

SENATE BILL NO. 497

INTRODUCED BY S. FITZPATRICK

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

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

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

"23-2-322. Prescriptive easement ~~not acquired by recreational use of surface waters --~~ limitations. (1) ~~A~~ Except as otherwise provided in subsection (3), 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.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

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

(iii) any portage over and around barriers; or

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

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

(4) The private attorney general doctrine, as adopted by the Montana supreme court, may not be 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."

