

## **BILL ANALYSIS**

C.S.H.B. 2693

By: Sheets

Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent reports indicate that Texas property owners face some of the highest homeowners' insurance rates in the nation, in large part because of certain weather risks faced by the state, such as hurricanes, hailstorms, and wildfires. Interested parties contend that one of the most effective ways to mitigate damage from wind, hail, and fire events is the use of appropriate roofing materials that are installed properly and are designed to minimize losses. The parties note that after a significant weather event, it is not uncommon to see a large influx of roofing contractors into an area with large numbers of damaged roofs and that some of these contractors may be unqualified or unwilling to perform quality work. The parties further contend that poor workmanship can exacerbate the potential for damage, causing more severe and more frequent property claims for homeowners, driving up insurance rates.

Many states require roofing contractors to participate in some form of licensing or registration process, and the parties assert that such a registration program should be implemented in Texas. C.S.H.B. 2693 seeks to ensure that consumers receive quality workmanship and to mitigate one of the causes of the state's high homeowners insurance rates by establishing a roofing contractor registration program with the Texas Department of Insurance.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.H.B. 2693 amends the Insurance Code to require the Texas Department of Insurance (TDI) to make available on its Internet website a publicly accessible list of roofing contractors who voluntarily elect to register as such and to set out certain registrant-specific information that must be included in the list. The bill authorizes a roofing contractor who voluntarily elects to register to represent to the public that the contractor is a registered roofing contractor. The bill sets out provisions relating to such registration and its issuance, the application process and fee, the term of registration and renewal, and the proper display of the registration certificate. The bill requires the commissioner of insurance to administer the bill's provisions in accordance with statutory provisions relating to TDI rules and procedures.

C.S.H.B. 2693 requires a roofing contractor to comply with local ordinances and regulations relating to standards and permits for roofing services. The bill requires a registrant to timely notify TDI of any change to the contractor's name, address, business entity, or legal service agent and prohibits an individual from obtaining another certificate of registration during any period in which the individual's certificate of registration is suspended or revoked. The bill makes it a Class A misdemeanor offense for a roofing contractor providing roofing services for which the contractor is to be paid by a consumer from the proceeds of the consumer's property insurance policy to pay or rebate or promise to pay or rebate all or part of any applicable insurance deductible. The bill makes it a Class C misdemeanor offense for a roofing contractor to act as an

adjuster or to advertise to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license as an insurance adjuster or as a public insurance adjuster. The bill prohibits a roofing contractor from engaging or offering or attempting to engage in the practice of engineering regulated under The Texas Engineering Practice Act or architecture regulated by the Texas Board of Architectural Examiners unless the roofing contractor holds an applicable license.

C.S.H.B. 2693 requires a roofing contractor to provide to all consumers solicited by the contractor a written disclosure of whether the contractor carries liability insurance coverage for damage or loss arising from the contractor's provision of roofing services and prohibits the contractor from entering into a contract for roofing services with a consumer until the contractor provides the disclosure to the consumer. The bill requires a roofing contractor that carries liability insurance coverage, on request of a consumer, to provide to the consumer a copy of the declarations page of the insurance policy.

C.S.H.B. 2693 requires TDI to investigate any complaint alleging that a registrant has violated the bill's provisions or a rule adopted under its provisions and requires the complaint to be filed in a manner prescribed by TDI. The bill makes it a Class C misdemeanor offense for a roofing contractor to violate the bill's liability insurance disclosure provisions or to represent to the public that the contractor is a registered roofing contractor unless the contractor is registered under the bill's provisions and has received from TDI confirmation of the registration.

C.S.H.B. 2693 exempts a licensed engineer and a registered architect from the bill's provisions by excluding such individuals from the bill's definition of "roofing contractor." The bill establishes that its provisions are to be construed to be in addition to any required license, certification, or registration of persons in Texas and not intended to conflict with or affect the authority of any state or local agency, board, or department that administers or enforces any law or ordinance or that establishes, administers, or enforces a policy, rule, qualification, or standard for a trade or profession. The bill's provisions do not require that a roofing contractor be registered under its provisions to engage in the business of providing roofing services in Texas.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2693 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Title 20, Insurance Code, is amended by adding Chapter 6004 to read as follows:

CHAPTER 6004. ROOFING CONTRACTORS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6004.001. SHORT TITLE. This chapter may be cited as the Roofing Contractor Registration Act.

