

1 SENATE BILL NO. 316

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIVIL LAWS; REVISING LAWS
5 RELATED TO THE USE OF FUNDS FOR RESTORATION; REQUIRING THAT AWARDS AND SETTLEMENT
6 FUNDS FOR RESTORATION DAMAGES ARE USED FOR CORRECTIVE ACTION ON PROPERTY;
7 REQUIRING FUNDS TO BE PLACED IN ESCROW AND USED FOR INTENDED PURPOSES; PROVIDING
8 OTHER CRITERIA RELATED TO THE USE OF THE FUNDS; PROVIDING A DEFINITION; AND PROVIDING
9 AN APPLICABILITY DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 NEW SECTION. Section 1. Purpose -- scope. (1) This part applies to civil claims brought in judicial
14 proceedings on behalf of private interests of individuals or entities, including residential construction disputes
15 under 70-19-427, in which:

- 16 (a) a party claims restoration damages; and
17 (b) a verdict or settlement awards a party more than \$25,000 in restoration damages.
18 (2) This part does not apply to an insured filing a claim against its insurer under a policy of insurance.
19 (3) Nothing in this part precludes the award of other damages allowed under common law and
20 statute.

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22 NEW SECTION. Section 2. Definition. As used in this part, unless the context clearly indicates
23 otherwise, "restoration damages" means the amount of:

- 24 (1) compensation determined necessary by a trier of fact or agreed to in a settlement agreement to:
25 (a) restore a contaminated special use property to its function and use prior to the contamination on
26 which a common law claim is based;
27 (b) remediate a contaminated property to a level determined by the trier of fact;
28 (c) repair damages to a structure or fixture, including but not limited to repairs related to foundations,

1 roofs, windows, or construction defects; or

2 (d) repair damage to landscaping or other damage to land.

3 (2) The term does not include:

4 (a) attorney fees and costs;

5 (b) punitive damages;

6 (c) damages related to emotional distress;

7 (d) treble damages;

8 (e) fines or penalties; or

9 (f) any other award of damages that are specifically delineated on a verdict form for categories of
10 damages unrelated to property damage.

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12 **NEW SECTION. Section 3. Award of restoration damages -- funds placed in escrow -- use of**

13 **funds.** (1) When a court or jury awards restoration damages or parties enter into a settlement that provides for
14 the payment of restoration damages, the party receiving money for restoration damages shall:

15 (a) pay the party's outstanding attorney fees, whether charged on an hourly basis or a flat fee basis,
16 as well as the percentage of the restoration damages owed to an attorney pursuant to a contingency fee
17 agreement, and the party's costs associated with the litigation;

18 (b) within 30 days of paying the costs outlined in subsection (1)(a), deposit the remaining restoration
19 damages in escrow at a commercial bank or trust company where the escrow is overseen by a qualified
20 professional to restore the property;

21 (c) use the funds in escrow to conduct any remedial and corrective action necessary to restore the
22 property for which the damages were awarded to its function and use prior to the contamination for which the
23 damages were awarded as claimed in the litigation or as ordered by the court; and

24 (d) commence remedial and corrective action within 3 years from the date the judgment is paid or
25 settlement proceeds are received.

26 (2) Remedial and corrective action must be done in accordance with applicable standards or
27 according to any expert disclosures or expert reports containing a restoration or remediation plan or
28 recommendation that is offered by the party seeking restoration damages. If the party alleges the restoration

1 work should have been done in a manner greater than any applicable standard, then the party must follow the
2 plan or recommendations set forth in an expert witness disclosure or expert witness report.

3 (3) If the party sells the property and remediation or corrective action is not completed, the escrow
4 funds must be transferred to the new owner of the property at the time the purchase of the property is complete.

5 (4) When the funds in the escrow are expended, the duty of the party to conduct remedial or
6 corrective action to restore the property ceases and the escrow account must be closed.

7 (5) When the party has completed the work, and if funds remain in the escrow account, the party shall
8 notify the qualified professional overseeing the trust to request the return of the funds, who may release the
9 funds on the finding that the remediation or corrective action has been completed in accordance with this
10 section.

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12 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be
13 codified as a new chapter in Title 27, and the provisions of Title 27 apply to [sections 1 through 3].

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15 NEW SECTION. Section 5. Applicability. [This act] applies to claims filed on or after October 1,
16 2021.

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