

SUMMARY: NCOIL STORM CHASER MODEL LEGISLATION

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Details the 13 sections of the model bill.

Section 1. Title

Currently, (State) Storm Chaser Consumer Protection Act.

Section 2. Purpose

The purpose of the Act is to protect Consumers from unscrupulous Contractor practices.

Section 3. Definitions

Creates a definition for Consumer, Contract, Contractor, and Person. Contractor includes a definition for roofing-related services, to include a subcontractor and other roofing related services and exempts a Person who meets three specific criteria.

Section 4. Written Contract Required

Determines the minimum requirements for a written Contract between the Contractor and the Consumer. Such requirements include the Contractor's contact and registration information; disclosure of the type of Contractors performing the work; the Consumer's right to pay by credit card; an itemized description of the services and costs; a separate document with a "Notice of Cancellation" statement that states the Consumer can cancel for any reason; and a right to cancel statement.

Section 5. Consumer Right to Rescind

The Consumer has the right to rescind a Contract, within three business days, for any reason, including if he or she has received a written notification from the insurer that all or any part of the claim is not covered under the insurance policy. The section also defines the procedures for a Consumer to send a cancellation notice and requires the Consumer to retain a copy of the cancellation notice.

Section 6. Consumer Right to Return of Deposit after Cancellation

Within ten days after a roofing Contract has been cancelled, the Contractor shall return deposits made by the Consumer. The section also entitles the Contractor to the reasonable value of any emergency services he or she performed.

Section 7. Registration Required

A Contractor shall not undertake any services without being registered as a Contractor with the state's appropriate accrediting body. The section requires a written application and proof of insurance to register as a Contractor. The section gives the state the right to deny or revoke a registration or refuse to issue a registration certificate if a licensee or applicant has met certain criteria, including failure to pay taxes and fraudulent misrepresentation.

Section 8. Insurance Required

Requires the Contractor to have and maintain workers' compensation insurance, liability insurance, bodily injury insurance, property damage insurance, and surety and performance bonds. The section allows the accrediting body to determine the specific insurance amounts.

Section 9. Penalties

Penalties can be applied to a Contractor who violates the Act or Contract terms. The section also authorizes the accrediting body to consider the seriousness of the violation, the impact of the violation on the complainant, any mitigating factors on the part of the Contractor, and the Contractor's history of previous violations before issuing any penalties or revoking a registration.

Section 10. Prohibitions

Prohibits a Contractor from certain activities, including asking for a deposit of more than one half of the Contract price, and operating without a license.

Section 11. Exemptions

Exempts a residential or farm property owner who performs roofing services on their own property without the assistance of a Contractor; any authorized employee of the federal, state or local government performing a roofing service upon a government property; and any Person who furnishes material that is not incorporated into or attached to the roof.

Section 12. Enforcement

Authorizes the appropriate state body to enforce the provisions of the Act.

Section 13. Effective Date

Provides an effective date.

Section 14. Severability

Provides a severability clause to ensure that if one part of the Act is deemed invalid, the remainder of the Act remains in force.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)
Storm Chaser Consumer Protection Act

Adopted by the NCOIL Executive Committee on July 19, 2015. Sponsored by Sen. Jason Rapert (AR) and Rep. Rich Golick (GA)

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Section 1. Title

This Act shall be known and cited as the [State] Storm Chaser Consumer Protection Act.

Section 2. Purpose

The purpose of this Act is to establish minimum standards for roofing contracts and to promote fair and honest practices in the roofing services business.

Section 3. Definitions

For purposes of this Act:

- A. "Consumer" includes any individual who seeks the service of a "Contractor" as defined in this Act.
- B. "Contract" includes the entire cost of the construction undertaking, including labor, materials, rentals, all direct and indirect project expenses, and the parties involved in the agreement.

