

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Housing  
(AC-Ho)

(Form Updated: 11/20/2008)

**COMMITTEE NOTICES ...**

➤ Committee Reports ... CR  
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➤ Executive Sessions ... ES  
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➤ Public Hearings ... PH  
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➤ Record of Comm. Proceedings ... RCP  
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**INFORMATION COLLECTED BY COMMITTEE  
FOR AND AGAINST PROPOSAL ...**

➤ Appointments ... Appt  
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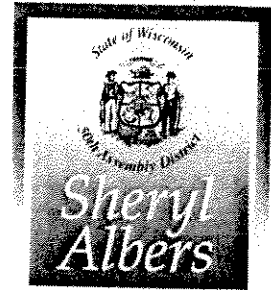
Name:

➤ Clearinghouse Rules ... CRule  
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➤ Hearing Records ... HR (bills and resolutions)

**\*\*05hr\_ab0885\_AC-Ho\_pt01**

➤ Miscellaneous ... Misc  
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**2005 Assembly Bill 885 – Equal Access to Consumer Protection**

**Assistance re: for New Home Construction**

**Testimony of State Representative Sheryl K. Albers**

**Assembly Committee on Committee on Housing**

**January 12, 2006**

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**Thank you, Chairman Wieckert, for the opportunity to discuss AB 885.**

**Under current law Chapter 100.20 enacted in 1927, the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to investigate complaints regarding "Home Improvement Practices." DATCP 110.01(2) specifically excludes new home construction, so to date, the agency limits investigations to remodeling projects, additions, and other improvements to an existing home; generally speaking, it appears the rule was intended to assist only those homeowners who are contracting improvement services from a third party. Back when the law was enacted and the rule came into being, the vast majority of new homes were being constructed by a general contractor who was responsible for hiring all subcontractors. The law presumed that the general contractor was knowledgeable about negotiating contracts and use of "change orders" and that they were knowledgeable as to building codes and requirements. Furthermore, most general contractors who have made building homes or other facilities their livelihood, recognize the importance of having a solid reputation. They know what materials shouldn't be used, though on the markets, typically avoid shoddy workmanship, and understand the importance of adhering to all building codes. They also know that unreasonable delays, and other unacceptable work product, will tarnish their reputation.**

Today however, the landscape has changed, in that individual property owners are opting to become the "general contractor" for doing so, they can do much of the work themselves. Other work to be performed is then sub-contracted. Unfortunately, this is where problems typically arise, yet DATCP intervention is currently unavailable.

Allow me to briefly provide the circumstances which generated the idea for a change in the law. An owner of a firm which manufactures Insulating Concrete Forms (ICFS), Blake Pace, upon desiring to construct a new home for his own family, contracted the services of a person who portrayed himself as having familiarity with ICF-construction. After the concrete had cured, though the walls constructed by the "sub-contractor" leaned the sub refused to redo them. In fact this subcontractor, having performed similar unacceptable work elsewhere in the state for others, unbeknownst to Mr. Pace, had financial problems when he took on Pace's project. Ultimately, the sub filed bankruptcy. Mr. Pace filed a complaint with DATCP. DATCP informed Mr. Pace, they had no authority to intervene given this was a new home construction project. To add insult to injury, Mr. Pace learned upon contacting an attorney, that laws regarding "double damages" that are available under current law to persons who contract home improvement services were not applicable. Given the circumstances, his attorney advised that pursuing a judgment would produce nothing but paper and legal bills. Pace removed the walls and debris at his own expense. The cost to have the faulty walls removed and replaced -- \$80,000.00! Had this been a person who did not own the plant that produced part of the product used (i.e. ICF blocks), the cost would have been significantly higher.

In discussing the Pace's circumstances with DATCP staff, I learned that legislation was being worked on that would license all contractors. Given the sheer number of contractors in the state, I believed licensing was not feasible. However, I felt that some change in the law was needed to keep all contractors honest. Most contractors concerned about maintaining a good reputation are insured; for they purchase bonds in an amount sufficient to address their financial exposure based on current liabilities. A reputable contractor will maintain separate accounts for each project undertaken and a knowledgeable general contractor will require such

language in any signed contract. Unfortunately, many contractors and subcontractors in the marketplace today are not adequately bonded, and there are many who co-mingle project funds with the hope and a prayer that the next project will come along to steer them clear of financial disaster.