Sec. 6004.002. DEFINITIONS. In this

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 20, Insurance Code, is amended by adding Chapter 6004 to read as follows:

CHAPTER 6004. ROOFING CONTRACTORS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6004.001. SHORT TITLE. This chapter may be cited as the Roofing Contractor Consumer Protection Act.

Sec. 6004.002. DEFINITIONS. In this

chapter:

(2) "Agricultural use" means a use or activity involving agriculture, as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity.

(3) "Commissioner" means the commissioner of insurance.

(5) "Department" means the Texas Department of Insurance."

(6) "Maintenance personnel" means an employee who performs maintenance work incidental to and in connection with other duties including the repair, maintenance and replacement of existing building systems and components. Such maintenance personnel shall not engage in roofing services for the general public.

(7) "Roofing contractor" means a person or business performing roofing services for compensation who:

(A) is an owner, officer, or director of a roofing business;

(B) possesses direct or indirect control of at least 10 percent of the voting securities of a roofing business that is a corporation;

(C) owns or possesses direct or indirect control of at least \$25,000 of the fair market value of a roofing business;

(D) directly or indirectly possesses the power to direct or cause the direction of the management or policies of a roofing business; or

(E) has a direct or indirect interest in at least 10 percent of the profits, proceeds, or capital gains of a roofing business.

(8) "Roofing product" means any material commonly used in the construction, installation, or replacement of a commercial or residential roof.

(9) "Roofing services" means the installation, construction, maintenance, repair, alteration, or modification of a roofing product for a commercial or

chapter:

(1) "Roofing contractor":

(A) means an individual performing roofing services for the public for compensation who:

(i) is operating as an individual or sole proprietorship; or

(ii) with respect to a business entity:

(a) is an owner, officer, or director of the business entity;

(b) possesses direct or indirect control of not less than, as applicable:

(1) 10 percent of the voting shares of a corporate entity; or

(2) \$25,000 of the fair market value of a noncorporate entity;

(c) possesses direct or indirect control of the management or policies of the business entity; or

(d) has a direct or indirect interest in not less than 10 percent of the profits, proceeds, or capital gains of the business entity; and

(B) does not include an individual acting as an engineer licensed under Chapter 1001, Occupations Code, or an architect registered under Chapter 1051, Occupations Code.

(2) "Roofing product" means any material commonly used in the construction, installation, or replacement of a commercial or residential roof.

(3) "Roofing services" means the installation, construction, maintenance, repair, alteration, or modification of a roofing product for a commercial or

residential roof.

(10 "Remodeler" means a person who manages, oversees or carries out multiple structural alterations, in addition to the performance of roofing services, for an existing residential or commercial property for compensation.

Sec. 6004.003. EXEMPTIONS. (a) This chapter does not apply to:

(1) the owner of residential property or property used primarily for agricultural purposes, or an employee of the owner, who physically performs roofing services on the owner's dwelling or on another structure located on the property;

(2) the owner or maintenance personnel of a commercial building;

(3) an authorized employee or representative of the United States government, this state, or any county, municipality, or other political subdivision of this state acting in an official capacity;

(4) a person who furnishes any fabricated or finished roofing product, material, or article of merchandise that is not incorporated into or attached to real property by the person;

(5) an employee while working for and acting under the supervision of a roofing contractor who holds a registration certificate under this chapter; or

(6) a builder of a newly constructed single family or multi-family residential dwelling or commercial structure.

(7) a remodeler of a single family or multi-family residential dwelling or commercial structure.

(b) Notwithstanding Subsection (a), a person described by Subsection (a)(6),(7) is subject to the requirements of this chapter to the extent the person provides roofing services other than those described by that subdivision.

Sec. 6004.004. CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER LAW. This chapter shall be construed to be in addition to any required registration of persons in this state. This chapter is not intended to conflict with or affect the authority of any state or local agency, board, or department that administers or enforces any law or ordinance or that

residential roof.

No equivalent provision.

Sec. 6004.003. CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER LAW. This chapter shall be construed to be in addition to any required license, certification, or registration of persons in this state. This chapter is not intended to conflict with or affect the authority of any state or local agency, board, or department

establishes, administers, or enforces a policy, rule, qualification, or standard for a trade or profession.

