

By: Carona

S.B. No. 19

A BILL TO BE ENTITLED

AN ACT

relating to certain residential and other structures and mitigation of loss to those structures resulting from natural catastrophes; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 2, Insurance Code, is amended by adding Chapter 152 to read as follows:

CHAPTER 152. LOSS MITIGATION PROGRAMS

Sec. 152.001. DEFINITIONS. In this chapter:

(1) "Construction" includes alteration, remodeling, enlargement, or repair of, or an addition to, a structure.

(2) "Mitigation measure" means an improvement to or feature of a structure that reduces the risk or amount of loss from a covered loss under a residential property insurance policy.

(3) "Qualified inspector" includes:

(A) an inspector certified by:

(i) the International Code Council;

(ii) the Building Officials and Code Administrators International, Inc.;

(iii) the International Conference of Building Officials; or

(iv) the Southern Building Code Congress International, Inc.;

(B) a licensed professional engineer whose name

appears on the roster described by Section 1001.652, Occupations Code; or

(C) a person who meets the requirements for appointment to conduct windstorm inspections as specified by the commissioner by rule.

(4) "Seacoast territory" has the meaning assigned by Section 2210.003.

(5) "Trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 152.002. ESTABLISHMENT OF PROGRAMS; PURPOSE. (a) The commissioner in cooperation with the office of public insurance counsel shall develop and implement statewide emergency preparedness and loss mitigation programs designed to reduce potential insured residential property losses in this state.

(b) The programs may:

(1) improve preparedness for windstorm, hail, wildfire, and other natural catastrophes;

(2) reduce the risk and amount of potential insured residential property losses arising from windstorm, hail, wildfire, and other natural catastrophes;

(3) provide grants for loss mitigation measures; and

(4) promote public education about emergency preparedness and loss mitigation related to windstorm, hail, wildfire, and other natural catastrophes.

1       (c) The department and the office of public insurance  
2 counsel may enter into an interagency contract or other agreements  
3 with each other as appropriate to implement this chapter. The  
4 department or the office of public insurance counsel, jointly or  
5 severally, may enter into agreements with any individual or entity,  
6 including a political subdivision, a state or federal agency, a  
7 trade association, a university, or a nonprofit entity or other  
8 private entity as appropriate to implement this chapter.

9       Sec. 152.003. FUNDING FOR LOSS MITIGATION GRANT PROGRAM.  
10 The department in cooperation with the office of public insurance  
11 counsel shall use its best efforts to obtain funding for loss  
12 mitigation grants available under Section 152.005, including  
13 obtaining:

14               (1) grants from any individual or entity, including a  
15 political subdivision, a state or federal agency, a trade  
16 association, a university, or a nonprofit entity or other private  
17 entity; or

18               (2) gifts or grants of money or in kind.

19       Sec. 152.004. ADDITIONAL FUNDING FOR LOSS MITIGATION GRANTS  
20 IN SEACOAST TERRITORY. The Texas Windstorm Insurance Association,  
21 at the direction of the commissioner, shall provide money described  
22 by Section 2210.454 in an amount determined by the commissioner to  
23 provide funding in addition to the funding under Section 152.003  
24 for grants available only to residential property owners in the  
25 seacoast territory.

26       Sec. 152.005. LOSS MITIGATION GRANT PROGRAM. (a) The  
27 commissioner in cooperation with the office of public insurance

1 counsel may establish and administer a grant program to provide to  
2 residential property owners financial assistance to implement  
3 mitigation measures.

4 (b) Subject to eligibility requirements determined by the  
5 commissioner by rule, grants under this section may be made  
6 available to residential property owners in areas susceptible to  
7 windstorm, hail, wildfire, and other natural catastrophes as  
8 determined by the commissioner by rule.

9 (c) Grants may be made available for implementation,  
10 addition, or installation of mitigation measures, including:

- 11 (1) roof deck attachments;
- 12 (2) secondary water barriers;
- 13 (3) roof coverings;
- 14 (4) brace gable ends;
- 15 (5) roof-to-wall connection reinforcements;
- 16 (6) exterior opening protections;
- 17 (7) exterior doors, including garage doors;
- 18 (8) tie downs;
- 19 (9) reinforcements of trusses, studs, or other  
20 structural components; or
- 21 (10) other mitigation measures approved by the  
22 commissioner by rule.

23 (d) The commissioner may adopt by rule quality standards  
24 applicable to the mitigation measures described by Subsection (c).

