



## PENALTIES & PROTOCOL FOR REPORTING SB38 VIOLATIONS

The Colorado Roofing Association (CRA) is committed to educating both our members and consumers regarding the new roofing law, SB38 – Colorado’s Consumer Protection/Residential Roofing Bill, that was signed by Governor Hickenlooper on June 6, 2012. CRA is not a consumer agency nor will we “police” the new law. We have followed this bill from the start, worked with both legislators and attorneys as the bill moved through the process and are answering your question(s) based on that perspective. We are not offering legal advice, but can only inform the public of what we have been told by those close to the legislation.

### **PAYING/WAIVING/REBATING HOMEOWNERS INSURANCE DEDUCTIBLE IS CONSIDERED INSURANCE FRAUD.**

The **INTENT** of the law is to eliminate the practice of paying, waiving or rebating an insurance deductible for a homeowner. This law was already in Colorado statute prior to SB38 passing (18-13-119.5, C.R.S.), and such interference by a 3rd party with the contractual agreement between an insurer and an insured is considered property insurance abuse or fraud. As such, a Class 2 misdemeanor is the charge.

#### ***Violation of 18-13-119.5, C.R.S. - Contact Local Law Enforcement – Fraud Division***

*Penalties: 18-13-119.5, C.R.S. is part of the criminal code and thus investigation of cases would lie with local law enforcement in charge of the particular jurisdiction and then prosecution would be with the district attorneys for that jurisdiction. Penalty for violation is a Class 2 Misdemeanor. Law enforcement will need facts (i.e. dates, addresses, names and documentation of the violation). \*Note: when calling, don’t just say SB38 you must refer specifically to 18-13-119.5, C.R.S.*

In attempting to follow the **INTENT** of the law, **any offers that could be construed** as waiving or rebating that deductible amount (\$500, \$1000) would appear to now be against the law. It is obviously rare when a contractor out and out says that they are ‘paying’ the deductible, but if the offer in question would appear to be exactly that, then we would suggest both contractor and homeowner err on the side of caution and not make such an offer. For example advertising & yard sign rebates, coupons, gift certificates, merchandise that reflect deductible amounts of \$500, \$1000 or more could easily be construed as rebating or waiving the deductible. If it is construed to be paying, waiving or rebating the deductible amount, the contractor’s bid/estimate will not be considered by the insurance company at all and the contractor could be liable for any damages related to that claim.

#### ***Violation of 6-22-105, C.R.S. – File Civil Suit***

*Penalties: The bill goes farther to say that if it is proven a deductible was paid/waived/rebated, the insurance company does not have to consider the estimate from any contractor violating the provision, and the property owner or the insurer may sue the contractor in the court of competent jurisdiction for any damages related to same. Damages may include just the deductible amount, or the cost difference between appropriate roofing materials and any lesser quality materials that a contractor may have used in order to offset the cost of the deductible, etc. Recoverable damages would be case specific.*

### **SB38’s WRITTEN CONTRACT VIOLATIONS.**

SB38 also requires a written & signed contract between the property owner and the roofing contractor which must include at least the following: (1) scope of work & materials to be provided; (2) cost for same based on damages known at the time the contract is entered into; (3) approximate dates of service; (4) roofing contractor’s contact information; (5) identification of contractor’s surety & liability coverage insurer & their contact information; (6) contractor’s policy regarding cancellation of contract & refund of any deposit including a rescission clause allowing the property owner to rescind the contract for roofing services and obtain a full refund of any deposit within 72 hours after entering the contract; (7) a statement that if the property owner plans to pay for the roofing services through an insurance claim, the contractor cannot pay, waive or rebate the homeowner’s insurance deductible in part or in whole; (8) a statement that the contractor shall hold in trust any payment from the property owner until the contractor has delivered roofing materials to the jobsite or has performed a majority of the roofing work on the property; (9) a statement that the property owner may rescind a contract for services, the payment for which will be made from the proceeds of a property insurance claim, within 72 hours after receiving notice from their insurer that the claim is denied in whole or in part.

