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[Home State Legislation](#) No Waving of Deductibles Bill: Texas HB 2102

No Waving of Deductibles Bill: Texas HB 2102

By [Kay Morgan](#) on June 22, 2019 Posted in [State Legislation](#)



The Problem: Waiving insurance policy deductibles (“you scratch my back and I’ll scratch yours”) has been common place in Texas since 1989 and came about as the result of a poorly worded statute passed that same year that contractors have basically ignored. Contractors who have broken the 1989 law by waving deductibles (primarily roofing contractors) are known as “deductible eaters.” Homeowners were lured into signing contracts with the deductible eaters based on promises, for example, of a “free roof.” And then, homeowners/policyholders were duped into committing insurance fraud when in submitting a request pursuant to their policy for replacement cost (RCV) hold-back, they failed to tell their insurance company that the deductible part of the claim had not been incurred. What this means, again for example, before the new law, is that the roof job a homeowner got where the \$2000 deductible was waived or “forgiven” and buried in other ways in the contractor’s paperwork, will now be required as payment out-of-pocket and proof that it was paid before the insurer will pay the RCV hold-back.

The Cure: This new bill out of the 86th Texas Legislature and signed into law this month by Governor Abbott is designed to cure or at least curb the above abuses. The new law, entitled Payment of Insurance Deductible, goes into effect September 1, 2019, and will be located in Chapter 707 of the Texas Insurance Code. The first full paragraph states: “A person insured under a property insurance policy shall pay any deductible applicable to a first-party claim made under the policy” *See* Tex. Ins. Code §707.002. This really has always been the law but has been ignored and not enforced.

However, the new law provides *that it is a violation of this law* if a contractor:

- Pays for,
- Waives,
- Absorbs,
- Rebates,
- Credits or Offsets or
- Otherwise assists the insured in any other manner in avoiding monetary payment of the required insurance deductible or provides a good or service knowing that the insured will pay for the good or service with the proceeds of a claim under the policy and without the insurer's consent to do so.

The new law creates a Class B misdemeanor offense of 180 days in county jail and a fine of up to \$2000, for (1) a business who sells goods or services to provide such a good or service in such a prohibited manner (*violating contractor*), (2) an insured (*policyholder*) who commits an offense if the person, in connection with a first party claim knowingly submits or allows a claim to be submitted in violation of subsection c, (the violation section directly above) unless the insured person promptly notifies the insurer of the violation.

Another key provision is Section 707.004, ***Reasonable Proof of Payment***, which provides that an insurer (Insurance Company) may refuse to pay a claim for withheld recoverable depreciation or replacement cost holdback until the insurer receives "reasonable proof" of payment of the deductible by the policyholder. "Reasonable Proof" is set out in the statute as consisting of a: "canceled check, money order under receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time. Tex. Ins. Code §707.004.

The new law also amends the ***Texas Business and Commerce Code***. This section provides that a contract that is reasonable expected to be paid wholly or partly from the proceeds of a claim made under a property insurance policy to provide a good or service of more than \$1000 ***must*** contain the following provision in 12 pt. font:

Texas law requires a person insured under a property insurance policy to pay any deductible applicable to a claim made under the policy. It is a violation of this Texas law for a person or business paid wholly or partly from proceeds of a property insurance claim to knowingly allow the insured person to fail to pay. Or assist the insured person's failure to pay, the applicable insurance deductible. See SECTION 2. Business & Commerce Code, is amended to read as follows: Section 27.02. "*Goods or Services Paid for by Insurance Proceeds: Payment of Deductible Required*"

Finally, although in my humble opinion the new law is well-written and extremely clear, there is a provision in it (§ 707.003) that the Texas Insurance Commission will be in charge of ***consumer education*** about the new law and "shall develop and implement an education program relating to the payment of property insurance deductible." The new law also set forth the specific, mandatory requirements that the educational program must contain.

Touted as a consumer/policyholder's victory, I am not sure what that victory entails. The only benefit I can think of is that if a policyholder or insured knows about this new law, then a contractor's con about a "free roof" would raise a red flag. Other than that knowledge benefit, I am not sure there are any others.

About

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