

BILL ANALYSIS

C.S.H.B. 2102
By: Capriglione
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the collection by contractors of insurance deductibles owed on work connected to the proceeds of a property or casualty insurance claim. It has been reported that fraudulent actors in the roofing industry are falsely claiming they can waive or absorb an insurance deductible, which results in consumers receiving lesser work or facing higher insurance premiums down the road. There have been calls to clarify state law governing the payment of insurance deductibles related to property insurance policies. C.S.H.B. 2102 seeks to answer these calls by providing for the mandatory disclosure in certain contracts of state law relating to the payment of insurance deductibles.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 2102 amends the Insurance Code to require a person insured under a property insurance policy to pay any deductible applicable to a first-party claim made under the policy. The bill defines "person" as an individual, corporation, association, partnership, limited liability company, or other legal entity and defines "property insurance" as insurance that provides first-party coverage for loss of or damage to real property. The bill requires the Texas Department of Insurance (TDI), in coordination with other applicable state agencies and stakeholders as necessary, to develop and implement a consumer education program related to the payment of property insurance deductibles and sets out requirements for the program. The bill authorizes an insurer that issues a property insurance policy with replacement cost coverage to refuse to pay a claim for withheld recoverable depreciation or a replacement cost holdback under the policy until the insurer receives reasonable proof of payment by the policyholder of any deductible applicable to the claim. The bill sets out documentation considered reasonable proof of payment. The bill authorizes the commissioner of insurance to adopt rules as necessary to implement these provisions and excepts such rules from a certain requirement for rules increasing costs to regulated persons.

C.S.H.B. 2102 amends the Business & Commerce Code to require a contract to provide a good or service that is reasonably expected to be paid wholly or partly from the proceeds of a claim under a property insurance policy and that has a contract price of \$1,000 or more to contain a notice concerning the requirement for a person to pay any applicable deductible and provides for the form and content of the notice.

C.S.H.B. 2102 creates a Class B misdemeanor offense for a person who sells goods or services if the person advertises or promises to provide a good or service to an insured under a property insurance policy in a transaction in which:

- the good or service will be paid for by the insured from the proceeds of a property insurance claim; and
- the person selling the good or service, without the insurer's consent:
 - will pay, waive, absorb, or otherwise decline to charge or collect the amount of the insured's deductible;
 - will provide a rebate or credit in connection with the sale of the good or service that will offset all or part of the amount paid by the insured as a deductible; or
 - will in any other manner assist the insured in avoiding monetary payment of the required insurance deductible.

The bill creates a Class B misdemeanor offense for a person who sells goods or services to provide such a good or service in such a manner. The bill creates a Class B misdemeanor offense for a person insured under a property insurance policy who, in connection with a first-party claim under the policy for loss of or damage to real or personal property, knowingly submits or allows a claim to be submitted in the prohibited manner unless the insured person promptly notifies the insurer of the violation. The bill removes the Class A misdemeanor offense relating to certain insurance claims for excessive charges.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2102 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the definition of "property insurance."

The substitute includes a specification that TDI is required to develop and implement the consumer education program in coordination with other state agencies and stakeholders as necessary.

The substitute revises provisions relating to the authorization for an insurer that issues a property insurance policy with replacement cost coverage to refuse to pay certain claims until the insurer receives reasonable proof of payment of any applicable deductible as follows:

- changes the type of claim to which the authorization applies from a claim for replacement cost to a claim for withheld recoverable depreciation or a replacement cost holdback;
- does not include a provision establishing the applicability of the authorization; and
- includes provisions setting out documentation considered reasonable proof of payment for purposes of the authorization.

The substitute changes the penalty for the created offenses from a Class A misdemeanor to a Class B misdemeanor.

The substitute does not create an offense for a person insured under a property insurance policy who knowingly pays for a good or service with proceeds of the claim and fails to pay a required insurance deductible or accepts a prohibited rebate or credit, but the substitute does create an

offense for a person insured under a property insurance policy who knowingly submits or allows a claim to be submitted in a manner prohibited by the bill unless the insured person promptly notifies the insurer of the violation.

The substitute includes an authorization for the commissioner of insurance to adopt rules to implement certain bill provisions relating to the payment of an insurance deductible. The substitute excepts such rules from a requirement for rules increasing costs to regulated persons.