Marj Gabower is here today to share her story. Many of you know her for she worked as a legislative staffer for over twenty five years. Her dealings with a contractor on an addition and re-roofing project were unfortunate, even though the city of Monona, where her residence is located, by ordinance, requires bonding of contractors. In her situation, upon arriving at the building permit office, the contractor claimed to have forgotten the necessary insurance documents. City staff had a form to deal with that circumstance, which Marj felt compelled to sign to avoid further delay. Her signature on the form obligated her as the trustee of the property, to assume all financial responsibility, more specifically if worker injury should occur while working on the project. Looking back on the situation she would not have done so, knowing what she does today.

Because Ms. Gabower's project was an addition, she had access to the private right of action, afforded under 100.18(11) (b) 2. And, ultimately, she obtained a judgment, which provides no guarantee of reimbursement of the \$12,600 she provided as a down payment to her contractor, who landed in jail at the point that the roof to her home was exposed to the elements for the old shingles had just been removed.

I believe that all consumers, whether they are the Marj Gabowers or the Blake Paces of the state, deserve equal access to the "benefit of the bargain" rule, that is contained in current law. This bill would allow that law to encompass all persons involved in construction of a new home.

Under my bill, a property's owner/future homeowner that is acting as the general contractor, entering into contracts with one or more third parties to perform a "home improvement," would have the same benefits now afforded persons who hire a person or firm to perform a home improvement services. The current, exclusion in ATCP rules would be eliminated.

**The beauty of allowing a private right of action is that contractors will be adequately bonded due to the threat of double damages, reasonable attorney fees, and pecuniary losses.**

**Even though some municipalities require proof of bonding before a contractor may perform work within their jurisdiction, ordinances in this regard do not consistently specify what amount of bonding is required. Therefore, consumers are not, in all instances, protected.**

**I am opposed to licensing all contractors for the following reasons:**

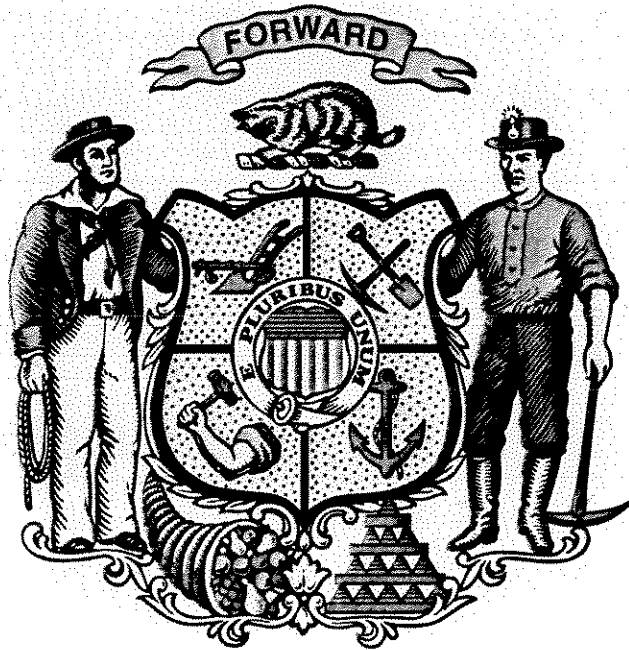
**1) The state's current fiscal situation does not allow for the hiring of a bevy of additional staff that would be needed to adequately regulate "contractors" – to include hotline staffers/complaint reviewers/attorneys/and investigators. My bill would result in only 5 additional staff – one for rule making, with the other positions being investigators.**

**2) Any license fee initially specified would likely be insufficient to cover costs, or higher than what most contractors would deem reasonable if set to cover costs, given the magnitude of the complaints that would surface. If our goal is to have affordable housing, having many contractors available in the marketplace is good, for it provides competition. Double damages, as proposed in my bill, attempts to ensure that contractors in the marketplace act in good faith. Licensing would surely increase the cost of all construction projects, more so than my bill. To exacerbate the current shortage of affordable housing would likely reduce the overall number of home improvement projects undertaken annually, which would mean less growth in equalized value statewide.**

**3. Efficiency of the court system. My bill seeks the involvement of DATCP to resolve complaints, by keeping new home construction problems out of the court to the extent possible. Most cases brought to court are resolved outside of court long before issues go to a jury.**

**I urge serious consideration of this proposal as an alternative to licensing because it creates equity in the law for new homeowners -- which citizens deserve.**

**Thank you for your time. I will respond to questions you may have.**



## Comments on AB 885

Good morning. My name is Mary Sabauer. I appreciate having the opportunity to tell you of my experience with a builder.

Because the dining area in my house was too small to accommodate my immediate family, I decided to add a dining/family room.