- C. "Contractor" means a Person, including, but not limited to, a Person that is a nonresident roofing contractor, independent contractor, day laborer, or subcontractor engaged in the business of roofing, gutter, downspout or siding services for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration, or waterproofing. The term shall not include a person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material, nor a person providing roofing services to a residential building of more than four units, nor a person engaged in building a new home or housing development.
- D. "Person" includes any individual, partnership, corporation, business, trust, or other legal entity.
- E. The words *including*, *includes*, and *include* are deemed to be followed by the words *without limitation*.

Section 4. Written Contract Required

- A. Any agreement with a Contractor in an amount over [Enter Dollar Amount] shall be in writing and shall include the following documentation and information:
 - (1) The complete agreement between the Consumer and the Contractor, with a clear description of any other documents which are or shall be incorporated into the agreement.
 - (2) The Contractor's full legal name, business names, principal address, phone number, email, and the registration number.
 - (3) The name of the Contractor's insurer, the type of insurance coverage as required by Section 8, and the insurance policy limits obtained by the Contractor.
 - (4) An itemized description of the work to be done, any emergency services to be completed, and the materials to be used in the performance of the Contract.
 - (5) The total itemized amount agreed to be paid for the work to be performed under the Contract, including all change orders and work orders.
 - (6) A description of who will be performing the work, such as a subcontractor, independent contractor, day laborer, and/or others meeting the Contractor definition in Section 3.

- (7) An approximation of the cost expected to be borne by the Consumer.
- (8) A provision allowing payment to be made by cash, check, or credit card, at the Consumer's discretion.
- (9) The signatures of all Persons party to the Contract.
- (10) Contain in immediate proximity to the space reserved for the signature of the buyer in bold-face type of a minimum size of ten points, a statement in substantially the following form:

"You may cancel this Contract at any time within three business days of entering into this Contract with your Contractor. You may also cancel the Contract with your Contractor within three business days of being notified that your insurer has denied all or any part of your claim or loss under the insurance policy. See attached notice of cancellation form for an explanation of this right."

- (11) Contain a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the Contract but easily detachable, and which shall contain, in boldface type of a minimum size of ten points, the following statement:

"NOTICE OF CANCELLATION

You may cancel this Contract at any time within three business days of entering into the Contract with your Contractor. You may also cancel the Contract with your Contractor within three business days of being notified that your insurer has denied all or any part of your claim or loss under the insurance policy. You may cancel the Contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of Contractor) at (address of Contractor's place of business) at any time within three business days of receiving such notice from your insurer. You may also send a cancellation notice through email. If you cancel, any payments made by you under the Contract will be returned to you within ten business days following receipt by the Contractor of your cancellation notice, and any security interest arising out of the transaction will be canceled. You shall retain a copy of the notice of cancellation that is transmitted to the Contractor.

I HEREBY CANCEL THIS TRANSACTION

(Date)

(Consumer's Signature)"

- B. At the time of signing, the Consumer shall be furnished with a copy of the Contract signed by both the Contractor and the Consumer. No work shall begin prior to the signing of the Contract and transmittal to the Consumer of a copy of the Contract.

Section 5. Consumer Right to Rescind

A Consumer has the right to rescind the Contract within three business days after he or she signs a Contract. A Consumer who has entered into a written Contract with a Contractor to provide goods or services to be paid from the proceeds of a property or casualty insurance policy may also cancel the Contract at any time prior to midnight of the third business day after he or she has received written notification from the insurer, including electronic notification, that all or any part of the claim is not covered under the insurance policy. Cancellation shall be evidenced by the Consumer giving written notice of cancellation to the Contractor at the physical address or email stated in the Contract. Notice of cancellation, if given by mail, shall be effective upon deposit into the United States mail, postage prepaid, and properly addressed to the Contractor. Notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the Consumer not to be bound by the Contract. The Consumer shall retain a copy of the cancellation notice.

Section 6. Consumer Right to Return of Deposit after Cancellation

Within ten days after a Contract has been cancelled, the Contractor shall tender to the Consumer or possessor of the residential real estate any payments, partial payments, or deposits made by the Consumer and any note or other evidence of indebtedness. If, however, the Contractor has performed any services which were both acknowledged by the Consumer in writing and reflected in the original itemized estimate, the Contractor shall be entitled to the reasonable value of such services.

