

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 FOR RESTORATION DAMAGES;
 11 PROVIDING A DEFINITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
 12 DATE."

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

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

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

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

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

23 (3) Nothing in this part:

24 (A) precludes the award of other damages allowed under common law and statute; OR

25 (B) MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

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

- 1 (1) compensation determined necessary by a trier of fact or agreed to in a settlement agreement to:
- 2 ~~(a) restore a contaminated special use property to its function and use prior to the contamination on~~
- 3 ~~which a common law claim is based;~~
- 4 ~~(b) remediate a contaminated property to a level determined by the trier of fact;~~
- 5 ~~(c)(A) repair damages to a BUILDING, structure, or fixture, including but not limited to repairs related to~~
- 6 ~~foundations, roofs, windows, or construction defects; or~~
- 7 ~~(d)(B) repair damage to landscaping or other damage to land CAUSED BY A DAMAGED BUILDING,~~
- 8 ~~STRUCTURE, OR FIXTURE.~~
- 9 (2) The term does not include:
- 10 (a) attorney fees and costs;
- 11 (b) punitive damages;
- 12 (c) damages related to emotional distress;
- 13 (d) treble damages;
- 14 (e) fines or penalties; or
- 15 (f) any other award of damages that are specifically delineated on a verdict form for categories of
- 16 damages unrelated to property damage.

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18 **NEW SECTION. Section 3. Award of ~~restoration~~ CONSTRUCTION REPAIR damages -- funds placed**

19 **in escrow OR TRUST -- use of funds.** (1) When a court or jury awards ~~restoration~~ CONSTRUCTION REPAIR

20 damages or parties enter into a settlement that provides for the payment of ~~restoration~~ CONSTRUCTION REPAIR

21 damages, the party receiving money for ~~restoration~~ CONSTRUCTION REPAIR damages shall:

22 ~~(a) pay the party's outstanding attorney fees, whether charged on an hourly basis or a flat fee basis,~~

23 ~~as well as the percentage of the restoration damages owed to an attorney pursuant to a contingency fee a,~~

24 ~~agreement, and the party's costs associated with the litigation;~~

25 ~~(b)(A) within 30 days of paying the costs outlined in subsection(1)(a) RECEIVING THE MONEY FOR~~

26 ~~CONSTRUCTION REPAIR DAMAGES AND AFTER DEDUCTING ANY OUTSTANDING ATTORNEY FEES AND COSTS OF LITIGATION~~

27 ~~OWED, deposit the remaining ~~restoration~~ CONSTRUCTION REPAIR damages in escrow OR A TRUST ACCOUNT at a~~

28 commercial bank or trust company where the escrow OR TRUST ACCOUNT is overseen by a qualified professional

1 to ~~restore the property~~ REPAIR THE BUILDING, STRUCTURE, OR FIXTURE;

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

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

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

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

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

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

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

28 (B) AFTER THE FUNDS ARE PLACED IN AN ESCROW OR TRUST ACCOUNT, AN ATTORNEY REPRESENTING A

1 PROPERTY OWNER HAS NO DUTY TO ENSURE FUNDS ARE USED IN ACCORDANCE WITH THIS SECTION.

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3 NEW SECTION. SECTION 4. RESTORATION DAMAGES. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND
4 (3), THIS SECTION APPLIES TO CIVIL CLAIMS BROUGHT IN JUDICIAL PROCEEDINGS ON BEHALF OF INDIVIDUALS AND
5 ENTITIES FOR THE RECOVERY OF RESTORATION DAMAGES TO ADDRESS IMPACTS TO REAL PROPERTY CAUSED BY
6 RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES.

7 (2) RESTORATION DAMAGES MAY BE AWARDED ONLY FOR A CLAIM ALLEGING CONTAMINATION OF SPECIAL USE
8 PROPERTY AND MAY BE OBTAINED ONLY IN ACCORDANCE WITH THE DEFINITIONS AND OTHER REQUIREMENTS SET FORTH
9 IN THIS SECTION. THE PLAINTIFF BEARS THE BURDEN OF PROOF TO SHOW THAT THE PROPERTY MEETS THE DEFINITION
10 OF SPECIAL USE PROPERTY.

11 (3) RESTORATION DAMAGES MAY NOT BE AWARDED OR USED TO ALTER AN INTERIM OR FINAL REMEDIAL
12 ACTION THAT HAS BEEN OR WILL BE UNDERTAKEN ON, OR WILL BENEFIT, A SPECIAL USE PROPERTY PURSUANT TO ANY OF
13 THE FOLLOWING AUTHORITIES:

14 (A) A FEDERAL ADMINISTRATIVE ORDER ISSUED PURSUANT TO 42 USC 9601, ET SEQ., AS OF MARCH 27,
15 2021;

16 (B) A STATE ADMINISTRATIVE ORDER ISSUED PURSUANT TO THIS PART;

17 (C) A JUDICIALLY APPROVED CONSENT DECREE; OR

18 (D) ANY OTHER INTERIM OR FINAL REMEDIAL ACTION PLAN APPROVED BY THE DEPARTMENT PURSUANT TO
19 STATE STATUTORY OR ADMINISTRATIVE LAW.

