1   HOUSE BILL NO. 565

2   INTRODUCED BY H. RASER

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4   A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE SCOPE OF EASEMENTS; PROVIDING THAT

5   AN EASEMENT DOES NOT INCLUDE USES THAT THE PARTIES MAY HAVE ANTICIPATED OR THAT

6   WOULD HAVE OCCURRED BY THE NORMAL DEVELOPMENT OF THE DOMINANT TENEMENT; AND

7   AMENDING SECTIONS 70-17-106 AND 70-20-308, MCA."

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

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11   **Section 1.** Section 70-17-106, MCA, is amended to read:

12   **"70-17-106. Extent of servitude.** The extent of a servitude is determined by the terms of the grant or

13   the nature of the enjoyment by which it was acquired. An easement, whether created by express grant or

14   reservation, through beneficial use or prescription, or through judicial declaration of implied easement or

15   easement by necessity, does not include uses that the parties may have anticipated or that would have occurred

16   by the normal development of the dominant tenement."

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18   **Section 2.** Section 70-20-308, MCA, is amended to read:

19   **"70-20-308. Easements to pass with property -- scope of easement.** (1) A transfer of real property

20   passes all easements attached thereto to the transferred property and creates in favor thereof of the transferred

21   property an easement to use other real property of the person whose estate is transferred in the same manner

22   and to the same extent as such the other property was obviously and permanently used by the person whose

23   estate is transferred for the benefit thereof of the transferred property at the time when the transfer was agreed

24   upon or completed.

25   (2)   An easement, whether created by express grant or reservation, through beneficial use or

26   prescription, or through judicial declaration of implied easement or easement by necessity, is limited to the scope

27   described in subsection (1) and does not include uses that the parties may have anticipated or that would have

28   occurred by the normal development of the dominant tenement."

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