

HOUSE BILL NO. 222

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EXTERIOR RESIDENTIAL STORM DAMAGE REPAIR CONTRACTS ACT; PROVIDING DISCLOSURE REQUIREMENTS FOR EXTERIOR RESIDENTIAL STORM DAMAGE REPAIR SOLICITATIONS, PROPOSALS, AND REPAIR CONTRACTS; PROVIDING FOR CANCELLATION OF EXTERIOR RESIDENTIAL STORM DAMAGE REPAIR CONTRACTS; PROVIDING REMEDIES; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title -- application.** (1) [Sections 1 through 7] may be cited as the "Montana Exterior Residential Storm Damage Repair Contracts Act".

(2) [Sections 1 through 7] apply to exterior residential storm damage to residential buildings as defined in [section 2].

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Contractor" means a person or entity in the business of contracting or offering to contract with an owner or possessor of residential real estate to repair or replace siding, gutters, a roof system, or a window system.

(2) "Exterior residential storm damage" means damage caused by wind or hail to the siding, gutters, roof system, or window system of a residential building.

(3) "Residential building" means:

(a) a single-family dwelling;

(b) a multifamily dwelling of up to four units and ancillary buildings, if any; or

(c) a farm or ranch dwelling and ancillary buildings, if any.

(4) "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, roof framing, roof ventilation, and roof insulation.

NEW SECTION. Section 3. Exterior residential storm damage repair -- solicitations -- advertisements -- requirements.

(1) A contractor soliciting contracts for exterior residential storm damage repair services, including general advertisements for repair services, shall disclose the following to the consumer:

(a) if the contractor is a construction contractor registered under Title 39, chapter 9, the contractor's:

(i) Montana registration number; and

(ii) license or registration number for any jurisdiction where the contractor holds a related license; or

(b) if the contractor is not registered under Title 39, chapter 9, the contractor's name and business entity name.

(2) A contractor soliciting exterior residential storm damage repair services in the state may not:

(a) advertise or promise to pay or rebate all or a portion of an insurance deductible as an inducement to the sale of goods or services, including but not limited to granting an allowance or offering a discount against the fees to be charged or paying compensation directly or indirectly to a person associated with the property;

(b) accept money or another form of compensation in exchange for allowing another exterior residential storm damage repair contractor to use the contractor's business name or registration number. This prohibition does not apply to bona fide partnership or subcontractor relationships.

(c) act as an unlicensed insurance adjuster, insurance consultant, or public adjuster, as provided in Title 33, chapter 17. This includes an offer or advertisement by a contractor to exclusively represent a homeowner with respect to an insurance claim in connection with exterior residential storm damage repair services when the contractor does not have a license under Title 33, chapter 17.

NEW SECTION. Section 4. Exterior residential storm damage repair proposals -- disclosure requirements. (1) A contractor who prepares a repair proposal for exterior residential storm damage repair services in anticipation of entering into an exterior residential storm damage repair contract shall disclose the following information to the consumer:

(a) a detailed description and location of all damage included in the repair proposal;

(b) a detailed description and itemization of all emergency repairs already completed, if any; and

(c) if certain damaged areas are not included in the repair proposal, a specification of those areas and the reason for their exclusion from the repair proposal.

(2) The disclosure required under subsection (1) must be in writing and must be included in the repair

1 proposal.

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3 **NEW SECTION. Section 5. Exterior residential storm damage repair contracts -- disclosure**
4 **requirements.** Exterior residential storm damage repair contracts must include all of the following:

- 5 (1) a copy of a repair proposal that contains the disclosures required under [section 4];
6 (2) a notice of the consumer's right to cancel provided in [section 6]; and
7 (3) a disclosure that the consumer is responsible for payment for any work performed for which the
8 consumer's insurer denies payment or coverage for any part of the loss.

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10 **NEW SECTION. Section 6. Exterior residential storm damage repair contracts -- right to cancel.**

11 (1) A consumer who has entered into a written contract with a contractor to receive exterior residential storm
12 damage repair goods and services has the right to cancel the contract:

- 13 (a) within 5 business days after the date the contract was entered into; or
14 (b) if the services are to be paid directly by or on behalf of the consumer from the proceeds of a property
15 or casualty insurance policy, within 5 business days after the consumer has received notice in writing from the
16 insurer that the claim has been denied, in whole or in part, whichever is later.

17 (2) Cancellation is evidenced by the consumer giving written notice of cancellation to the contractor at
18 the address stated in the contract. Notice of cancellation in writing is sufficient if it indicates the intention of the
19 consumer not to be bound by the contract. The written notice of cancellation may be delivered:

- 20 (a) in electronic form and is effective on the date of the electronic transmission;
21 (b) by mail and is effective on the date of the postmark, if properly addressed to the exterior residential
22 storm damage repair contractor with prepaid postage; or
23 (c) to the contractor by personal delivery and is effective upon receipt.

24 (3) Before entering a contract under this section, the contractor shall furnish the consumer both of the
25 following:

26 (a) a written notice, in not less than 12-point boldface type, containing a statement in substantially the
27 following form:

28 "You may cancel this contract at any time within five (5) business days after the date on which the
29 contract was entered into or within five (5) business days after you have been notified that your insurer has, in
30 whole or in part, denied your claim to pay for the goods and services to be provided under this contract,

1 whichever is later. See the attached notice of cancellation form for an explanation of this right."

2 (b) a fully completed form that must be attached to or otherwise accompany the contract and must
3 contain, in not less than 12-point boldface type, the following statement:

4 "NOTICE OF CANCELLATION

5 You may cancel this contract within five (5) business days from when it is entered into for any reason or,
6 if your insurer in whole or in part denies your claim to pay for goods and services to be provided under this
7 contract, you may cancel this contract by mailing or delivering, including electronically, a signed and dated copy
8 of this cancellation notice or any other written notice to (name of exterior residential storm damage repair
9 contractor) at (address of exterior residential storm damage repair contractor's place of business, e-mail address,
10 and facsimile number, if applicable) at any time within five (5) business days after the date on which the contract
11 was entered into or within five (5) business days after you have been notified that your claim has been denied
12 in whole or in part, whichever is later. If you cancel, any payments made by you under this contract will be
13 returned within ten (10) business days following receipt by (name of exterior residential storm damage repair
14 contractor) of your cancellation notice.

15 I HEREBY CANCEL THIS TRANSACTION.

16

17 (DATE)

18

19 (CONSUMER'S SIGNATURE)"

20 (4) Within 10 days after a contract referred to in subsection (1) has been canceled, the contractor shall
21 tender to the consumer any payments already made by the consumer and a notice or other evidence of any
22 indebtedness. If the contractor has performed emergency services, the contractor is entitled to bill the consumer
23 separately for the services if the consumer has received a detailed description and itemization of the charges for
24 those services.

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26 NEW SECTION. **Section 7. Enforcement -- private remedies.** An exterior residential storm damage
27 repair contractor who violates [this act] is subject to the enforcement provisions and penalties in 30-14-111
28 through 30-14-143.

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30 NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified

1 as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through
2 7].

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4 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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6 NEW SECTION. **Section 10. Applicability.** [This act] applies to exterior residential storm damage repair
7 contracts executed on or after [the effective date of this act].

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