

SENATE BILL NO. 405

INTRODUCED BY A. BLEWETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE FREEDOM TO FLOAT ACT; PROVIDING THAT
5 A LANDOWNER OR OTHER PERSON MAY NOT CREATE ACROSS A STREAM OR RIVER A WIRE BARRIER
6 THAT CREATES A HAZARD TO FLOATERS; PROVIDING A PENALTY; PROVIDING FOR REMOVAL OF A
7 WIRE BARRIER UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 23-2-311, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 WHEREAS, the Legislature recognizes the balance between a landowner's right to create barriers across
11 streams and rivers for purposes of land or water management or to establish land ownership and the right of a
12 member of the public to make recreational use of surface waters; and

13 WHEREAS, prohibiting the use of barbed wire, electrified wire, or woven mesh wire to create barriers
14 across streams and rivers will maintain the important rights of landowners and the recreating public while
15 protecting public safety.

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

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19 NEW SECTION. **Section 1. Short title.** [Section 2] may be cited as the "Freedom to Float Act".

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21 **Section 2.** Section 23-2-311, MCA, is amended to read:

22 **"23-2-311. Right to portage -- establishment of portage route -- penalty for certain barriers.** (1) A
23 member of the public making recreational use of surface waters may, above the ordinary high-water mark,
24 portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and
25 violation of the landowner's rights.

26 (2) ~~A~~ (a) Except as provided in subsection (2)(b), a landowner may create barriers across streams for
27 purposes of land or water management or to establish land ownership as otherwise provided by law. If a
28 landowner erects a structure that does not interfere with the public's use of the surface waters, the public may
29 not go above the ordinary high-water mark to portage around the structure.

30 (b) (i) (A) Except as provided in subsection (2)(b)(i)(B), in order to protect public safety, a landowner or

1 other person may not create across a stream or river a barrier, including but not limited to a barrier consisting of
2 barbed wire, electrified wire, or woven mesh wire, that creates a hazard to floaters.

3 (B) For purposes of this section, a float-over cable or a float-through gate that is used for purposes of
4 containing livestock is not a barrier that creates a hazard to floaters pursuant to subsection (2)(b)(i)(A).

5 (ii) (A) A violation of this subsection (2)(b) is punishable by a civil penalty of not less than \$100 or more
6 than \$500 if the landowner responsible for erecting the barrier has not removed the barrier within 30 days after
7 having been warned by a department warden in writing that the barrier is a hazard to the safety of floaters.

8 (B) The civil penalty may be collected by a department warden. The department may remove a barrier
9 pursuant to this subsection (2)(b) only after issuing a warning to the landowner.

10 (C) All civil penalties collected pursuant to this subsection (2)(b) must be deposited in the general fund.

11 (iii) The provisions of this subsection (2)(b) are independent of and do not affect the restriction of
12 landowner liability in 23-2-321 or 70-16-302.

13 (3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's
14 land and violation of the landowner's rights, as well as to provide a reasonable and safe route for the recreational
15 user of the surface waters.

16 (b) A portage route may be established when either a landowner or a member of the recreating public
17 submits a request to the supervisors that a route be established.

18 (c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner
19 and a representative of the department, examine and investigate the barrier and the adjoining land to determine
20 a reasonable and safe portage route.

21 (d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most
22 appropriate portage route.

23 (e) The cost of establishing the portage route around artificial barriers must be borne by the involved
24 landowner, except for the construction of notification signs of the route, which is the responsibility of the
25 department. The cost of establishing a portage route around artificial barriers not owned by the landowner on
26 whose land the portage route will be placed must be borne by the department.

27 (f) Once the route is established, the department has the exclusive responsibility to maintain the portage
28 route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the
29 existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

30 (g) If either the landowner or the recreationist disagrees with the route described in subsection (3)(e),

1 the person may petition the district court to name a three-member arbitration panel. The panel must consist of
2 an affected landowner, a member of an affected recreational group, and a member selected by the two other
3 members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding
4 under subsection (3)(d).

5 (h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use
6 the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under
7 3-15-201, must be borne by the contesting party or parties. All other parties shall bear their own costs.

8 (i) The determination of the arbitration panel may be appealed within 30 days to the district court.

9 (j) Once a portage route is established, the public shall use the portage route as the exclusive means
10 to portage around or over the barrier.

11 (4) This part does not address the issue of natural barriers or portage around the barriers, and this part
12 does not make the portage lawful or unlawful."

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14 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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