[Sections 6004.005-6004.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSIONER

Sec. 6004.101. GENERAL POWERS AND DUTIES. The department or commissioner, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 6004.102. RULES. The commissioner shall adopt rules as necessary to administer this chapter, including rules relating to:

- (1) registration and renewal of registrations of roofing contractors;
- (2) registration requirements for out of state roofing contractors.
- (3) the display of a registration certificate by a registrant; and
- (4) the form and manner of a complaint submitted to the department; including the investigation of complaints.

Sec. 6004.103. UNIFORM CONTRACT REQUIREMENT. The commissioner shall adopt rules necessary to establish the elements of a uniform contract which shall be made available for all registrants to use, if requested.

Sec. 6004.104 REQUIRED FINANCIAL DISCLOSURE. The commissioner shall adopt rules requiring registrants to disclose, in writing, whether or not a registrant carries insurance or maintains any other form of financial responsibility, including any form of liability coverage, surety bond, workers compensation coverage, or other coverage. This disclosure shall be made to any consumer for whom a registrant seeks to provide roofing services and must be made prior to the signing of a contract with a consumer.

that administers or enforces any law or ordinance or that establishes, administers, or enforces a policy, rule, qualification, or standard for a trade or profession. This chapter does not require that a roofing contractor be registered under this chapter to engage in the business of providing roofing services in this state.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 6004.051. ADMINISTRATION. The commissioner shall administer this chapter in accordance with Chapter 36.

No equivalent provision.

No equivalent provision.

No equivalent provision.

Sec. 1307.105. REGISTRANT DATABASE. The department shall make available on its Internet website a publicly accessible list of registered roofing contractors. The list must contain the following for each registered roofing contractor:

(1) contact information for the contractor;

(2) a statement indicating whether the contractor is registered and in good standing;

(3) a summary of any known disciplinary action taken against the contractor; and

(4) any other information that the department determines is relevant.

[Sections 6004.106-6004.150 reserved for expansion]

#### SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 6004.151. REGISTRATION REQUIRED. (a) A person may not act as or offer to act as a roofing contractor unless the person holds a registration certificate issued under this chapter.

(b) A registration:

(1) is valid only with respect to the person or company named on the registration certificate; and

(2) authorizes the registrant to operate one roofing contractor business for each registration.

(c) a registration may not be transferred or assigned.

Sec. 6004.152. APPLICATION; APPLICATION FEE. (a) An applicant for registration must:

(1) apply to the department on a form prescribed by the commissioner and under rules adopted by the commissioner;

(2) submit with the application a nonrefundable application fee in an amount to be set by the commissioner.

(b) The commissioner by rule shall

Sec. 6004.052. VOLUNTARY REGISTRANT DATABASE. The department shall make available on its Internet website a publicly accessible list of roofing contractors who voluntarily elect to register under this chapter. The list must contain the following for each registered roofing contractor:

(1) contact information for the contractor;

(2) the name of each business entity with respect to which the registrant is described by Section 6004.002(1)(A)(ii);

(3) a statement indicating whether the contractor is registered in good standing under this chapter;

(4) a summary of known disciplinary action taken against the contractor; and

(5) any other information that the commissioner considers relevant.

#### SUBCHAPTER C. VOLUNTARY REGISTRATION

Sec. 6004.101. REGISTRATION. (a) A roofing contractor who voluntarily elects to register under this chapter may represent to the public that the contractor is a registered roofing contractor.

(b) A registration:

(1) is valid only with respect to the individual named on the certificate of registration; and

(2) authorizes the registrant to operate under the registration under the business names included in the application for registration.

(c) A registration certificate may not be transferred or assigned.

Sec. 6004.102. APPLICATION; APPLICATION FEE. (a) An applicant for a registration certificate must:

(1) apply to the department on a form prescribed by the commissioner by rule; and

(2) submit with the application a nonrefundable application fee established by the commissioner by rule.

(b) The commissioner by rule shall

specify the information that must be included on an application submitted to the department. The rules must require each application to include:  
(1) the name and address of each controlling person.

No equivalent provision.

Sec. 6004.153. TERM OF REGISTRATION AND RENEWAL. (a) Registration issued under this chapter is valid for one year.

(b) A renewal application must be filed by a roofing contractor at least 30 days prior to the expiration of each prior years registration.

