

1 SENATE BILL NO. 497

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO PRESCRIPTIVE EASEMENTS;
5 PROVIDING LIMITATIONS ON CLAIMS FOR PRESCRIPTIVE EASEMENTS; PROVIDING THAT THE
6 ATTORNEY GENERAL DOCTRINE MAY NOT BE APPLIED TO A CAUSE OF ACTION RELATING TO A
7 CERTAIN PRESCRIPTIVE ~~EASEMENT EASEMENTS~~; AMENDING SECTION 23-2-322 70-17-114, MCA;
8 AND PROVIDING AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 23-2-322, MCA, is amended to read:

13 ~~"23-2-322. Prescriptive easement not acquired by recreational use of surface waters --~~
14 ~~limitations. (1) A Except as otherwise provided in subsection (3), a prescriptive easement is a right to use the~~
15 ~~property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and~~
16 ~~uninterrupted use for a period of 5 years.~~

17 ~~(2) A prescriptive easement cannot be acquired through:~~

18 ~~(a) recreational use of surface waters, including:~~

19 ~~(i) the streambeds underlying them;~~

20 ~~(ii) the banks up to the ordinary high water mark; or~~

21 ~~(iii) any portage over and around barriers; or~~

22 ~~(b) the entering or crossing of private property to reach surface waters.~~

23 ~~(3) A claim for a prescriptive easement may not be pursued if there is signage generated by a~~
24 ~~government entity that is in place for 5 or more years at the claimed easement site indicating that an individual~~
25 ~~is entering private property.~~

26 ~~(4) The private attorney general doctrine, as adopted by the Montana supreme court, may not be~~
27 ~~applicable to any cause of action brought by any party alleging a prescriptive easement. A plaintiff who prevails~~
28 ~~on this cause of action is not entitled to attorney fees."~~

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NEW SECTION. Section 1. Prescriptive easement -- attorney fees. (1) The private attorney general doctrine, as adopted by the Montana supreme court, is not applicable to any cause of action brought by any party alleging a prescriptive easement. A plaintiff who prevails on this cause of action is not entitled to attorney fees.

(2) For the purposes of this section, a prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

Section 2. Section 70-17-114, MCA, is amended to read:

"70-17-114. Easement signage. (1) The owner of a servient tenement may place private property signage along the servitude boundary to ensure those persons or entities using the servitude understand the servitude boundary.

(2) A claim for a prescriptive easement in [section 1(2)] may not be pursued if there is signage generated by a government entity and in place for a period of 5 or more years at the claimed easement site indicating that an individual is entering private property. This subsection does not apply to a government-generated sign next to surface waters that are used for recreational purposes. "

NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 1].

NEW SECTION. Section 4. Applicability. [This act] applies to legal causes of action relating to prescriptive easements filed on or after October 1, 2023.

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