25 Sec. 152.006. LOSS MITIGATION CREDIT AND SURCHARGE PROGRAM.

26 (a) The commissioner by rule may identify actuarially justified  
27 premium credits that may be given for a residential property

1 insurance policy if mitigation measures identified by the  
2 commissioner by rule have been implemented, added, or installed in  
3 an insured structure or in the construction of the structure.

4 (b) The commissioner by rule may adopt an actuarially  
5 justified premium surcharge that may be imposed by an insurer for a  
6 residential property insurance policy if the insured structure or  
7 the construction of the structure does not meet building code  
8 standards adopted by the commissioner by rule. The surcharge shall  
9 be retained by the insurer issuing the policy for which the  
10 surcharge is paid.

11 (c) The commissioner by rule may require inspection by a  
12 qualified inspector of an insured structure or the construction of  
13 the structure for a property owner to qualify for a premium credit  
14 or to be subject to a premium surcharge under this section.

15 (d) The commissioner shall adopt rules necessary to  
16 implement and enforce this section, including rules that:

17 (1) adopt building code standards; and  
18 (2) define "actuarially justified" for the purposes of  
19 this section.

20 Sec. 152.007. COLLECTION OF INFORMATION; PUBLIC  
21 AVAILABILITY. (a) The department may collect information relating  
22 to premium credits and surcharges:

23 (1) related to loss mitigation generally; or  
24 (2) authorized under Section 152.006.

25 (b) The information collected under Subsection (a) may  
26 include:

27 (1) the name of a credit or surcharge;

1           (2) the amount of a credit or surcharge;  
2           (3) mitigation measures eligible for a credit;  
3           (4) building code standards that must be met to avoid a  
4 surcharge; and  
5           (5) other information the commissioner in cooperation  
6 with the office of public insurance counsel reasonably believes  
7 promotes the purpose of this chapter.

8           (c) The information collected under this section may be used  
9 in connection with the public education program established under  
10 Section 152.009.

11           (d) The information collected under this section must be:  
12           (1) made available to the public;  
13           (2) posted on the department's Internet website; and  
14           (3) posted on the Internet website of the office of  
15 public insurance counsel.

16           (e) The department and the office of public insurance  
17 counsel shall take all reasonable precautions to prevent disclosure  
18 or use of personal information obtained in the collection of  
19 information under this section.

20           Sec. 152.008. FUNDING FOR PUBLIC EDUCATION PROGRAM. The  
21 department in cooperation with the office of public insurance  
22 counsel shall use its best efforts to obtain funding for the public  
23 education program established under Section 152.009, including  
24 obtaining:

25           (1) grants from any individual or entity, including a  
26 political subdivision, a state or federal agency, a trade  
27 association, a university, or a nonprofit entity or other private

1 entity; or

2 (2) gifts or grants of money or in kind.

3 Sec. 152.009. PUBLIC EDUCATION PROGRAM. (a) The  
4 commissioner in cooperation with the office of public insurance  
5 counsel may create a public education program to educate and inform  
6 the public about:

7 (1) the programs established under this chapter;

8 (2) the appropriateness of particular mitigation  
9 measures in certain circumstances;

10 (3) the availability of credits described by this  
11 chapter; and

12 (4) the imposition of surcharges described by this  
13 chapter.

14 (b) To develop and implement the public education program,  
15 the department in cooperation with the office of public insurance  
16 counsel may coordinate or collaborate with any individual or  
17 entity, including a political subdivision, a state or federal  
18 agency, a trade association, a university, or a nonprofit entity or  
19 other private entity.

20 SECTION 2. Sections 2210.454(a), (b), and (d), Insurance  
21 Code, are amended to read as follows:

22 (a) The commissioner shall annually develop and implement a  
23 mitigation and preparedness plan in coordination with the loss  
24 mitigation programs authorized under Chapter 152.

25 (b) Each state fiscal year, the department may fund the  
26 mitigation and preparedness plan and provide additional funding for  
27 the loss mitigation program as described by Section 152.004 using

1 available funds.

2 (d) Money in excess of \$1 million may not be used under this  
3 section or provided to the loss mitigation program described by  
4 Section 152.004 if the commissioner determines that an expenditure  
5 of investment income from the trust fund would jeopardize the  
6 actuarial soundness of the fund or materially impair the ability of  
7 the fund to serve the state purposes for which the fund was  
8 established.