(c) If a roofing contractor fails to file a renewal application at least 30 days prior to the expiration of the prior years registration then the roofing contractor's registration shall be deemed not in good standing.

(d) A roofing contractor has a thirty-day grace period to renew a registration beyond the expiration date.

(e) A roofing contractor who fails to renew a registration beyond the time provided in 6004.153 (d) shall have their registration revoked for failure to renew.

[Sections 6004.154-6004.200 reserved for expansion]

#### SUBCHAPTER D. PRACTICE BY REGISTRANT

Sec. 6004.201. DISPLAY OF REGISTRATION CERTIFICATE. (a) A roofing contractor shall display the contractor's business name and the number of the registration certificate

specify the information that must be included on an application submitted to the department.

Sec. 6004.103. ISSUANCE OF CERTIFICATE. The commissioner shall issue a numbered certificate of registration to an applicant who submits an application and fee in compliance with Section 6004.102.

Sec. 6004.104. TERM OF REGISTRATION; RENEWAL. (a) A certificate of registration issued under this chapter is valid for one year.

(b) Except as provided by Subsection (c), an application for renewal of a certificate of registration must be filed with the department not later than the 30th day before the date the certificate of registration expires. A certificate of registration for which an application for renewal is not timely filed under this subsection is considered not in good standing until the later of the date of the expiration of the certificate of registration under Subsection (d) or the granting of an application described by Subsection (c), if any.

(c) A registrant may file an application for renewal not later than the 30th day after the date a certificate of registration expires.

(d) A certificate of registration not renewed under Subsection (b) or (c) may not be renewed. The individual may obtain a new certificate of registration by complying with the requirements and procedures for obtaining an initial certificate of registration.

#### SUBCHAPTER D. PRACTICE BY ROOFING CONTRACTOR

No equivalent provision.

issued by the commissioner on each vehicle owned by the contractor and used in providing roofing services.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) affixed in conspicuous places on both sides of the vehicle.

Sec. 6004.202. COMPLIANCE WITH LOCAL REQUIREMENTS. A roofing contractor shall comply with local ordinances and regulations relating to standards and permits for roofing services.

Sec. 6004.203. OBTAINING A REGISTRATION UNDER ANOTHER NAME PROHIBITED. (a) A person may not attempt to obtain registration under any other name during any period during which the person's roofing contractor registration is suspended or revoked.

(b) Subsection (a) applies to any controlling person of a business entity or other group whose registration is suspended or revoked.

Sec. 6004.204. NOTIFICATION OF CHANGE OF INFORMATION. A roofing contractor shall timely notify the department of any change to the name, address, business entity, or legal service agent of the contractor.

**No equivalent provision.**

Sec. 6004.205. WAIVER OF INSURANCE DEDUCTIBLE PROHIBITED. A roofing contractor providing roofing services to be paid by a consumer from the proceeds of the consumer's property or casualty insurance policy may not pay or rebate or promise to pay or rebate all or part of any applicable

Sec. 6004.151. COMPLIANCE WITH LOCAL REQUIREMENTS. A roofing contractor shall comply with local ordinances and regulations relating to standards and permits for roofing services.

**No equivalent provision.**

Sec. 6004.152. NOTIFICATION OF CHANGE OF INFORMATION. A registrant shall timely notify the department of any change to the name, address, business entity, or legal service agent of the contractor.

Sec. 6004.153. REGISTRATION DURING SUSPENSION OR REVOCATION PROHIBITED. An individual may not obtain another certificate of registration under this chapter during any period in which the individual's certificate of registration is suspended or revoked.

Sec. 6004.154. REBATING PROHIBITED. (a) A roofing contractor providing roofing services to be paid by a consumer from the proceeds of the consumer's property insurance policy may not pay or rebate or promise to pay or rebate all or part of any applicable insurance deductible.



insurance deductible.

Sec. 6004.206. MISREPRESENTATION AND DECEPTIVE ACTS PROHIBITED. A roofing contractor shall not engage in any fraudulent or deceptive acts or practices or misrepresentation of products, services, or qualifications of a roofing contractor.

SEC. 6004.207. CERTAIN CLAIMS HANDLING PROHIBITED. A roofing contractor shall not handle or advertise services to handle the adjustment of claims or losses on behalf of an insured.

