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March 3, 2022

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 855 – Business Regulation – Home Improvement Contracts – Deposits by Financial Institutions (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in opposition to Senate Bill 855 submitted by Senator Adelaide C. Eckardt. The bill would permit a home improvement contractor to receive a deposit of more than one-third before or at the time of execution of the contract, as long as the deposit is financed by a financial institution.

While it is reasonable to permit a contractor to obtain a deposit at the time of execution of the contract, this practice must be tempered by the need to protect consumers from unscrupulous contractors. By collecting one-third as a deposit, a contractor is able to purchase necessary supplies without those expenses coming out of pocket. However, often contractors do not finish the job, perform the work poorly, or, in some cases, do not even begin the work at all. By increasing the amount of the initial deposit, it increases the harm to consumers in these situations, even if the amount is financed since the consumer would still be liable for repaying the deposit to the lender whether or not the work is completed.

The Consumer Protection Division receives complaints from consumers advising the Division that they have been scammed by a contractor who collected a deposit and then failed to complete the work or did not even begin the work. In many of these cases the contractor can no longer be found and refuses to return phone calls. By increasing the amount that can be collected as a deposit, these situations will increase. Moreover, there can be disputes even with honest and reputable contractors. This bill diminishes the recourse available to consumers who find that the work is severely delayed, poorly done or not completed.

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This bill may look superficially like § 10-504 of the Real Property Article, under which a new home deposit for a custom home does not have to be protected by an escrow account, bond or letter of credit if financed by a chartered financial institution. In that scenario, however, it is expected that the financial institution will pay according to a draw schedule so the consumer would not be liable for the entire amount if the builder fails to complete the job. There is no such requirement with a home improvement contract, so the consumer's entire deposit could be at risk regardless of whether the amount of the deposit was financed.

For these reasons, we ask that the Education, Health, and Environmental Affairs Committee return an unfavorable report on this bill.

cc: The Honorable Adelaide C. Eckardt
Members, Education, Health, and Environmental Affairs Committee