

HOUSE BILL NO. 565
INTRODUCED BY H. RASER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE SCOPE OF EASEMENTS; PROVIDING THAT AN EASEMENT DOES NOT INCLUDE USES THAT THE PARTIES MAY HAVE ANTICIPATED OR THAT WOULD HAVE OCCURRED BY THE NORMAL DEVELOPMENT OF THE DOMINANT TENEMENT; AND AMENDING SECTIONS 70-17-106 AND 70-20-308, MCA."

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

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

"70-17-106. Extent of servitude. The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired. An easement, whether created by express grant or reservation, through beneficial use or prescription, or through judicial declaration of implied easement or easement by necessity, does not include uses that the parties may have anticipated or that would have occurred by the normal development of the dominant tenement."

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

"70-20-308. Easements to pass with property -- scope of easement. (1) A transfer of real property passes all easements attached ~~thereto~~ to the transferred property and creates in favor ~~thereof~~ of the transferred property an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as ~~such~~ the other property was obviously and permanently used by the person whose estate is transferred for the benefit ~~thereof~~ of the transferred property at the time when the transfer was agreed upon or completed.

(2) An easement, whether created by express grant or reservation, through beneficial use or prescription, or through judicial declaration of implied easement or easement by necessity, is limited to the scope described in subsection (1) and does not include uses that the parties may have anticipated or that would have occurred by the normal development of the dominant tenement."

- END -

