

CHAPTER 267

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 12-038

BY SENATOR(S) Tochtrop, Aguilar, Bacon, Newell;
also REPRESENTATIVE(S) Priola, Labuda, Todd, Williams A.**AN ACT****CONCERNING MEASURES TO PROTECT CONSUMERS WHO ENGAGE A ROOFING CONTRACTOR TO PERFORM ROOFING SERVICES ON RESIDENTIAL PROPERTY.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, **add** article 22 to title 6 as follows:**ARTICLE 22**
Roofing Services - Residential Property**6-22-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSE OF ENACTING THIS ARTICLE IS TO PROTECT COLORADO CONSUMERS BY:

(a) REQUIRING ROOFING CONTRACTORS OFFERING TO PERFORM ROOFING WORK ON RESIDENTIAL PROPERTY IN THIS STATE TO SIGN A WRITTEN CONTRACT WITH PROPERTY OWNERS DETAILING THE SCOPE AND COST OF THE ROOFING WORK AND CONTACT INFORMATION FOR THE ROOFING CONTRACTOR;

(b) REQUIRING ROOFING CONTRACTORS TO PERMIT PROPERTY OWNERS TO RESCIND A CONTRACT FOR THE PERFORMANCE OF ROOFING WORK AND OBTAIN A REFUND OF ANY DEPOSIT PAID TO THE ROOFING CONTRACTOR; AND

(c) PROHIBITING ROOFING CONTRACTORS FROM PAYING, WAIVING, REBATING, OR PROMISING TO PAY, WAIVE, OR REBATE ALL OR PART OF ANY INSURANCE DEDUCTIBLE APPLICABLE TO AN INSURANCE CLAIM MADE TO THE PROPERTY OWNER'S PROPERTY AND CASUALTY INSURER FOR PAYMENT FOR ROOFING WORK ON THE RESIDENTIAL PROPERTY COVERED BY A PROPERTY AND CASUALTY INSURANCE POLICY.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

6-22-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "PROPERTY OWNER" MEANS THE OWNER OF RESIDENTIAL PROPERTY OR THE OWNER'S LEGAL REPRESENTATIVE.

(2) (a) "RESIDENTIAL PROPERTY" MEANS:

(I) A DETACHED, ONE- OR TWO-FAMILY DWELLING; OR

(II) MULTIPLE SINGLE-FAMILY DWELLINGS THAT ARE NOT MORE THAN THREE STORIES ABOVE GRADE PLANE HEIGHT AND PROVIDE SEPARATE MEANS OF EGRESS.

(b) "RESIDENTIAL PROPERTY" DOES NOT INCLUDE:

(I) A STRUCTURE COMPRISING MULTIPLE, ATTACHED SINGLE-FAMILY DWELLINGS, UNLESS MAINTENANCE, REPAIR, OR REPLACEMENTS OF THE DWELLINGS' ROOF IS THE RESPONSIBILITY OF A CONDOMINIUM ASSOCIATION, HOMEOWNERS' ASSOCIATION, COMMON INTEREST COMMUNITY, UNIT OWNERS' ASSOCIATION, OR ANY OTHER ENTITY SUBJECT TO THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., REGARDLESS OF WHEN THE ENTITY WAS FORMED; OR

(II) NEW CONSTRUCTION.

(3) "ROOFING CONTRACTOR" MEANS:

(a) AN INDIVIDUAL OR SOLE PROPRIETORSHIP THAT PERFORMS ROOFING WORK OR ROOFING SERVICES IN THIS STATE FOR COMPENSATION; OR

(b) (I) A FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, BUSINESS TRUST, LIMITED LIABILITY COMPANY, OR OTHER LEGAL ENTITY THAT PERFORMS OR OFFERS TO PERFORM ROOFING WORK IN THIS STATE ON RESIDENTIAL PROPERTY FOR COMPENSATION.

(II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), "ASSOCIATION" DOES NOT INCLUDE A CONDOMINIUM ASSOCIATION, HOMEOWNERS' ASSOCIATION, COMMON INTEREST COMMUNITY, UNIT OWNERS' ASSOCIATION, OR ANY OTHER ENTITY SUBJECT TO THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., REGARDLESS OF WHEN THE ENTITY WAS FORMED.