20 (4) (A) RESTORATION DAMAGES AWARDED PURSUANT TO SUBSECTION (2), EXCLUSIVE OF AWARDS OF
21 ATTORNEY FEES AND COSTS, MAY BE USED ONLY TO CONDUCT REMEDIAL AND CORRECTIVE ACTION NECESSARY TO
22 RESTORE THE SPECIAL USE PROPERTY FOR WHICH THE DAMAGES WERE AWARDED. RESTORATION MUST COMMENCE
23 WITHIN 3 YEARS FROM THE DATE THE JUDGMENT IS PAID OR SETTLEMENT PROCEEDS ARE RECEIVED.

24 (B) IF ANY AWARDED RESTORATION DAMAGES REMAIN AFTER COMPLETION OF THE RESTORATION WORK, THE
25 SURPLUS MUST BE REFUNDED TO THE DEFENDANT. IF THE DEFENDANT IS NO LONGER VIABLE OR CANNOT BE FOUND, THE
26 FUNDS MUST BE REMITTED TO THE DEPARTMENT.

27 (5) ANY PARTY MAY REQUEST THAT A COURT AWARDED RESTORATION DAMAGES ALSO ORDER THAT THOSE
28 DAMAGES BE DEPOSITED IN A SEGREGATED TRUST OR ESCROW ACCOUNT AT A COMMERCIAL BANK OR TRUST COMPANY

1 TO ENSURE COMPLIANCE WITH SUBSECTION (4)(A). THE PLAINTIFF MAY CREATE A TRUST OR ESCROW ACCOUNT TO BE
 2 OVERSEEN BY A QUALIFIED PROFESSIONAL TO RESTORE THE SPECIAL USE PROPERTY.

3 (6) NOTHING IN THIS SECTION PRECLUDES THE AWARD OF OTHER DAMAGES ALLOWED UNDER COMMON LAW
 4 AND STATUTE.

5 (7) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

6 (A) "QUALIFIED PROFESSIONAL" MEANS A PERSON WHO POSSESSES SUFFICIENT SPECIFIC EDUCATION,
 7 TRAINING, AND EXPERIENCE NECESSARY TO EXERCISE PROFESSIONAL JUDGEMENT TO DESIGN AND OVERSEE
 8 IMPLEMENTATION OF A RESTORATION PLAN.

9 (B) "RESTORATION DAMAGES" MEANS THE AMOUNT OF COMPENSATION DETERMINED REASONABLY
 10 NECESSARY BY A TRIER OF FACT TO RESTORE A CONTAMINATED SPECIAL USE PROPERTY TO ITS FUNCTION, USE, OR
 11 CONDITION PRIOR TO THE CONTAMINATION ON WHICH A CIVIL CLAIM IS BASED, UNLESS CONTAMINATION WAS PRESENT AT
 12 THE TIME THE PLAINTIFF ACQUIRED THE SPECIAL USE PROPERTY, IN WHICH CASE THE TERM MEANS THE AMOUNT OF
 13 COMPENSATION DETERMINED NECESSARY BY A TRIER OF FACT TO RESTORE A CONTAMINATED SPECIAL USE PROPERTY
 14 TO THE FUNCTION, USE, OR CONDITION THAT EXISTED AT THE TIME THE PLAINTIFF ACQUIRED THE SPECIAL USE
 15 PROPERTY.

16 (C) "SPECIAL USE PROPERTY" MEANS REAL PROPERTY CONTAMINATED BY A RELEASE OF A HAZARDOUS OR
 17 DELETERIOUS SUBSTANCE THAT IS FOUND BY A TRIER OF FACT TO HAVE OBJECTIVELY REASONABLE PERSONAL VALUE TO
 18 THE PLAINTIFF NOT REFLECTED IN THE MARKET VALUE OF THE PROPERTY OR TO HAVE UNIQUE PUBLIC, HISTORIC,
 19 CULTURAL, OR RELIGIOUS VALUE NOT REFLECTED IN THE MARKET VALUE OF THE PROPERTY.

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 21 NEW SECTION. **Section 5. Codification instruction.** (1) [Sections 1 through 3] are intended to be
 22 codified as a new chapter in Title 27, and the provisions of Title 27 apply to [sections 1 through 3].

23 (2) [SECTION 4] IS INTENDED TO BE CODIFIED IN TITLE 75, CHAPTER 10, PART 7, AND THE PROVISIONS OF
 24 TITLE 75, CHAPTER 10, PART 7, APPLY TO [SECTION 4].

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 26 NEW SECTION. **SECTION 6. SAVING CLAUSE.** [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
 27 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF
 28 THIS ACT].

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NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. Section 8. Applicability. [This act] applies to claims filed on or after ~~October 1,~~
2024 [THE EFFECTIVE DATE OF THIS ACT].

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