislation, and urge you to not pass this bill without the substitute language proposed above.