After interviewing three potential builders, I chose - let's call him Dave - a builder who assured me he had the necessary insurance, experience and expertise to build my 15' x 20' addition. The roof also had to be replaced, we agreed on a price, and went to get the building permit. Dave told me he didn't know where the Monona City Hall was located. When we got into the Building and Zoning office, Dave said he had forgotten to pick his papers off the desk when he left his house, apologized and asked me to get the building permit. While I really didn't want that responsibility, Dave assured me and the Monona officials he had all the insurance necessary to do the job and said I need not be concerned. The Monona officials explained what was needed to get the building permit for the room addition.

When we returned to the house, Dave again reassured me, apologized again, measured lot lines, roof pitches, put in stakes the size of the room, checked something in the attic, discussed the project with me, and said he'd be back in a couple days with the contract for the room addition, and his crew would start the roof on the same day if he could get a dumpster by then.

One of Monox's requirements is a professionally prepared blueprint of the project. The roof was a separate contract. Dave said he needed the front payment on the room to get the plan drawn up and the trusses ordered. Room completion was scheduled for Memorial Day.

In a few days the front and two end sides of the roof were finished. Dave said it would be completed shortly to the point where the addition would be and that area would be tarped. He said he had to have his crew finish another job. Messages left on his cell phone were always returned promptly, but there was always some reason he couldn't finish the roof or get the necessary building permit.

Rain started pouring water into the garage, kitchen cupboards and onto the

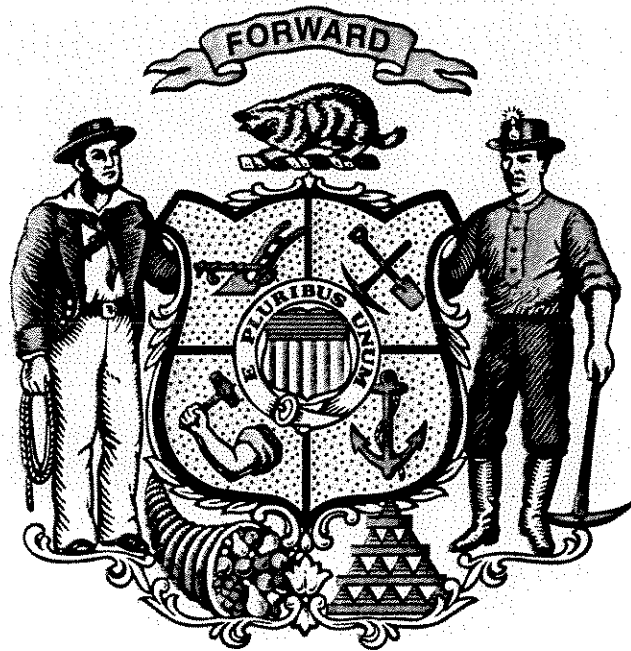


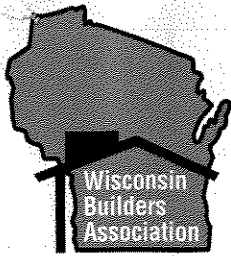
Kitchen table through the ceiling light fixture. More phone calls brought his crew down to put tarps on the roof. Then messages left on his cell phone went unanswered. After a call to his father I found out Dave was in jail. In more phone calls I found out he had barber law privileges but they were being revoked. I had to quickly find another roofer to finish the job. More added cost to me. At this point in time it has become apparent the kitchen ceiling will need to be replaced. Unfortunately that was not obvious when we got a judgement. More costs added. And still no room addition work done by Dave.

As some of you may know, I worked 26½ years for the Assembly Republicans - 17 of those years for the legislators from the 41st Assembly District - Patricia "Pat" Hoodeink and Bob Welch. I was a single parent in the days before child support laws. Yes I kick myself because I thought I was too smart to be taken like this. For me, rules requiring those who do construction work to be bonded and carry adequate insurance

would have been a great help and provided me with some recourse. In my opinion, all new construction, be it an addition or a new building, should be covered by the language in AB885 requiring bonding and adequate insurance.

Thank you for listening.





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## Protecting the Housing Consumer Summary of WBA™ Initiatives

The mission of the Wisconsin Builders Association™ is to provide for the creation and preservation of safe, affordable, quality housing opportunities for the people of Wisconsin. This is a summary of ongoing and recent initiatives protecting the 24,000 families that buy a new home in Wisconsin each year.

Over the past four years, WBA™ has supported legislation to protect housing consumers in a variety of ways, including:

- Requiring all new homes to be inspected
- Providing education for builders
- Providing home buyer education for consumers
- Establishing a clear process for resolving disputes between builders and consumers
- Mandating continuing education for the construction industry
- Giving Commerce the power to suspend or revoke a contractor's certification
- Improving the enforcement of existing building code and contractor certification laws

Through these initiatives, the industry is committing tens of thousands of man-hours and over \$16 million annually to protect our customers.