Section 7. Registration Required

- A. No person shall undertake, offer to undertake, or agree to perform Contractor services unless registered with and approved by the [Enter Accrediting Body] as a Contractor.
- B. Any Contractor who does not possess a certificate of registration from the [Enter Accrediting Body] as of [Enter Enactment Date], shall be entitled to complete any preexisting Contracts he or she has entered. However, a Contractor shall be required to register prior to bidding or entering into any Contracts within thirty days following [Enter Enactment Date].
- C. In order to be registered as a Contractor, an applicant must make an application to the [Enter Accrediting Body]. The application shall set forth information that includes the following:

- (1) The applicant's name, home address, business address, phone number, email address, website address, and social security number.
 - (2) The names and addresses of any and all affiliates, subsidiaries, partners, or trustees of the applicant including, in the case of corporate entities, the names and addresses of any and all officers, directors, and principal shareholders.
 - (3) A statement whether the applicant has ever been previously registered in the state as a Contractor, under what other names he or she was previously registered, whether there have been previous judgments or arbitration awards against him or her, and whether his or her registration has ever been suspended or revoked.
- D. If requested, the applicant shall furnish the [Enter Accrediting Body] proof of insurance, as described in Section 8 of this Act.
- E. The [Enter Accrediting Body] may fix fees, in an amount not to exceed [appropriate dollar amount], in a manner established by its rules for the registration fees and, if appropriate, renewal fees for Contractors. After consideration of administrative expenses, any fees collected under this section shall be used to enforce this Act.
- F. The [Enter the Accrediting Body] may deny, restrict, suspend, revoke the registration of a Contractor, or refuse to register an applicant if he or she:
- (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a registration or the renewal of a registration ;
 - (2) Practices or attempts to practice roofing services by fraudulent misrepresentation;
 - (3) Commits an act of gross malpractice or incompetence, as determined by [Enter Accrediting Body];
 - (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a Contractor, or that indicates that the person has deceived or defrauded the public;
 - (5) Has been declared incompetent by a court of competent jurisdiction;
 - (6) Has willfully violated any provision in this Act or any rules adopted by [Enter Accrediting Body];

- (7) Has had a Contractor registration suspended in another state;
- (8) Fails to maintain insurance pursuant to Section 8 of this Act; or
- (9) Fails or refuses to pay any taxes due in this State.

G. The [Enter Accrediting Body] has the authority to accelerate registration for any Contractor that is registered and in good standing in another state with similar registration standards. The [Enter Accrediting Body] has the authority to issue a certificate of registration that will contain information deemed appropriate by the [Enter Accrediting Body]. Said certificate will be valid for [Enter appropriate term] from the date of its issuance and may be renewed upon approval of the [Enter Accrediting Body]. The certificate will not be transferable.

Section 8. Insurance Required

- A. A Contractor shall obtain and maintain in full force and effect during the operation of the roofing business all of the following types of insurance:
- (1) Workers' compensation insurance in the amount of [Enter Appropriate State Amount];
 - (2) Public liability insurance in the amount of [Insert the State Requirement];
 - (3) Bodily injury in the amount of [Insert the State Requirement];
 - (4) Property damage in the amount of [Insert the State Requirement]; and
 - (5) A Surety and Performance Bond is the amount of [Insert Appropriate State Amount].

Section 9. Penalties

- A. If the [Enter Accrediting Body] determines that any registrant is liable for violation of any of the provisions contained in this Act, the [Enter Accrediting Body] may suspend the registrant's certificate of registration for such period of time as shall be determined by the [Enter Accrediting Body], revoke the registrant's certificate of registration, or reprimand the registrant.
- B. The [Enter Accrediting Body] may assess an administrative penalty not to exceed [Enter state penalty] of the total Contract price, whichever is greater, payable within 30 days of their order, for each violation of any of the provisions of this Act, committed by the

Contractor who is registered or who is required to be registered, plus any administrative costs incurred by the [Enter Accrediting Body].

