

## 1 HOUSE BILL NO. 467

2 INTRODUCED BY M. MILLER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING PRIVATE ROADS; CLARIFYING  
5 THAT CERTAIN MARKERS INSTALLED ON A PRIVATE ROAD MAY NOT BE CONSIDERED TO BE  
6 ENCROACHMENTS; CLARIFYING THAT A PERSON WHOSE PRIVATE ROAD IS DAMAGED BY ANOTHER  
7 PERSON MAY COMMENCE AN ACTION; CLARIFYING THAT PUBLIC ACCESS MAY NOT BE GRANTED ON  
8 A PRIVATE ROAD WITH MULTIPLE OWNERS UNLESS ALL OF THE OWNERS AGREE; AND AMENDING  
9 SECTIONS 7-14-2134, 27-2-208, AND 45-6-201, MCA."

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

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13 **Section 1.** Section 7-14-2134, MCA, is amended to read:

14 **"7-14-2134. Removal of highway encroachment.** (1) Except as clarified in 23-2-312 and 23-2-313 and  
15 except as provided in ~~subsection (4)~~ subsections (4) and (5) of this section, if any highway is encroached upon  
16 by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or  
17 in writing, requiring the encroachment to be removed from the highway.

18 (2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor  
19 or county surveyor shall immediately remove the encroachment.

20 (3) The board of county commissioners may at any time order the road supervisor or county surveyor  
21 to immediately remove any encroachment.

22 (4) This section does not apply to a fence for livestock control or property management that is in a county  
23 road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence  
24 and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection  
25 must comply with 23-2-313.

26 (5) (a) Except as provided in subsection (5)(c) and subject to subsection (5)(b), markers or guideposts  
27 installed on the edge of a private road to differentiate the portion of the road improved, designed, or ordinarily  
28 used for vehicular travel from the remainder of the road right-of-way are not encroachments and may not be  
29 required to be removed by a board of county commissioners, the road supervisor, or the county surveyor.

30 (b) Markers or guideposts installed as provided in subsection (5)(a) must be located at least 7 feet from

1 the portion of the road improved, designed, or ordinarily used for vehicular travel and must be at least 40 feet  
 2 apart.

3 (c) If the owner of a private road claims that markers or guideposts installed as provided in subsections  
 4 (5)(a) and (5)(b) restrict the owner's access and provides proof to the board of county commissioners, the road  
 5 supervisor, or the county surveyor that the markers or guideposts obstruct or prevent the use of the road, the  
 6 board of county commissioners, the road supervisor, or the county surveyor may order that the markers or  
 7 guideposts be removed."

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9 **Section 2.** Section 27-2-208, MCA, is amended to read:

10 **"27-2-208. Actions for damages arising out of work on improvements to real property or land**  
 11 **surveying.** (1) Except as provided in 70-19-427(1) and subsections (2) and (3) of this section, an action to  
 12 recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in  
 13 writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation  
 14 of construction of any improvement to real property or resulting from or arising out of land surveying of real  
 15 property may not be commenced more than 10 years after completion of the improvement or land surveying.

16 (2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred  
 17 during the 10th year after the completion of the improvement or land surveying may be commenced within 1 year  
 18 after the occurrence of the injury.

19 (3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or  
 20 person in actual possession and control of the improvement or real property that is surveyed at the time a right  
 21 of action arises.

22 (4) As used in this section:

23 (a) "completion" means that degree of completion at which the owner can utilize the improvement for  
 24 the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

25 (b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

26 (5) This section may not be construed as extending the period prescribed by the laws of this state for  
 27 the bringing of any action.

28 (6) An action to recover damages may be commenced under this chapter by the owner of a private road  
 29 whose road or any signs, culverts, or other appurtenances associated with the road and located within the road  
 30 right-of-way are damaged during the construction, reconstruction, improvement, or maintenance of that road or

1 another private road."

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3 **Section 3.** Section 45-6-201, MCA, is amended to read:

4 **"45-6-201. Definition of enter or remain unlawfully.** (1) A person enters or remains unlawfully in or  
5 upon any vehicle, occupied structure, or premises when the person is not licensed, invited, or otherwise privileged  
6 to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or  
7 other authorized person or by the failure of the landowner or other authorized person to post notice denying entry  
8 onto private land. The privilege may be revoked at any time by personal communication of notice by the  
9 landowner or other authorized person to the entering person.

10 (2) To provide for effective posting of private land through which the public has no right-of-way, the notice  
11 provided for in subsection (1) must satisfy the following requirements:

12 (a) notice must be placed on a post, structure, or natural object by marking it with written notice or with  
13 not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the  
14 entire post must be painted; and

15 (b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of  
16 access to the property, including both sides of a water body crossing the property wherever the water body  
17 intersects an outer boundary line.

18 (3) To provide for effective posting of private land through which or along which the public has an  
19 unfenced right-of-way by means of a public road, a landowner shall:

20 (a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the  
21 private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT  
22 \_\_\_ MILES"; or

23 (b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway  
24 at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land,  
25 except that orange markings may not be placed on posts where the public roadway enters the private land.

26 (4) (a) If property has been posted in substantial compliance with subsection (2) or (3), it is considered  
27 closed to public access unless explicit permission to enter is given by the landowner or the landowner's  
28 authorized agent.

29 (b) If a group of landowners own and maintain a private road that has been posted in substantial  
30 compliance with subsection (2) or (3), public access may not be granted unless all of the landowners or their

1 authorized agents agree to provide the access.

2 (5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding  
3 hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits,  
4 in condensed form, the provisions of this section concerning entry on private land. The department shall use  
5 public media, as well as its own publications, in attempting to educate and inform other recreational users of the  
6 provisions of this section. In the interests of providing the public with clear information regarding the public nature  
7 of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the  
8 requirements of subsection (3).

9 (6) For purposes of this section, "land" means land as defined in 70-15-102.

10 (7) Civil liability may not be imposed upon the owner or occupier of premises by reason of any privilege  
11 created by this section."

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