

KAPCIC

Kansas Association of Property & Casualty Insurance Companies Inc.

February 19, 2019

SB 78

Testimony Before the Senate Judiciary Committee

Testimony by Marlee Carpenter, Kansas Association of Property and Casualty Insurance Companies (KAPCIC)

Mr. Chair and Members of the Committee;

Thank you for the opportunity to testify on behalf of the Kansas Association of Property and Casualty Insurance Companies (KAPCIC), our state trade association for domestic property and casualty insurance companies. Most of the KAPCIC member companies are domiciled Kansas companies and our members live and work here in the state.

SB 78 is a bill that addresses the abuse of the assignment of benefits in property and casualty insurance contracts. SB 78 is modeled after a Nebraska law that was passed last year. In many cases, an assignment of benefits has a valid purpose. However, we have found that in some instances, this assignment of benefits has been abused.

After large storm losses, there are times dishonest roofers and contractors ascend on the area of loss to make a quick profit. In some states, these dishonest roofers and contractors are asking homeowners to assign their benefits to the roofer or contractor. When a homeowner assigns their benefits, the roofer or contractor steps into the shoes of the homeowner and assumes their rights under the contract. In some cases, the homeowner has no knowledge of the repair price, the materials ordered or even if the roofer or contractor sues the insurance company. When a roofer or contractor is dishonest, this drives up the repair price and the cost of insurance in the state.

SB 78 addresses the assignment of benefits under the Kansas Consumer Protection Act. It put key protections in place that will keep both the homeowner and insurance company informed if an assignment is made. The bill will require that the insurance company is notified of an assignment, that the check for repairs is addressed to both the roofer/contractor and the homeowner and requires a statement regarding the assignment accompanies the assignment.

We have worked with the Kansas Department of Insurance, the Attorney General's Office as well as the Kansas Roofer's Association on the bill. There are a few changes we would request to the bill. I have drafted a balloon amendment to address some of the concerns of the interested parties. The balloon amendment is attached to my testimony.

Thank you for your time and I will be happy to answer any questions.



Kansas Insurance Department

Ken Selzer, CPA, Commissioner of Insurance

FOR IMMEDIATE RELEASE
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Consumer alert: Post-storm, be careful what you sign

Topeka, KS—Ken Selzer, CPA, Kansas Commissioner of Insurance, is urging Kansans who have insurance claim money following a storm to be sure to know your rights and responsibilities “before you sign on the dotted line” with a contractor.

“I urge all Kansas homeowners to know what control you have or don’t have if you are considering a post-loss assignment of a claim to a contractor,” Commissioner Selzer said. “You need to realize that you may give up any control over how the claim money is used or how the work is completed.”

A post-loss assignment of a claim is a contract signed by the homeowner, after a covered loss, that grants a contractor all rights and duties of the claim under the insurance policy. This could be for any damage to insured property, such as a roof, siding, gutters, deck, windows or other household features.

Once that contract is signed, the contractor now owns all rights and duties to the claim. There are several ramifications of that, Commissioner Selzer said:

- If there is a disagreement between the contractor and the insured, the contractor may file a suit against the insurer in the policyholders’ name. The policyholder has no rights in the suit, and the suit could have an impact on future rates and insurability.
- The policyholder could be financially responsible to the contractor for the difference in the contractor’s price and the insurer’s payment.
- The policyholder could lose any ability to seek further action against the insurer because his/her rights have been assigned to the contractor.
- If a policyholder signed the agreement and then wishes to fire the contractor, that contractor still has claim to the insurance payment.

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“A homeowner is not required to sign a post-loss agreement,” Commissioner Selzer said. “I would urge homeowners to get a legal opinion before signing any agreement. Also, be sure to thoroughly check out the potential contractor by seeking recommendations from friends, co-workers, the Better Business Bureau and others.”

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The Kansas Insurance Department, established in 1871, assists and educates consumers, regulates and reviews companies, and licenses agents selling insurance products in the state. More about the department is online at www.ksinsurance.org or at www.facebook.com/kansasinsurancedepartment.

SENATE BILL No. 78

By Committee on Judiciary

2-1

1 AN ACT concerning consumer protection; relating to assignment of rights
2 or benefits to a residential contractor under a property and casualty
3 insurance policy insuring residential real estate.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) As used in this section:

7 (1) "Assignment" means a post-loss assignment of rights or benefits
8 to a residential contractor under a property and casualty insurance policy
9 insuring residential real estate;

10 (2) "residential contractor" means a person in the business of
11 contracting or offering to contract with an owner or possessor of
12 residential real estate to:

13 (A) Repair or replace a roof system or perform any other exterior
14 repair, replacement, construction or reconstruction work on residential real
15 estate;

16 (B) perform interior or exterior cleanup services on residential real
17 estate; repair

18 (C) arrange for, manage or process the work referred to in
19 subparagraph (A) or (B); or

20 (D) serve as a representative, agent or assignee of the owner or
21 possessor of residential real estate;

22 (3) "residential real estate" means a new or existing building,
23 including a detached garage, constructed for habitation by at least one but
24 no more than four families; and structure

25 (4) "roof system" means and includes roof coverings, roof sheathing,
26 roof weatherproofing and insulation. deck, roof ventilation

27 (b) (1) An assignment may authorize a residential contractor to be
28 named as a coveyee for the payment of benefits under a property and
29 casualty insurance policy covering residential real estate.

30 (2) An assignment shall include a statement that the residential
31 contractor has made no assurances that the claimed loss will be fully
32 covered by an insurance contract and shall include the following notice in
33 capitalized 14-point type:

34 "YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS THAT
35 YOU HAVE UNDER YOUR INSURANCE POLICY WITH AN
36 ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE

ASSIGNMENT OF BENEFITS IS VOLUNTARY."

1 ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU
2 THE INSURED HOMEOWNER HAVE UNDER YOUR INSURANCE
3 POLICY, PLEASE READ AND UNDERSTAND THIS DOCUMENT
4 BEFORE SIGNING.

5 THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR
6 REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL,
7 SUBJECT TO THE TERMS OF THE POLICY."

(3) The residential contractor shall provide the assignment to the Insuree of the residential real estate within three business days.

8
9 (4) An assignment shall provide that, in addition to any other right to
10 revoke, the named insured has the right to cancel the assignment within
11 five business days after execution. The residential contractor shall provide
12 the assignment to the insurer of the residential real estate within five
13 business days after the five-day right-to-cancel period expires

14 (5) (A) An assignment shall not:
15 (A) Impair the interest of a mortgage listed on the declarations page
16 of the property and casualty insurance policy that is the subject of the
17 assignment; or

18 (B) prevent or inhibit an insurer from communicating with the named
19 insured or mortgage listed on the declarations page of the property and
20 casualty insurance policy that is the subject of the assignment.

21 (C) The commissioner of insurance shall strictly enforce the
22 provisions of K.S.A. 40-2404(9)(n), and amendments thereto, which
23 requires insurers to promptly provide a named insured a reasonable
24 explanation of the basis in the insurance policy in relation to the facts or
25 applicable law for denial of a claim or for the offer of a compromise
26 settlement.

26 (d) An assignment is void if the residential contractor:

27 (1) Violates any provision of this section; or

28 (2) is not in compliance with any of the requirements of the Kansas
29 roofing registration act.

30 (e) Any violation of this section is a deceptive act or practice under
31 the Kansas consumer protection act.

32 (f) This section shall be a part of and supplemental to the Kansas
33 consumer protection act.

34 Sec. 2. This act shall take effect and be in force from and after its
35 publication in the statute book.

POLICY HOLDER