

## SENATE FLOOR AMENDMENT

Second Reading

BY SENATORS Cutter &amp; Marchman

1 Amend reengrossed bill, page 8, after line 15 insert:

2 "SECTION 4. In Colorado Revised Statutes, **repeal** 10-4-112 as  
3 follows:

4 **10-4-112. Property damage - time of payment.** ~~(1) After an~~  
5 ~~insurer has issued a draft or check to a loss payee and the insured under~~  
6 ~~the terms of a property damage policy for the repair of property damage~~  
7 ~~to a one- to four-family dwelling unit or an owner-operated commercial~~  
8 ~~property when the mortgage or deed of trust secures a debt not in excess~~  
9 ~~of two hundred thousand dollars, such draft or check, if satisfactory in an~~  
10 ~~amount to the insured, shall be properly endorsed by the insured in favor~~  
11 ~~of the loss payee and delivered to the loss payee.~~

12 ~~(2) If the draft or check is for the full amount of the loss and is in~~  
13 ~~an amount of one thousand dollars or less, the loss payee shall return the~~  
14 ~~draft or check, properly endorsed, to the insured within ten days after the~~  
15 ~~date of its receipt by the loss payee, unless the evidence of the debt or the~~  
16 ~~instrument given as security for the debt is in default.~~

17 ~~(3) If the draft or check is in an amount in excess of one thousand~~  
18 ~~dollars, or is a partial payment on a loss in an amount in excess of one~~  
19 ~~thousand dollars, the loss payee shall either:~~

20 ~~(a) Send the draft or check, properly endorsed, to the insured~~  
21 ~~within ten days after the date of its receipt by the loss payee;~~

22 ~~(b) Process the draft or check for collection or deposit, except as~~  
23 ~~provided in paragraph (c) of this subsection (3). Any loss payee holding~~  
24 ~~funds under this paragraph (b), upon its approval of contracts or plans for~~  
25 ~~the completion of repairs, shall make reasonable advances or progress~~  
26 ~~payments as appropriate to be applied to the completion of repairs and~~  
27 ~~shall be entitled to require appropriate lien waivers and to inspect the~~  
28 ~~repairs during the progress of the repairs. The loss payee shall be entitled~~  
29 ~~to retain up to fifteen percent of the amount of the draft or check as~~  
30 ~~retainage until completion and inspection, satisfactory to the insured, of~~  
31 ~~the work.~~

32 ~~(c) Process the draft or check for collection or deposit. Any loss~~  
33 ~~payee holding funds under this paragraph (c) shall hold such funds for the~~  
34 ~~payment of the cost of repairs unless any one of the following~~  
35 ~~circumstances is present:~~

36 ~~(I) The evidence of the debt or the instrument given as security for~~  
37 ~~the debt is in default. If the default is a result of failure to make payments~~  
38 ~~in a timely manner as required by the evidence of debt or the instrument~~  
39 ~~securing the debt, the loss payee may apply an amount of such proceeds~~  
40 ~~sufficient to cure the default, including taxes, penalties, and late charges;~~

1 and hold the balance for the cost of repairs, pursuant to paragraph (b) of  
2 this subsection (3):

3 (II) ~~The restoration of the property would violate local, state, or~~  
4 ~~federal laws or regulations;~~

5 (III) ~~The property cannot reasonably be restored to its condition~~  
6 ~~prior to the loss at a cost of not to exceed the amount of the draft, reduced~~  
7 ~~by an amount applied to cure a default pursuant to subparagraph (I) of~~  
8 ~~this paragraph (c).~~

9 (d) ~~Advise the insurer and insured that it is not satisfied with the~~  
10 ~~amount of the draft or check and pursue a claim for the loss under the~~  
11 ~~terms of the policy. Upon such notification the insured shall not be~~  
12 ~~precluded from pursuing, either singly or jointly with the loss payee, a~~  
13 ~~claim for the loss under the terms of the policy.~~

14 (4) ~~Neither approval of contracts, plans for the completion of~~  
15 ~~repairs, nor inspection of the work shall make the loss payee liable to any~~  
16 ~~person for any improper, negligent, or unsatisfactory repairs."~~

17 Renumber succeeding section accordingly.

\*\* \*\* \*\* \*\* \*\*

\*\* \*\* \*\* \*\* \*\*