

## 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 CONSTRUCTION REPAIRS AND PROPERTY RESTORATION;  
 6 REVISING THE MONTANA CONTAMINATED PROPERTY AND RESTORATION ACT; REQUIRING THAT  
 7 AWARDS AND SETTLEMENT FUNDS FOR CONSTRUCTION REPAIRS AND RESTORATION DAMAGES  
 8 ARE USED FOR CORRECTIVE ACTION ON PROPERTY; REQUIRING FUNDS TO BE PLACED IN  
 9 ESCROW OR TRUST ACCOUNTS AND USED FOR INTENDED PURPOSES; PROVIDING OTHER  
 10 CRITERIA RELATED TO THE USE OF THE FUNDS; PROVIDING A DEFINITION; AND PROVIDING AN  
 11 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

18 (a) a party claims ~~restoration~~ CONSTRUCTION REPAIR damages; and

19 (b) a verdict or settlement awards a party more than ~~\$25,000~~ \$100,000 in ~~restoration~~ CONSTRUCTION  
 20 REPAIR damages.

21 (2) This part does not apply to an insured filing a claim against its insurer under a policy of insurance.

22 (3) Nothing in this part:

23 (A) precludes the award of other damages allowed under common law and statute; OR24 (B) MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

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26 NEW SECTION. Section 2. Definition. As used in this part, unless the context clearly indicates  
 27 otherwise, "~~restoration~~ CONSTRUCTION REPAIR damages" means the amount of:

28 (1) compensation determined necessary by a trier of fact or agreed to in a settlement agreement to:

- 1           ~~(a) restore a contaminated special use property to its function and use prior to the contamination on~~  
 2 ~~which a common law claim is based;~~
- 3           ~~(b) remediate a contaminated property to a level determined by the trier of fact;~~
- 4           ~~(c)(A) repair damages to a BUILDING, structure, or fixture, including but not limited to repairs related to~~  
 5 ~~foundations, roofs, windows, or construction defects; or~~
- 6           ~~(d)(B) repair damage to landscaping or other damage to land CAUSED BY A DAMAGED BUILDING,~~  
 7 ~~STRUCTURE, OR FIXTURE.~~

8           (2) The term does not include:

- 9           (a) attorney fees and costs;
- 10          (b) punitive damages;
- 11          (c) damages related to emotional distress;
- 12          (d) treble damages;
- 13          (e) fines or penalties; or
- 14          (f) any other award of damages that are specifically delineated on a verdict form for categories of  
 15 damages unrelated to property damage.

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17           **NEW SECTION. Section 3. Award of ~~restoration~~ CONSTRUCTION REPAIR damages -- funds placed**  
 18 **in escrow OR TRUST -- use of funds.** (1) When a court or jury awards ~~restoration~~ CONSTRUCTION REPAIR  
 19 damages or parties enter into a settlement that provides for the payment of ~~restoration~~ CONSTRUCTION REPAIR  
 20 damages, the party receiving money for ~~restoration~~ CONSTRUCTION REPAIR damages shall:

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

24           ~~(b)(A) within 30 days of paying the costs outlined in subsection(1)(a)~~ RECEIVING THE MONEY FOR  
 25 CONSTRUCTION REPAIR DAMAGES AND AFTER DEDUCTING ANY OUTSTANDING ATTORNEY FEES AND COSTS OF LITIGATION  
 26 OWED, deposit the remaining ~~restoration~~ CONSTRUCTION REPAIR damages in escrow OR A TRUST ACCOUNT at a  
 27 commercial bank or trust company where the escrow OR TRUST ACCOUNT is overseen by a qualified professional  
 28 to ~~restore the property~~ REPAIR THE BUILDING, STRUCTURE, OR FIXTURE;

1           ~~(e)(B)~~ use the funds in escrow OR TRUST to conduct any ~~remedial and corrective action~~ REPAIRS  
 2 necessary to restore the property for which the damages were awarded to its function and use prior to the  
 3 ~~contamination~~ CONDITION for which the damages were awarded as claimed in the litigation or as ordered by the  
 4 court; and

5           ~~(d)(C)~~ commence ~~remedial and corrective action~~ REPAIRS within 3 years from the date the judgment is  
 6 paid or settlement proceeds are received.

7           (2) ~~Remedial and corrective action~~ REPAIRS must be done in accordance with applicable standards or  
 8 according to any expert disclosures or expert reports containing a ~~restoration or remediation~~ REPAIR plan or  
 9 recommendation that ~~is offered by the party seeking restoration~~ SERVED AS THE BASIS FOR THE AWARD OR  
 10 SETTLEMENT OF CONSTRUCTION REPAIR damages. If the party alleges the ~~restoration~~ REPAIR work should have  
 11 been done in a manner greater than any applicable standard, then the party must follow the plan or  
 12 recommendations set forth in an expert witness disclosure or expert witness report.

13           (3) If the party sells the property ~~and remediation or corrective action is not~~ BEFORE REPAIRS ARE  
 14 completed, the escrow OR TRUST funds must be transferred to the new owner of the property at the time the  
 15 purchase of the property is complete. THE FUNDS MUST BE HELD IN ESCROW OR TRUST AND USED IN ACCORDANCE  
 16 WITH THIS SECTION.

17           (4) ~~When~~ AFTER ALL the funds in the escrow OR TRUST ACCOUNT are expended, the duty of the party  
 18 to conduct ~~remedial or corrective action to restore the property~~ CONSTRUCTION REPAIRS ceases and the escrow  
 19 OR TRUST account must be closed.

20           (5) When the party has completed the work, and if funds remain in the escrow OR TRUST account, the  
 21 party shall notify the qualified professional overseeing the ESCROW OR trust ~~to request the return of the funds,~~  
 22 ~~who may~~ ACCOUNT. THE QUALIFIED PROFESSIONAL SHALL release the funds TO THE PROPERTY OWNER on the  
 23 finding that the ~~remediation or corrective action~~ CONSTRUCTION REPAIRS ~~has~~ HAVE been completed in  
 24 accordance with this section.

25           (6) (A) A DEFENDANT, AN INSURER, OR AN ATTORNEY REPRESENTING A DEFENDANT OR AN INSURER HAS NO  
 26 DUTY TO ENSURE FUNDS ARE USED IN ACCORDANCE WITH THIS SECTION.

27           (B) AFTER THE FUNDS ARE PLACED IN AN ESCROW OR TRUST ACCOUNT, AN ATTORNEY REPRESENTING A  
 28 PROPERTY OWNER HAS NO DUTY TO ENSURE FUNDS ARE USED IN ACCORDANCE WITH THIS SECTION.

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

NEW SECTION. SECTION 5. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. Section 7. Applicability. [This act] applies to claims filed on or after ~~October 1,~~ 2024 [THE EFFECTIVE DATE OF THIS ACT].

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