(4) (a) "ROOFING WORK" OR "ROOFING SERVICES" MEANS THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A ROOF ON A RESIDENTIAL PROPERTY AND THE USE OF MATERIALS AND ITEMS IN THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, AND REPAIR OF ROOFING AND WATERPROOFING OF ROOFS, ALL IN A MANNER TO COMPLY WITH PLANS, SPECIFICATIONS, CODES, LAWS, RULES, REGULATIONS, AND ROOFING INDUSTRY STANDARDS FOR WORKMANLIKE PERFORMANCE APPLICABLE TO THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, AND REPAIR OF ROOFS ON RESIDENTIAL PROPERTIES.

(b) "ROOFING WORK" OR "ROOFING SERVICES" DOES NOT INCLUDE ROOFING WORK OR SERVICES FOR WHICH THE COMPENSATION IS ONE THOUSAND DOLLARS OR LESS PER CONTRACT.

6-22-103. Contracts for roofing services - writing required - required terms.

(1) PRIOR TO ENGAGING IN ANY ROOFING WORK, A ROOFING CONTRACTOR SHALL PROVIDE A WRITTEN CONTRACT TO THE PROPERTY OWNER, SIGNED BY BOTH THE ROOFING CONTRACTOR OR HIS OR HER DESIGNEE AND THE PROPERTY OWNER, STATING AT LEAST THE FOLLOWING TERMS:

(a) THE SCOPE OF ROOFING SERVICES AND MATERIALS TO BE PROVIDED;

(b) THE APPROXIMATE DATES OF SERVICE;

(c) THE APPROXIMATE COSTS OF THE SERVICES BASED ON DAMAGES KNOWN AT THE TIME THE CONTRACT IS ENTERED;

(d) THE ROOFING CONTRACTOR'S CONTACT INFORMATION, INCLUDING PHYSICAL ADDRESS, ELECTRONIC MAIL ADDRESS, TELEPHONE NUMBER, AND ANY OTHER CONTACT INFORMATION AVAILABLE FOR THE ROOFING CONTRACTOR;

(e) IDENTIFICATION OF THE ROOFING CONTRACTOR'S SURETY AND LIABILITY COVERAGE INSURER AND THEIR CONTACT INFORMATION, IF APPLICABLE;

(f) (I) THE ROOFING CONTRACTOR'S POLICY REGARDING CANCELLATION OF THE CONTRACT AND REFUND OF ANY DEPOSIT, INCLUDING A RESCISSION CLAUSE ALLOWING THE PROPERTY OWNER TO RESCIND THE CONTRACT AND OBTAIN A FULL REFUND OF ANY DEPOSIT WITHIN SEVENTY-TWO HOURS AFTER ENTERING THE CONTRACT; AND

(II) A WRITTEN STATEMENT THAT THE PROPERTY OWNER MAY RESCIND A ROOFING CONTRACT PURSUANT TO SECTION 6-22-104; AND

(g) A WRITTEN STATEMENT THAT IF THE PROPERTY OWNER PLANS TO USE THE PROCEEDS OF A PROPERTY AND CASUALTY INSURANCE POLICY ISSUED PURSUANT TO PART 1 OF ARTICLE 4 OF TITLE 10, C.R.S., TO PAY FOR THE ROOFING WORK, PURSUANT TO SECTION 6-22-105, THE ROOFING CONTRACTOR CANNOT PAY, WAIVE, REBATE, OR PROMISE TO PAY, WAIVE, OR REBATE ALL OR PART OF ANY INSURANCE DEDUCTIBLE APPLICABLE TO THE INSURANCE CLAIM FOR PAYMENT FOR ROOFING WORK ON THE COVERED RESIDENTIAL PROPERTY.

(2) IN ADDITION TO THE CONTRACT TERMS REQUIRED IN SUBSECTION (1) OF THIS SECTION, A ROOFING CONTRACTOR SHALL INCLUDE, ON THE FACE OF THE CONTRACT, IN BOLD-FACED TYPE, A STATEMENT INDICATING THAT THE ROOFING CONTRACTOR SHALL HOLD IN TRUST ANY PAYMENT FROM THE PROPERTY OWNER UNTIL THE ROOFING CONTRACTOR HAS DELIVERED ROOFING MATERIALS AT THE RESIDENTIAL PROPERTY SITE OR HAS PERFORMED A MAJORITY OF THE ROOFING WORK ON THE RESIDENTIAL PROPERTY.