9 SECTION 3. Sections 233.153(a), (c), and (f), Local  
10 Government Code, are amended to read as follows:

11 (a) New residential construction of a single-family house  
12 or duplex in the unincorporated area of a county [~~to which this~~  
13 ~~subchapter applies~~] shall conform to the version of the  
14 International Residential Code published as of May 1, 2008, or the  
15 version of the International Residential Code that is applicable in  
16 the county seat of that county.

17 (c) If a municipality [~~located within a county to which this~~  
18 ~~subchapter applies~~] has adopted a building code in the  
19 municipality's extraterritorial jurisdiction, the building code  
20 adopted by the municipality controls and building code standards  
21 under this subchapter have no effect in the municipality's  
22 extraterritorial jurisdiction.

23 (f) Except as provided by Section 233.1546, a [A] county may  
24 not charge a fee to a person subject to standards under this  
25 subchapter to defray the costs of enforcing the standards.

26 SECTION 4. Sections 233.154(b) and (c), Local Government  
27 Code, are amended to read as follows:



1 (b) Before [~~If required by a county to which this subchapter~~  
2 ~~applies, before~~] commencing new residential construction, the  
3 builder shall provide notice to the county on a form prescribed by  
4 the county of:

5 (1) the location of the new residential construction;

6 (2) the approximate date by which the new residential  
7 construction will be commenced; and

8 (3) the version of the International Residential Code  
9 that will be used to construct the new residential construction  
10 before commencing construction.

11 (c) Not [~~If required by the county, not~~] later than the 10th  
12 day after the date of the final inspection under this section, the  
13 builder shall submit notice of the inspection stating whether or  
14 not the inspection showed compliance with the building code  
15 standards applicable to that phase of construction in a form  
16 required by the county to:

17 (1) the county employee, department, or agency  
18 designated by the commissioners court of the county to receive the  
19 information; and

20 (2) the person for whom the new residential  
21 construction is being built, if different from the builder.

22 SECTION 5. Subchapter F, Chapter 233, Local Government  
23 Code, is amended by adding Sections 233.1545 and 233.1546 to read as  
24 follows:

25 Sec. 233.1545. CERTIFICATION OF COMPLIANCE; CONNECTION OF  
26 UTILITIES. (a) A county shall require the issuance of a  
27 certificate of compliance as a precondition to obtaining utility

1 services as provided by this section.

2 (b) Not later than the fifth business day after the date a  
3 notice of inspection described by Section 233.154(c) stating that  
4 the inspection showed compliance with applicable building code  
5 standards is received, the county shall issue the party submitting  
6 the notice a written certificate of compliance.

7 (c) An electric, gas, water, or sewer service utility may  
8 not permanently serve or connect new residential construction of a  
9 single-family house or duplex as described by Section 233.151(a)(1)  
10 with electricity, gas, water, sewer, or other utility service  
11 unless the utility receives a certificate issued by the county  
12 under Subsection (b).

13 (d) Subsection (c) does not prevent the temporary use or  
14 connection of utilities necessary to complete new residential  
15 construction, including temporary use or connection of utilities to  
16 pass an inspection under this subchapter.

17 Sec. 233.1546. FEES. A county may charge a reasonable fee  
18 to issue a certificate of compliance under Section 233.1545. The  
19 fees, aggregated annually, may not exceed the annual cost of  
20 issuing the certificates under Section 233.1545.

21 SECTION 6. Title 8, Occupations Code, is amended by adding  
22 Chapter 1307 to read as follows:

23 CHAPTER 1307. ROOFING CONTRACTORS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 1307.001. SHORT TITLE. This chapter may be cited as  
26 the Roofing Contractor Consumer Protection Act.

27 Sec. 1307.002. DEFINITIONS. In this chapter:

1           (1) "Advisory board" means the roofing contractors  
2 advisory board.

3           (2) "Commission" means the Texas Commission of  
4 Licensing and Regulation.

5           (3) "Controlling person" means an individual who:

6                   (A) is an owner, officer, or director of a  
7 roofing contractor;

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

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

14                   (D) directly or indirectly possesses the power to  
15 direct or cause the direction of the management or policies of a  
16 roofing contractor; or

17                   (E) has a direct or indirect interest in at least  
18 10 percent of the profits, proceeds, or capital gains of a roofing  
19 contractor.

20           (4) "Department" means the Texas Department of  
21 Licensing and Regulation.