#### ***Violation of Written Contract Provision – Unenforceable Contract***

*Penalties: A signed contract lacking SB38’s specific written provisions may be found to be unenforceable by either party.*

### **COLORADO ATTORNEY GENERAL – CONSUMER FRAUD UNIT - ONLINE COMPLAINT FORM:**

The following link also allows you to also file a complaint(s) with the AG’s office. The AG’s office will funnel the complaint(s) to their special prosecutions unit, the appropriate District Attorney’s Office, or state agency.

<http://www.stopfraudcolorado.gov/about-consumer-protection/complaint-forms/consumer-complaint-form>

**For additional information, the CRA advises that you seek the advice of an attorney.**

Note: Homeowners are encouraged to contact the Better Business Bureau, CRA or Referral Service (Tom Martino, Team Dave Logan, Angie’s List, First Choice Repair, CBS\_4 Scam Awareness, etc.) that recommended or lead you to choose a specific contractor.

## COLORADO REVISED STATUTES

### TITLE 18. CRIMINAL CODE ARTICLE 13. MISCELLANEOUS OFFENSES

#### C.R.S. 18-13-119.5 (2011)

#### **18-13-119.5.** Abuse of property insurance

(1) The general assembly hereby finds, determines, and declares that:

(a) (I) Business practices that have the effect of reducing or eliminating the need for actual payment of required copayments and deductibles by an insured for property damages interfere with contractual obligations entered into by the insured and insurer relating to such payments;

(II) Interference described in subparagraph (I) of this paragraph (a) is not in the public interest because it has the effect of increasing insurance costs by removing the incentives that copayments and deductibles create in making the consumer a cost-conscious purchaser; and

(b) (I) Business practices that have the effect of providing rebates or something of value to an insured to attract business relating to property damages when the costs of the rebate or thing of value is passed on to an insurer interfere with contractual obligations entered into by the insured and insurer relating to such property damages;

(II) Interference described in subparagraph (I) of this paragraph (b) is not in the public interest because it has the effect of increasing insurance costs by including items unrelated to the property damage in the costs paid by insurers; and

(c) Advertising of practices described in paragraphs (a) and (b) of this subsection (1) may aggravate the impact of such practices.

(2) (a) The general assembly further declares that business practices described in subsection (1) of this section are illegal and that such practices or the advertising thereof shall be grounds for disciplinary actions by any governmental body which is responsible for licensing or regulating persons who engage in such practices.

(b) The general assembly further declares that this section shall create a private right of action in courts of the state of Colorado, including an action for injunctive relief.

(3) Any person who provides repairs, goods, or services commits abuse of property insurance if such person knowingly:

(a) Submits a fee to an insurer which is higher than a fee estimate such person provided to the insured or which is higher than the fee such person has agreed to accept from the insured if the effect is to provide the insured a rebate or something of value to attract the insured to do business with such person and the cost of providing the rebate or thing of value is passed on to the insurer as a part of the higher fee; or

(b) Provides a rebate or a gift, cash, or thing of value to an insurance company or its representative, agent, employee, or others acting on behalf of the insurance company, in connection with any claim under an insurance policy which insures for property damage.

(4) Any insurance company, or its agent, employee, representative, or other person acting on behalf of the insurance company, commits abuse of property insurance if such company or person knowingly: Accepts a rebate or a gift, cash, or thing of value from any person who provides repairs, goods, or services in connection with any claim under an insurance policy which insures for property damage.

(5) Abuse of property insurance is a class 2 misdemeanor.

## COLORADO REVISED STATUTES

### TITLE 6. CONSUMER AND COMMERCIAL AFFAIRS ARTICLE 22. ROOFING SERVICES – RESIDENTIAL PROPERTY

#### C.R.S. 6-22-105 (2012)

#### **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 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 the 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.