

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 12-0365.01 Christy Chase x2008

SENATE BILL 12-038

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Vaad,

Senate Committees
Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PROTECT CONSUMERS WHO ENGAGE A**
102 **ROOFING CONTRACTOR TO PERFORM ROOFING SERVICES ON**
103 **RESIDENTIAL PROPERTY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires residential roofing contractors to sign a written contract with customers that details the following:

- ! The scope of roofing services and materials to be provided;
- ! The approximate dates of service;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 29, 2012

SENATE
Amended 2nd Reading
February 28, 2012

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

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

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

16 **6-22-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
17 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

25 (b) "RESIDENTIAL PROPERTY" DOES NOT INCLUDE:

26 (I) A STRUCTURE COMPRISING MULTIPLE, ATTACHED
27 SINGLE-FAMILY DWELLINGS, UNLESS MAINTENANCE, REPAIR, OR

1 REPLACEMENTS OF THE DWELLINGS' ROOF IS THE RESPONSIBILITY OF A
2 CONDOMINIUM ASSOCIATION, HOMEOWNERS' ASSOCIATION, COMMON
3 INTEREST COMMUNITY, UNIT OWNERS' ASSOCIATION, OR ANY OTHER
4 ENTITY SUBJECT TO THE "COLORADO COMMON INTEREST OWNERSHIP
5 ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., REGARDLESS OF WHEN THE
6 ENTITY WAS FORMED; OR

7 (II) NEW CONSTRUCTION.

8 (3) "ROOFING CONTRACTOR" MEANS:

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

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

16 (II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b),
17 "ASSOCIATION" DOES NOT INCLUDE A CONDOMINIUM ASSOCIATION,
18 HOMEOWNERS' ASSOCIATION, COMMON INTEREST COMMUNITY, UNIT
19 OWNERS' ASSOCIATION, OR ANY OTHER ENTITY SUBJECT TO THE
20 "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE
21 38, C.R.S., REGARDLESS OF WHEN THE ENTITY WAS FORMED.

22 (4) (a) "ROOFING WORK" OR "ROOFING SERVICES" MEANS THE
23 CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, OR
24 REPAIR OF A ROOF ON A RESIDENTIAL PROPERTY AND THE USE OF
25 MATERIALS AND ITEMS IN THE CONSTRUCTION, RECONSTRUCTION,
26 ALTERATION, MAINTENANCE, AND REPAIR OF ROOFING AND
27 WATERPROOFING OF ROOFS, ALL IN A MANNER TO COMPLY WITH PLANS,

1 SPECIFICATIONS, CODES, LAWS, RULES, REGULATIONS, AND ROOFING
2 INDUSTRY STANDARDS FOR WORKMANLIKE PERFORMANCE APPLICABLE TO
3 THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, AND
4 REPAIR OF ROOFS ON RESIDENTIAL PROPERTIES.

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

8 **6-22-103. Contracts for roofing services - writing required -**
9 **required terms.** (1) PRIOR TO ENGAGING IN ANY ROOFING WORK, A
10 ROOFING CONTRACTOR SHALL PROVIDE A WRITTEN CONTRACT TO THE
11 PROPERTY OWNER, SIGNED BY BOTH THE ROOFING CONTRACTOR OR HIS OR
12 HER DESIGNEE AND THE PROPERTY OWNER, STATING AT LEAST THE
13 FOLLOWING TERMS:

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

16 (b) THE APPROXIMATE DATES OF SERVICE;

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

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

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

26 (f) (I) THE ROOFING CONTRACTOR'S POLICY REGARDING
27 CANCELLATION OF THE CONTRACT AND REFUND OF ANY DEPOSIT,

1 INCLUDING A RESCISSION CLAUSE ALLOWING THE PROPERTY OWNER TO
2 RESCIND THE CONTRACT AND OBTAIN A FULL REFUND OF ANY DEPOSIT
3 WITHIN SEVENTY-TWO HOURS AFTER ENTERING THE CONTRACT; AND

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

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

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

22 **6-22-104. Residential roofing contract - payment from**
23 **insurance proceeds - right to rescind - return of payments.** (1) (a) A
24 PROPERTY OWNER WHO ENTERS INTO A WRITTEN CONTRACT WITH A
25 ROOFING CONTRACTOR TO PERFORM ROOFING WORK ON THE PROPERTY
26 OWNER'S RESIDENTIAL PROPERTY, THE PAYMENT FOR WHICH WILL BE
27 MADE FROM THE PROCEEDS OF A PROPERTY AND CASUALTY INSURANCE

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

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

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

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

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

26 (2) WITHIN TEN DAYS AFTER RESCISSION OF A CONTRACT IN
27 ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, THE ROOFING

1 CONTRACTOR SHALL RETURN TO THE PROPERTY OWNER ANY PAYMENTS OR
2 DEPOSITS MADE BY OR EVIDENCE OF INDEBTEDNESS OF THE PROPERTY
3 OWNER IN CONNECTION WITH THE CONTRACT FOR ROOFING WORK ON THE
4 RESIDENTIAL PROPERTY.

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

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

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

24 **6-22-105. Waiver of insurance deductible prohibited.** (1) A
25 ROOFING CONTRACTOR THAT PERFORMS ROOFING WORK, THE PAYMENT
26 FOR WHICH WILL BE MADE FROM THE PROCEEDS OF A PROPERTY AND
27 CASUALTY INSURANCE POLICY ISSUED PURSUANT TO PART 1 OF ARTICLE 4

1 OF TITLE 10, C.R.S., SHALL NOT ADVERTISE OR PROMISE TO PAY, WAIVE,
2 OR REBATE ALL OR PART OF ANY INSURANCE DEDUCTIBLE APPLICABLE TO
3 THE CLAIM FOR PAYMENT FOR ROOFING WORK ON THE COVERED
4 RESIDENTIAL PROPERTY.

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

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

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

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

1 PERFORM ROOFING WORK.

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

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