22           (5) "Executive director" means the executive director  
23 of the department.

24           (6) "Roofing contractor" means a person who performs  
25 roofing services for compensation.

26           (7) "Roofing product" means any material commonly used  
27 in the construction, installation, or replacement of a commercial

1 or residential roof.

2 (8) "Roofing services" means the installation,  
3 construction, maintenance, repair, alteration, or modification of  
4 a roofing product for a commercial or residential roof.

5 Sec. 1307.003. EXEMPTIONS. (a) This chapter does not apply  
6 to:

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

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

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

18 (4) an employee of a roofing contractor licensed under  
19 this chapter; or

20 (5) a person who performs roofing services for the new  
21 construction of a commercial or residential structure.

22 (b) Notwithstanding Subsection (a), a person described by  
23 Subsection (a)(5) may be subject to the requirements of this  
24 chapter to the extent the person provides roofing services other  
25 than those described by that subdivision.

26 Sec. 1307.004. CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER  
27 LAW. This chapter shall be construed to be in addition to any

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

SUBCHAPTER B. ADVISORY BOARD

Sec. 1307.051. ROOFING CONTRACTORS ADVISORY BOARD. (a) The advisory board consists of five members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) one general contractor who is not a roofing contractor;

(2) three roofing contractors licensed under this chapter; and

(3) one public member.

(b) For purposes of Subsection (a)(2), the commission may appoint a roofing contractor who is not licensed under this chapter if the contractor has fulfilled the requirements for the issuance of a license and has submitted a complete application to the department. The commission shall remove from the advisory board a roofing contractor appointed under this subsection if the contractor does not receive a license before the 31st day after the date the contractor is appointed to the advisory board.

(c) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) Chapter 2110, Government Code, does not apply to the

composition or duration of the advisory board.

Sec. 1307.052. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the commission on the adoption of rules governing the repair of a roofing system.

Sec. 1307.053. COMPENSATION. Advisory board members may not receive compensation for serving as a member.

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1307.101. GENERAL POWERS AND DUTIES. The department, executive director, or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 1307.102. RULES. The commission shall adopt rules as necessary to administer this chapter, including rules relating to:

(1) licensing roofing contractors and establishing standards of conduct for license holders, including the display of a license by a license holder;

(2) investigating and resolving complaints filed under this chapter;

(3) establishing the minimum financial responsibility requirements for license holders;

(4) administering a licensing examination; and

(5) prohibiting false, misleading, or deceptive advertising practices by license holders.

Sec. 1307.103. CRIMINAL HISTORY BACKGROUND CHECK. The department may obtain criminal history record information under Subchapter F, Chapter 411, Government Code, for an applicant for or holder of a license under this chapter. For purposes of Section

1 411.093, Government Code, an applicant for or holder of a license  
2 under this chapter includes a controlling person of an applicant or  
3 holder.

4 Sec. 1307.104. LICENSE HOLDER DATABASE. The commission  
5 shall make available on its Internet website a publicly accessible  
6 list of licensed roofing contractors. The list must contain the  
7 following for each licensed roofing contractor:

- 8 (1) contact information for the contractor;  
9 (2) a statement indicating whether the contractor is  
10 licensed in good standing;  
11 (3) a summary of any disciplinary action taken by the  
12 commission against the contractor; and  
13 (4) any other information that the commission  
14 determines is relevant.

15 SUBCHAPTER D. LICENSE REQUIREMENTS

16 Sec. 1307.151. LICENSE REQUIRED. (a) A person may not act  
17 as or offer to act as a roofing contractor unless the person holds a  
18 license issued under this chapter.

19 (b) A license:

- 20 (1) is valid only with respect to the person or company  
21 named on the license; and  
22 (2) authorizes the license holder to operate one  
23 roofing contractor business for each license.

24 (c) A license issued under this chapter is not transferable  
25 or assignable.

26 Sec. 1307.152. APPLICATION; APPLICATION FEE. (a) An  
27 applicant for a license must:

1           (1) apply to the department on a form prescribed by the  
2 executive director and under rules adopted by the commission;

3           (2) submit with the application a nonrefundable  
4 application fee in an amount set by the commission; and

5           (3) pass an examination adopted by the department.

6           (b) The commission by rule shall specify the information  
7 that must be included on an application submitted to the  
8 department. The rules must require each application to include:

9           (1) the name and address of, and an authorization for  
10 the department to obtain criminal history record information for,  
11 each controlling person; and

12           (2) evidence that the applicant satisfies the minimum  
13 financial responsibility requirements established by commission  
14 rule.

