

1 SENATE BILL NO. 354

2 INTRODUCED BY S. HINEBAUCH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LAND SERVITUDES AND
 5 EASEMENTS; ALLOWING THE OWNER OF A SERVIENT TENEMENT TO MARK THE SERVITUDE
 6 BOUNDARIES WITH SIGNAGE; PROVIDING THAT THE EXTENT OF A SERVITUDE MAY NOT EXTEND
 7 BEYOND THOSE PURPOSES PROVIDED FOR IN WRITING; AMENDING ~~SECTION~~ SECTIONS 23-2-322
 8 AND 70-17-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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12 NEW SECTION. Section 1. Easement signage. The owner of a servient tenement may place private
 13 property signage along the servitude boundary to ensure those persons or entities using the servitude
 14 understand the servitude boundary.

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16 SECTION 2. SECTION 23-2-322, MCA, IS AMENDED TO READ:

17 "**23-2-322. Prescriptive easement not acquired by recreational use of surface waters.** (1) A
 18 prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious,
 19 hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

20 (2) A prescriptive easement cannot be acquired through:

21 (a) recreational use of surface waters, including:

22 (i) the streambeds underlying them;

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

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

25 (b) the entering or crossing of private property;

26 (i) to reach surface waters; or27 (ii) to reach public property if reasonable, legal access to the public property is otherwise documented28 and deemed available within 1 mile of the alleged prescriptive easement access point to the public property; or

1 (c) a leasehold interest in the proposed servient tenement.

2 (3) (a) For a prescriptive easement that has not been reduced to writing or that is the result of a court
 3 order, an individual or governmental entity claiming the prescriptive easement shall pay a \$100 filing fee and file
 4 the following information with the regional office of the department of natural resources and conservation on a
 5 form prescribed by the department:

6 (i) an affidavit setting forth the specific facts that satisfy each of the criteria in subsection (1); and

7 (ii) a map that accurately depicts the location and nature of the public access prescriptive easement.

8 (b) The form prescribed by the department must be filed no later than December 31, 2022. This date
 9 serves as a notice requirement only, and by its filing does not create any rights. A prescriptive easement filed
 10 under this subsection (3) may only be claimed by an individual or governmental entity. A party may challenge
 11 the validity of a claim of a prescriptive easement at any time.

12 (4) The criteria set forth in subsection (1) are not satisfied for public access purposes if there is
 13 signage generated by a governmental entity and in place for a period of 5 or more years at the claimed
 14 easement site indicating that an individual is entering private property."

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16 **Section 3.** Section 70-17-106, MCA, is amended to read:

17 **"70-17-106. Extent of servitude.** (1) Except as otherwise provided in 23-2-312, 23-2-322, and this
 18 section, The the extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by
 19 which it was acquired.

20 (2) A servitude granted, either by the terms of the grant or by the nature of the enjoyment, to a local,
 21 state, or federal government body for administrative purposes does not create a right to use the servitude for
 22 any other purpose unless specifically provided for in writing in the grant.

23 (3) The holder of a written servitude may not use the servitude to grant additional rights and privileges
 24 to a successor or assignee unless the successor or assignee is specifically provided for in writing in the grant."

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26 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
 27 integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 1].

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1 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
2 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
3 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
4 APPLICATIONS.

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6 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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