6-22-104. Residential roofing contract - payment from insurance proceeds - right to rescind - return of payments. (1) (a) A PROPERTY OWNER WHO ENTERS

INTO A WRITTEN CONTRACT WITH A ROOFING CONTRACTOR TO PERFORM ROOFING WORK ON THE PROPERTY OWNER'S RESIDENTIAL PROPERTY, THE PAYMENT FOR WHICH WILL BE MADE FROM THE PROCEEDS OF A PROPERTY AND CASUALTY INSURANCE POLICY ISSUED PURSUANT TO PART 1 OF ARTICLE 4 OF TITLE 10, C.R.S., MAY RESCIND THE CONTRACT WITHIN SEVENTY-TWO HOURS AFTER THE PROPERTY OWNER RECEIVES WRITTEN NOTICE FROM THE PROPERTY AND CASUALTY INSURER THAT THE CLAIM FOR PAYMENT FOR ROOFING WORK ON THE RESIDENTIAL PROPERTY IS DENIED IN WHOLE OR IN PART. THE PROPERTY OWNER'S RIGHT OF RESCISSION UNDER THIS SUBSECTION (1) DOES NOT APPLY WHEN THE PROPERTY AND CASUALTY INSURER DENIES, IN WHOLE OR IN PART, A CLAIM RELATED TO A REQUEST FOR SUPPLEMENTAL ROOFING SERVICES IF THE DAMAGE REQUIRING THE SUPPLEMENTAL ROOFING SERVICES COULD NOT HAVE BEEN REASONABLY FORESEEN AS A NECESSARY AND RELATED ROOFING SERVICE AT THE TIME OF THE INITIAL ROOFING INSPECTION OR THE EXECUTION OF THE INITIAL ROOFING CONTRACT.

(b) THE PROPERTY OWNER SHALL GIVE WRITTEN NOTICE OF RESCISSION OF THE CONTRACT TO THE ROOFING CONTRACTOR AT THE PHYSICAL ADDRESS PROVIDED IN THE CONTRACT WITHIN SEVENTY-TWO HOURS AFTER HE OR SHE IS NOTIFIED OF THE DENIAL. THE PROPERTY OWNER MAY GIVE NOTICE OF RESCISSION OF THE CONTRACT:

(I) IN AN ELECTRONIC FORM, WHICH IS EFFECTIVE ON THE DATE OF THE ELECTRONIC TRANSMISSION;

(II) BY MAIL, WHICH IS EFFECTIVE UPON DEPOSIT IN THE UNITED STATES MAIL, POSTAGE PREPAID, SENT TO THE PHYSICAL ADDRESS STATED IN THE CONTRACT; OR

(III) BY PERSONAL DELIVERY TO THE ROOFING CONTRACTOR, WHICH IS EFFECTIVE UPON DELIVERY.

(2) WITHIN TEN DAYS AFTER RESCISSION OF A CONTRACT IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, THE ROOFING CONTRACTOR SHALL RETURN TO THE PROPERTY OWNER ANY PAYMENTS OR DEPOSITS MADE BY OR EVIDENCE OF INDEBTEDNESS OF THE PROPERTY OWNER IN CONNECTION WITH THE CONTRACT FOR ROOFING WORK ON THE RESIDENTIAL PROPERTY.

(3) NOTHING IN THIS SECTION PRECLUDES A ROOFING CONTRACTOR FROM RETAINING ALL OR A PORTION OF ANY PAYMENTS OR DEPOSITS MADE BY A PROPERTY OWNER TO COMPENSATE THE ROOFING CONTRACTOR FOR ROOFING WORK ACTUALLY PERFORMED ON THE RESIDENTIAL PROPERTY IN A WORKMANLIKE MANNER CONSISTENT WITH STANDARD ROOFING INDUSTRY PRACTICES, BUT THE ROOFING CONTRACTOR MAY RETAIN ONLY AN AMOUNT REQUIRED TO COMPENSATE THE ROOFING CONTRACTOR FOR THE ACTUAL WORK PERFORMED.

