

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO PROPERTY
5 INTERESTS; IDENTIFYING THINGS IN WHICH PROPERTY INTERESTS EXIST, INCLUDING GOODWILL
6 AND GOING CONCERN VALUE OF A BUSINESS, LICENSE TO PURSUE A BUSINESS OR LIVELIHOOD,
7 REAL PROPERTY AND FIXTURES, PERSONAL PROPERTY AND APPURTENANCES, WATER RIGHTS,
8 AND INTANGIBLE PROPERTY; PROVIDING THAT IDENTIFIED PROPERTY INTERESTS ARE
9 PROTECTED PRIVATE PROPERTY INTERESTS; PROVIDING EXCEPTIONS; AMENDING SECTION 70-1-
10 104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
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12 WHEREAS, the Legislature has the highest interest in vindicating private property rights and in
13 protecting private property rights and Montana businesses from wrongful and uncompensated government
14 takings; and

15 WHEREAS, section 70-1-104, MCA, specifically designates several categories of property in which a
16 property interest may be held under Montana law; and

17 WHEREAS, the Legislature desires to clarify and codify what constitutes a private property interest
18 under the Montana Constitution for which just compensation must be paid when the property interest is taken
19 for public purposes.

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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22

23 **Section 1.** Section 70-1-104, MCA, is amended to read:

24 **"70-1-104. In what things property interests may exist.** (1) There may be ownership of:

25 ~~(1)(a)~~ all inanimate things ~~which~~ that are capable of appropriation or of manual delivery;

26 ~~(2)(b)~~ all domestic animals;

27 ~~(3)(c)~~ all obligations;

28 ~~(4)(d)~~ ~~such~~ products of labor or skill such as the composition of an author, the goodwill and going

- 1 concern value of a business, trademarks, and signs; and
- 2 (5)(e) rights created or granted by statute;
- 3 (f) licenses to pursue a business or livelihood, including state licenses that have been approved and
- 4 issued and for which the holder has a legitimate claim of entitlement, and the property interests associated with
- 5 licenses, including any authorized ability to freely transfer or dispose of the license;
- 6 (g) real property and fixtures;
- 7 (h) personal property and appurtenances;
- 8 (i) water rights and beneficial water use permits or authorizations; and
- 9 (j) intangible property.
- 10 (2) (a) The property interests in subsection (1) are protectable private property interests under Article
- 11 II, section 29, of the Montana constitution for which compensation may be claimed and just compensation must
- 12 be awarded when a court finds that the property has been damaged or taken for a public use by means of
- 13 eminent domain or a regulatory taking. Prima facie evidence of a regulatory taking occurs if there is 25% or
- 14 greater diminution in the private property's fair market value.
- 15 (b) Subsection (2)(a) may not be construed to limit the types of property interests or what may be
- 16 considered property recognized under the Montana constitution or by law for which just compensation may be
- 17 claimed and awarded, such as property interests recognized and protected under Article II, section 3, of the
- 18 Montana constitution and property as defined in 15-1-101.
- 19 (3) A court may not deny a regulatory taking on the basis that the property being taken is associated
- 20 with a highly regulated business or industry.
- 21 (4) (a) This section does not affect:
- 22 (i) the enforcement of the terms of a license, permit, or authorization, including requirements imposed
- 23 by federal law; or
- 24 (ii) the power or authority of a county, city, or town to lawfully enact valid zoning, subdivision, or other
- 25 land use regulations or ordinances that are required by law or that are necessary to protect documented public
- 26 health, welfare, or safety impacts.
- 27 (b) Compensation may not be claimed under subsection (2) for action taken pursuant to subsection
- 28 (4)(a).