15           Sec. 1307.153. TERM OF LICENSE. A license issued under this  
16 chapter is valid for one year.

17           Sec. 1307.154. EXAMINATION. (a) An examination required  
18 by this chapter shall be conducted at locations throughout the  
19 state.

20           (b) The department shall accept, develop, or contract for  
21 the examination required by this chapter, including the  
22 administration of the examination. Each examination must test the  
23 knowledge of the applicant about basic contracting principles and  
24 roofing services.

25           (c) The executive director shall determine uniform  
26 standards for acceptable performance on an examination.



SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 1307.201. DISPLAY OF LICENSE INFORMATION. (a) A roofing contractor shall display the contractor's business name and the number of the license issued by the executive director 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. 1307.202. COMPLIANCE WITH LOCAL REQUIREMENTS. A roofing contractor shall comply with local ordinances and regulations relating to standards and permits for roofing services.

Sec. 1307.203. OBTAINING LICENSE UNDER ANOTHER NAME PROHIBITED. (a) A person may not attempt to obtain a license under any other name during any period during which the person's roofing contractor license is suspended or revoked.

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

Sec. 1307.204. NOTIFICATION OF CHANGE OF INFORMATION. A roofing contractor shall timely notify the department of any change to the name, address, business entity, liability coverage, or legal service agent of the contractor.

Sec. 1307.205. PROHIBITED ACTS. 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 insurance deductible.

Sec. 1307.206. 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, Insurance Code.

#### SUBCHAPTER F. ENFORCEMENT

Sec. 1307.251. 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. 1307.252. ADMINISTRATIVE PENALTY. The commission or executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license 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 commission or executive

1 director.

2 Sec. 1307.253. SANCTIONS. The commission may impose  
3 sanctions as provided by Section 51.353.

4 Sec. 1307.254. CRIMINAL PENALTY. (a) A person commits an  
5 offense if the person:

6 (1) violates the licensing requirements of this  
7 chapter; or

8 (2) performs roofing services without a license  
9 required by this chapter.

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

11 SECTION 7. Section 233.152, Local Government Code, is  
12 repealed.

13 SECTION 8. Chapter 152, Insurance Code, as added by this  
14 Act, applies only to an insurance policy that is delivered, issued  
15 for delivery, or renewed on or after January 1, 2014. A policy  
16 delivered, issued for delivery, or renewed before January 1, 2014,  
17 is governed by the law as it existed immediately before the  
18 effective date of this Act, and that law is continued in effect for  
19 that purpose.

20 SECTION 9. (a) Except as provided by Subsection (b) of this  
21 section, Subchapter F, Chapter 233, Local Government Code, as  
22 amended by this Act, applies only to new residential construction  
23 that commences on or after the effective date of this Act.

24 (b) In a county that, before the effective date of this Act,  
25 required notice under Section 233.154(b), Local Government Code, as  
26 it existed before amendment by this Act, Subchapter F, Chapter 233,  
27 Local Government Code, as amended by this Act, applies only to new

1 residential construction for which notice was given on or after the  
2 effective date of this Act.

3       SECTION 10. Not later than February 1, 2014, the Texas  
4 Commission of Licensing and Regulation, the Texas Department of  
5 Licensing and Regulation, and the executive director of the Texas  
6 Department of Licensing and Regulation, as appropriate, shall adopt  
7 rules and forms necessary to implement Chapter 1307, Occupations  
8 Code, as added by this Act.

9       SECTION 11. The Texas Department of Licensing and  
10 Regulation shall issue a roofing contractor license under Chapter  
11 1307, Occupations Code, as added by this Act, to an applicant who:

12               (1) applies for a license under this section not later  
13 than June 1, 2014;

14               (2) submits to the department the information required  
15 by rule;

16               (3) has at least 10 years of experience performing  
17 roofing services as defined by Section 1307.002, Occupations Code,  
18 as added by this Act; and

19               (4) pays the application fee established by the Texas  
20 Commission of Licensing and Regulation.

21       SECTION 12. (a) Except as provided by Subsection (b) of  
22 this section, this Act takes effect September 1, 2013.

23               (b) Section 1307.151, Occupations Code, and Subchapters E  
24 and F, Chapter 1307, Occupations Code, as added by this Act, take  
25 effect September 1, 2014.