(4) NOTHING IN THIS SECTION ABROGATES THE ROOFING CONTRACTOR'S RIGHT TO PURSUE COMMON LAW REMEDIES FOR THE REASONABLE VALUE OF ROOFING MATERIALS ORDERED AND ACTUALLY INSTALLED ON THE RESIDENTIAL PROPERTY PURSUANT TO A CONTRACT FOR ROOFING WORK BEFORE THE PROPERTY OWNER RESCINDED THE CONTRACT, AS LONG AS THE ROOFING CONTRACTOR PERFORMED THE ROOFING SERVICES CONSISTENT WITH ROOFING INDUSTRY STANDARDS FOR WORKMANLIKE PERFORMANCE OF ROOFING SERVICES.

(5) NOTHING IN THIS SECTION ABROGATES A PROPERTY AND CASUALTY INSURER'S DUTIES, RESPONSIBILITIES, OR LIABILITY UNDER SECTIONS 10-3-1115 AND 10-3-1116, C.R.S.

6-22-105. Waiver of insurance deductible prohibited. (1) A ROOFING CONTRACTOR THAT PERFORMS ROOFING WORK, THE PAYMENT FOR WHICH WILL BE MADE FROM THE PROCEEDS OF A PROPERTY AND CASUALTY INSURANCE POLICY ISSUED PURSUANT TO PART 1 OF ARTICLE 4 OF TITLE 10, C.R.S., SHALL NOT ADVERTISE OR PROMISE TO PAY, WAIVE, OR REBATE ALL OR PART OF ANY INSURANCE DEDUCTIBLE APPLICABLE TO THE CLAIM FOR PAYMENT FOR ROOFING WORK ON THE COVERED RESIDENTIAL PROPERTY.

(2) IF A ROOFING CONTRACTOR VIOLATES SUBSECTION (1) OF THIS SECTION:

(a) THE INSURER TO WHOM THE PROPERTY OWNER SUBMITTED THE CLAIM FOR PAYMENT FOR THE ROOFING WORK IS NOT OBLIGATED TO CONSIDER THE ESTIMATE OF COSTS FOR THE ROOFING WORK PREPARED BY THE ROOFING CONTRACTOR; AND

(b) THE PROPERTY OWNER WHOSE RESIDENTIAL PROPERTY IS INSURED UNDER THE PROPERTY AND CASUALTY INSURANCE POLICY OR THE INSURER THAT ISSUED THE POLICY MAY BRING AN ACTION AGAINST THE ROOFING CONTRACTOR IN A COURT OF COMPETENT JURISDICTION TO RECOVER DAMAGES SUSTAINED BY THE PROPERTY OWNER OR INSURER AS A CONSEQUENCE OF THE VIOLATION.

(3) A ROOFING CONTRACTOR SOLICITING ROOFING SERVICES IN THIS STATE SHALL NOT CLAIM TO BE OR ACT AS A PUBLIC INSURANCE ADJUSTER ADJUSTING CLAIMS FOR LOSSES OR DAMAGES. NOTHING IN THIS ARTICLE PREVENTS A PUBLIC INSURANCE ADJUSTER LICENSED PURSUANT TO SECTION 10-2-417, C.R.S., FROM ACTING OR HOLDING HIMSELF OR HERSELF OUT AS A PUBLIC INSURANCE ADJUSTER. NOTHING IN THIS SUBSECTION (3) PRECLUDES A ROOFING CONTRACTOR FROM DISCUSSING, ON BEHALF OF THE PROPERTY OWNER, THE SCOPE OF REPAIRS WITH A PROPERTY AND CASUALTY INSURER WHEN THE ROOFING CONTRACTOR HAS A VALID CONTRACT WITH THE PROPERTY OWNER OF THE RESIDENTIAL PROPERTY ON WHICH THE ROOFING CONTRACTOR HAS CONTRACTED TO PERFORM ROOFING WORK.

SECTION 2. Applicability. The provisions of this act apply to roofing work performed on residential property in this state on or after the effective date of this act.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 2012