Sec. 6004.206. CONFLICTS OF INTEREST PROHIBITED. (a) In this section, "public insurance adjuster" has the meaning assigned by Section 4102.001, Insurance Code.

(b) A roofing contractor may not act as a public insurance adjuster for any property for which the contractor is providing roofing services, regardless of whether the contractor holds a license under Chapter 4102, Insurance Code.

(c) A roofing contractor is subject to the prohibitions under Section 4102.158, 4102.153, 4102.155 and 4102.161, Insurance Code.

[Sections 6004.207-6004.250 reserved for expansion]

No equivalent provision.

No equivalent provision.

(b) A roofing contractor that violates Subsection (a) commits an offense. An offense under this subsection is a Class A misdemeanor.

No equivalent provision.

No equivalent provision.

Sec. 6004.155. CONFLICTS OF INTEREST PROHIBITED. A roofing contractor may not act as an adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license under Chapter 4101 or 4102.

Sec. 6004.156. ENGINEERING AND ARCHITECTURE SERVICES PROHIBITED. Unless a roofing contractor holds a license under the applicable chapter, the contractor may not engage or offer or attempt to engage in the practice of:

- (1) engineering regulated under Chapter 1001, Occupations Code; or
- (2) architecture regulated under Chapter 1051, Occupations Code.

Sec. 6004.157. DISPLAY OF CERTIFICATE OF REGISTRATION NUMBER PERMITTED. A registrant may display the certificate of registration number issued to the contractor under Section 6004.103.

No equivalent provision.

Sec. 6004.158. LIABILITY INSURANCE DISCLOSURE. (a) A roofing contractor shall provide to all consumers solicited by the contractor a written disclosure of whether the contractor carries liability insurance coverage for damage or loss arising from the contractor's provision of roofing services.

(b) A roofing contractor may not enter into a contract for roofing services with a consumer until the contractor provides to the consumer the disclosure described by Subsection (a).

(c) On request of a consumer, a roofing contractor that carries liability insurance coverage described by Subsection (a) shall provide to the consumer a copy of the declarations page of the insurance policy.

SUBCHAPTER E. ENFORCEMENT

Sec. 6004.251. INVESTIGATION OF COMPLAINTS. (a) The department shall investigate any complaint alleging that a violation of this chapter or a rule adopted under this chapter has occurred.

(b) A complaint must be filed in a manner prescribed by the department.

Sec. 6004.252 ADMINISTRATIVE PENALTY. The commissioner may impose an administrative penalty on a person under Subchapter B, Chapter 84, regardless of whether the person is a registrant under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the department or commissioner.

Sec. 6004.253. PENALTIES. The commissioner may impose a penalty as provided by Section 84.022.

Sec. 6004.254. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates the registration requirements of this chapter; or

(2) performs roofing services without the registration required by this chapter.

SUBCHAPTER E. ENFORCEMENT

Sec. 6004.201. INVESTIGATION OF COMPLAINTS. (a) The department shall investigate any complaint alleging that a voluntary registrant has violated this chapter or a rule adopted under this chapter.

(b) A complaint must be filed in a manner prescribed by the department.

No equivalent provision.

No equivalent provision.

Sec. 6004.202. CRIMINAL PENALTY. (a) A roofing contractor commits an offense if the contractor:

(1) violates Section 6004.155 or 6004.158; or

(2) represents to the public that the contractor is a registered roofing

(b) An offense under this section is a Class C misdemeanor.

(c) More than one violation of this act during any twelve-month period shall be grounds for the suspension of a roofing contractors registration by the department.

(d) More than two violations of this act during any twelve-month period shall cause the registrant to be ineligible for registration for a period not to exceed twelve-months from the date of the last violation.

SECTION 2. Not later than February 1, 2014, the Texas Department of Insurance, the Commissioner of the Department of Insurance, as appropriate, shall adopt rules and forms necessary to implement Chapter 6004, Insurance Code, as added by this Act.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Section 6004.151, Insurance Code, and Subchapters E and F, Chapter 6004, Insurance Code, as added by this Act, take effect September 1, 2014.

contractor unless the contractor is registered under this chapter and has received from the department confirmation of registration.

(b) An offense under this section is a Class C misdemeanor.

SECTION 2. Not later than February 1, 2014, the commissioner of insurance shall adopt rules and forms necessary to implement Chapter 6004, Insurance Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2013.