

1 SENATE BILL NO. 112

2 INTRODUCED BY S. FITZPATRICK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSTRUCTION DISPUTE LAWS; PRECLUDING
5 SIMULTANEOUS CONSUMER PROTECTION ACTIONS AND RESIDENTIAL CONSTRUCTION DISPUTES;
6 AND AMENDING SECTIONS 30-14-133 AND 70-19-427, MCA."

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

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10 **Section 1.** Section 30-14-133, MCA, is amended to read:

11 **"30-14-133. Damages -- limitation on residential construction disputes -- notice to public**
12 **agencies -- attorney fees -- prior judgment as evidence.** (1) ~~A~~(a) Except as provided in subsection (1)(b), a
13 consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or
14 employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an
15 individual action but not a class action under the rules of civil procedure in the district court of the county in
16 which the seller, lessor, or service provider resides or has its principal place of business or is doing business to
17 recover actual damages or \$500, whichever is greater. An individual claim may be brought in justice's court.
18 The court may, in its discretion, award up to three times the actual damages sustained and may provide any
19 other equitable relief that it considers necessary or proper.

20 (b) A consumer may not bring or maintain an action under this section if the consumer is bringing an
21 action subject to 70-19-427 or 70-19-428 against a construction professional.

22 (2) Upon commencement of any action brought under subsection (1), the clerk of court shall mail a
23 copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry
24 of any judgment or decree in the action, shall mail a copy of the judgment or decree to the department and the
25 appropriate county attorney.

26 (3) In any action brought under this section, the court may award the prevailing party reasonable
27 attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's
28 own behalf without an attorney may receive attorney fees at the judge's discretion.

1 (4) Any permanent injunction, judgment, or order of the court made under 30-14-111 is prima facie
 2 evidence in an action brought under this section that the respondent used or employed a method, act, or
 3 practice declared unlawful by 30-14-103."
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5 **Section 2.** Section 70-19-427, MCA, is amended to read:

6 **"70-19-427. Residential construction disputes -- limitation on consumer protection actions --**
 7 **notice and opportunity to repair -- tolling of statute of limitations -- presumption of compliance with**
 8 **construction standards.** (1) Prior to commencing an action against a construction professional for a
 9 construction defect, the claimant shall serve written notice of claim on the construction professional. The notice
 10 of claim must state that the claimant asserts a construction defect claim against the construction professional
 11 and must describe the claim in reasonable detail sufficient to determine the general nature of the defect. If a
 12 written notice of claim is served under this section within the time prescribed for the filing of an action under 27-
 13 2-208, the statute of limitations for construction defect claims is tolled. Assertion of a claim under this section
 14 precludes a claimant from bringing or maintaining an action under 30-14-133.

15 (2) Within 21 days after service of the notice of claim, the construction professional shall serve a
 16 written response on the claimant. The written response must:

17 (a) propose to inspect the residence that is the subject of the claim and to complete the inspection
 18 within a specified timeframe. The proposal must include the statement that the construction professional shall,
 19 based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

20 (b) offer to compromise and settle the claim by monetary payment without inspection; or

21 (c) state that the construction professional disputes the claim and will neither remedy the construction
 22 defect nor compromise and settle the claim.

23 (3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice
 24 of claim within the time stated in subsection (2), the claimant may bring an action against the construction
 25 professional for the claim described in the notice of claim without further notice.

26 (b) If the claimant rejects the inspection proposal or the settlement offer made by the construction
 27 professional pursuant to subsection (2), the claimant shall serve written notice of the claimant's rejection on the
 28 construction professional. After service of the notice of rejection, the claimant may bring an action against the

1 construction professional for the construction defect claim described in the notice of claim. If the construction
2 professional has not received from the claimant, within 30 days after the claimant's receipt of the construction
3 professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at
4 any time after that date the construction professional may terminate the proposal or offer by serving written
5 notice on the claimant. The claimant may, after service, bring an action against the construction professional for
6 the construction defect claim described in the notice of claim.

7 (4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the
8 construction professional's proposal pursuant to subsection (2)(a), the claimant shall provide the construction
9 professional and its contractors or other agents reasonable access to the claimant's residence, as agreed by
10 the parties, to inspect the premises and the claimed defect.

11 (b) Within 14 days following completion of the inspection, the construction professional shall serve on
12 the claimant:

13 (i) a written offer to remedy the construction defect at no cost to the claimant, including a report of the
14 scope of the inspection, the findings and results of the inspection, a description of the additional construction
15 necessary to remedy the defect described in the claim, and a timetable for the completion of the construction;

16 (ii) a written offer to compromise and settle the claim by monetary payment pursuant to subsection
17 (2)(b);

18 (iii) a written offer to remedy the claim through a combination of repair and monetary payment pursuant
19 to subsection (2)(b); or

20 (iv) a written statement setting forth the reasons why the construction professional will not proceed
21 further to remedy the alleged defect.

22 (c) If the construction professional does not proceed further to remedy the alleged construction defect
23 within the agreed-upon time or if the construction professional fails to comply with the provisions of subsection
24 (4)(b), the claimant may bring an action against the construction professional for the claim described in the
25 notice of claim without further notice.

26 (d) If the claimant rejects the offer made by the construction professional pursuant to subsection
27 (4)(b)(i) or (4)(b)(ii) to either remedy the construction defect or to compromise and settle the claim by monetary
28 payment, the claimant shall serve written notice of the claimant's rejection on the construction professional.

1 After service of the rejection notice, the claimant may bring an action against the construction professional for
2 the construction defect claim described in the notice of claim. If the construction professional has not received
3 from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either
4 an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (4)(b)(ii), then at any time after
5 that date the construction professional may terminate the offer by serving written notice on the claimant.

6 (5) (a) Any claimant accepting the offer of a construction professional to remedy the construction
7 defect pursuant to subsection (4)(b)(i) or (4)(b)(iii) shall do so by serving the construction professional with a
8 written notice of acceptance within 30 days after receipt of the offer. The claimant shall provide the construction
9 professional and its contractors or other agents reasonable access to the claimant's residence during normal
10 working hours to perform and complete the construction according to the timetable stated in the offer.

11 (b) The claimant and construction professional may, by written mutual agreement, alter the extent of
12 construction or the timetable for completion of construction stated in the offer, including but not limited to repair
13 of additional defects.

14 (6) Subsequently discovered claims of construction defects must be administered separately under
15 70-19-428 and this section, unless otherwise agreed to by the parties.

16 (7) This section may not be construed to prevent a claimant from commencing an action on the
17 construction defect claim described in the notice of claim if the construction professional fails to perform the
18 construction agreed upon, fails to remedy the defect, or fails to perform within the time agreed upon pursuant to
19 subsection (4)(b) or (5)(b).

20 (8) This section may not be enforced unless the ~~home owner~~ homeowner has been given written
21 notice of the requirements of 70-19-426, 70-19-428, and this section."

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