- C. In determining whether to impose an administrative penalty, the [Enter Accrediting Body] shall consider the seriousness of the violation, the impact of the violation on the complainant, any mitigating factors on the part of the Contractor, and any previous violations by the Contractor.
- D. If any provision of this Act is violated, the Consumer has the right to rescind the agreement with the Contractor. However, the Consumer will be responsible for paying the Contractor for any work that was performed prior to the cancellation and acknowledged by the Consumer in writing, as specified in Section 4 of this Act.

[Drafting note: A state may want to consult with its attorney general's office to determine if a criminal penalty is necessary for inclusion in this Act or if an adjustment in the criminal penalty section of the current code is needed.]

Section 10. Prohibitions

- A. A Contractor shall not advertise, promise to pay, or rebate any portion of any insurance deductible as an inducement to the sale of goods or services. As used in this Section, a promise to pay or rebate includes granting any allowance or offering any discount against the fees to be charged or paying the Consumer or any Person directly or indirectly associated with the property any form of compensation.
- B. A Contractor shall not require a deposit of more than one half (1/2) of the Contract price.
- C. A Contractor shall not mandate that a particular form of payment be made in order to start roofing services.
- D. A Contractor shall not induce the sale of any goods or services by:
 - (1) Offering or providing any upgraded work, material, or product;
 - (2) Granting any allowance or offering any discount against the fees to be charged; or
 - (3) Paying the Consumer, or any other person directly or indirectly associated with the property, any form of compensation, gift, prize, bonus, coupon, credit, referral fee, trade-in or trade-in payment, advertising, or other fee or payment.
- E. A Contractor shall not operate without a certificate of registration issued by the [Enter Accrediting Body].

- F. A Contractor shall not abandon or fail to perform, without justification, any ongoing Contract or project, or deviate from or disregard plans or specifications in any material respect without the consent of the Consumer.
- G. A Contractor shall not fail to credit the Consumer for any payment the Consumer has made to the Contractor in connection with the Contract.
- H. A Contractor shall not make any material misrepresentation in the procurement of a Contract or make any false promise likely to influence, persuade, or induce the procurement of a Contract.
- I. A Contractor shall not violate the building code of the state or municipality.
- J. A Contractor shall not fail to notify the [Enter Accrediting Body] within 30 business days of any change of trade name or address, or conducting a business in any name other than the one in which the Contractor is registered.
- K. A Contractor shall not fail to pay for materials or services rendered in connection with his operating as a Contractor where he or she has received sufficient funds as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased.
- L. A Contractor shall not perform the reporting, adjusting, or negotiating of a claim on behalf of the Consumer and shall not receive compensation for the referral to any entity that reports, adjusts or negotiates a claim on behalf of a Consumer.
- M. A Contractor shall not fail to possess any insurance required as defined by state and federal law.

Section 11. Exemptions

The following persons are exempt from the requirements of this Act.

- A. Residential or farm property owners who, without the assistance of a Contractor registered under this Act, physically perform or have employees who perform roofing, siding, gutter, or downspout services on the dwelling or on another structure located on the residential or farm property.
- B. Any authorized employee or representative of the United States government, this state, or any county, municipality, or other political subdivision of this state performing a roofing service upon government property.

- C. Any Person who furnishes any fabricated or finished product, material, or article of merchandise that is not incorporated into or attached to real property by the Person so as to become affixed to the property.

Section 12. Enforcement

- A. The provisions of this Act shall be enforced by the [Enter the Accrediting Body].
- B. The [Enter the Accrediting Body] should have sufficient funding to properly enforce the provisions of this Act.

Section 13. Effective Date

- A. This Act shall take effect on [Enter Effective Date].

Section 14. Severability.

- A. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, that declaration shall not affect the parts that remain.