

SENATE BILL NO. 191

INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SEPTIC SYSTEM DISCLOSURE STATEMENT ON REAL ESTATE DOCUMENTS; AND PROVIDING AN APPLICABILITY DATE."

~~WHEREAS, a properly designed, constructed, and maintained septic system can provide long-term, effective treatment of household wastewater and is key to the property value of a home or business; and~~

~~WHEREAS, a poorly maintained septic system may malfunction, damaging property and costing thousands of dollars to repair or replace;~~

~~WHEREAS, a poorly maintained septic system degrades water quality in ground water, streams, and rivers and can contaminate drinking water, especially if located near wells;~~

~~WHEREAS, a prospective property buyer needs to know if a property is served by a septic system, whether a septic system has been permitted by the county, and if a septic system has been maintained, repaired, or replaced; and~~

~~WHEREAS, a seller should not be liable for future failures or maintenance of a septic system unless the seller fails to disclose the required information to the buyer or does not agree to a requested inspection.~~

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana Septic System Disclosure Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(2) "Septic system" means any system where sewage, including wastewater, is collected in a tank or disposed of within the boundaries of the inhabitable real property being offered for sale.

1 NEW SECTION. **Section 3. Septic system disclosure statement on real estate documents --**
 2 **disclosure of permit -- immunity from liability.** (1) A septic system disclosure statement must be provided on
 3 ~~at least one document, form, or application executed~~ prior to or contemporaneously with ~~an offer for~~ the purchase
 4 and sale of inhabitable real property served by a septic system. The seller ~~or seller's agent~~ shall provide the
 5 following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement
 6 by signing a copy of the disclosure statement:

7 ~~"THIS PROPERTY INCLUDES A SEPTIC SYSTEM WHERE SEWAGE IS COLLECTED OR DISPOSED~~
 8 ~~OF WITHIN THE BOUNDARIES OF THE PROPERTY. THE BUYER UNDERSTANDS THAT SEPTIC SYSTEMS~~
 9 ~~REQUIRE REGULAR MAINTENANCE, REPAIR, AND REPLACEMENT TO PROTECT PUBLIC HEALTH,~~
 10 ~~WATER QUALITY, AND PRIVATE PROPERTY. THE BUYER MAY REQUEST AN INSPECTION OF THE~~
 11 ~~SEPTIC SYSTEM AND ANY ASSOCIATED DRAINFIELD OR INFRASTRUCTURE THAT COLLECTS, TREATS,~~
 12 ~~AND DISPOSES OF SEWAGE. A POORLY MAINTAINED SEPTIC SYSTEM MAY MALFUNCTION, DAMAGING~~
 13 ~~PROPERTY AND DEGRADING WATER QUALITY. THE BUYER UNDERSTANDS THAT SEPTIC SYSTEMS~~
 14 ~~REQUIRE REGULAR MAINTENANCE, REPAIR, AND POTENTIAL REPLACEMENT TO PROTECT PUBLIC~~
 15 ~~HEALTH, WATER QUALITY, AND PRIVATE PROPERTY. IT IS THE BUYER'S OBLIGATION TO DETERMINE~~
 16 ~~THE CONDITION OF THE SEPTIC SYSTEM. THE BUYER MAY HIRE A QUALIFIED INSPECTOR TO INSPECT~~
 17 ~~THE SEPTIC SYSTEM AND ASSOCIATED INFRASTRUCTURE AND MAKE ANY CONTRACT CONTINGENT~~
 18 ~~UPON THE RESULTS OF THAT INSPECTION."~~

19 (2) If ~~THE INFORMATION IS~~ available ~~after reasonable investigation~~, the seller ~~or the seller's agent~~ shall
 20 provide ~~FOR THE DISCLOSURE~~ to the buyer prior to ~~or upon entry into a contract for~~ the purchase of the inhabitable
 21 real property:

- 22 (a) the county permit for the septic system; AND
 23 (B) ANY OTHER RECORDS OF SEPTIC SYSTEM AND DRAINFIELD MAINTENANCE, REPAIR, AND LOCATION.
 24 ~~(b) pumping records or other records of septic system maintenance;~~
 25 ~~(c) maps or diagrams indicating the location and design of the septic system;~~
 26 ~~(d) records of repair or replacement of the septic system; and~~
 27 ~~(e) well logs and water quality tests for the property.~~

28 (3) The furnishing of information pursuant to subsection (2) is not to be construed as a promise,
 29 warranty, or representation of any sort by the seller ~~or the seller's agent~~ as to the condition of the septic system.
 30 This section does not create a contingency on the purchase of the property or any right to rescind a contract for

1 purchase unless the contingency or right to rescind is an express term of the applicable contract.

2 ~~(4) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action related~~
3 ~~to the septic system.~~

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5 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified
6 as an integral part of Title 70, chapter 16, and the provisions of Title 70, chapter 16, apply to [sections 1 through
7 3].

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9 **NEW SECTION. Section 5. Applicability.** [This act] applies to offers for the purchase and sale of
10 inhabitable real property made after [the effective date of this act].

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