### Inspection

In 2003 the Wisconsin Builders Association™ championed a state law requiring all new homes to be inspected by a state-licensed building expert during construction, even though this law will subject builders to additional costs (approximately \$600 per home), delays, and red tape. Prior to the passage of this law, consumers buying a home in a rural area had no assurance, other than the builders' good name, that the home met the state's standards for safety and durability.

Statewide building inspection costs the industry, conservatively, approximately \$14.4 million each year.

### Education

The Wisconsin Builders Association™ fought for legislation that requires a portion of every building permit fee to go toward education. Each year, the law now requires \$200,000 to be dedicated to builder education, and \$600,000 to be dedicated to new home buyer education. In addition, WBA™, industry sponsors, and local affiliated associations will match or exceed this amount.

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The industry is investing more than \$1.6 million annually to make sure that builders are aware of the latest building regulation changes and innovations, and, more importantly, assuring that customers understand the process and understand their rights.

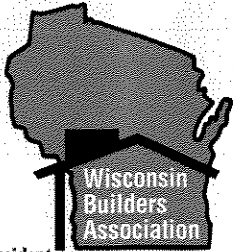
**Conflict resolution**

The Wisconsin Builders Association™ is working with Legislators to establish a new path for problem solving between builders and customers. LRB 3973/SB448 lays out a process that builders and consumers can follow to resolve disputes. The law is patterned after notice and right to cure laws that have dramatically reduced the time and legal costs of resolving construction disputes in two dozen other states.

**And more**

Between 2004 and 2005, leaders of the Wisconsin Builders Association™ analyzed contractor licensing laws from every state and Canadian province. The result of that review is legislation (LRB 3739) requiring all builders and remodelors in Wisconsin to take a minimum number of continuing education courses. It gives the State Department of Commerce the authority to revoke the certification of any contractor who fails to build to the state's safety regulations, or who commits a crime relating to building. The legislation also puts new emphasis on enforcement, by holding building inspectors responsible for allowing an un-certified contractor to obtain a building permit.

Consumer protection is a fundamental part of our mission, and an ongoing element of our public policy agenda. This is a complex issue with many causes and solutions. Therefore we oppose "simple" solutions that may look good on paper, but in the long run will not help consumers.



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## Summary of Concerns AB 885

While we acknowledge that there's work to be done on consumer protection for new home buyers, the Wisconsin Builders Association™ opposes AB 885. It is a simplistic answer to a complex group of issues. The rules that will result from this bill will be cumbersome, costly, and ultimately will cost consumers more than the benefits conferred. Here is an abbreviated list of concerns:

- **Cost.** DATCP estimates AB 885 will cost \$110,000 to develop and \$250,000 per year to administer. It will require four new permanent state employees. A source of funds is not provided. This fiscal estimate is probably too low because it is based only on single-family construction. In addition to single-family, AB 885 applies to "noncommercial" construction. It is not clear what additional types of construction fall under that category.
- **Cumbersome.** ATCP 110 is DATCP's regulation that covers residential remodeling. While the department is quite proud of ATCP 110, it imposes significant paperwork requirements on both remodelors and customers.
- **Too narrow.** If ATCP 110 is any indication, DATCP will focus the rules drafted under AB 885 on paperwork requirements, ignoring on-site quality issues, consumer education, builder education, and proper building inspection and enforcement.
- **The wrong agency.** Residential and commercial construction is regulated primarily by the department of Commerce. Commerce already certifies residential contractors, licenses various subcontractors, writes the building codes, licenses and oversees building inspectors, conducts building plan reviews, and provides contractor education. Bringing a different agency into this mix will only increase bureaucracy and add confusion.
- **Lack of experience.** DATCP's regulatory experience is limited to residential remodeling. It has limited knowledge of new single-family residential construction.
- **A distraction.** The housing industry is pursuing two significant consumer legislation changes along with three statewide builder and consumer education initiatives. Because AB 885 gives DATCP such broad authority, WBA would have to set these initiatives aside during the development of the new rules. Instead of protecting and educating builders and consumers, we would spend two years negotiating with DATCP over paperwork.
- **Punishment, not solutions.** Our single greatest concern with AB 885 is that it places the focus on punishing builders, rather than solving problems. The bill does nothing to improve the knowledge or skills of builders. It does nothing to improve enforcement of existing laws, so that uncertified builders cannot build a home in the first place.
- **In conclusion, AB 885 does not do enough to protect consumers making the largest financial commitment of their lives.**

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