

1 SENATE BILL NO. 158

2 INTRODUCED BY J. ELLSWORTH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FAMILY TRANSFER LAW; PROVIDING AN  
5 EXEMPTION FROM ADDITIONAL SUBDIVISION REVIEWS IF CERTAIN CONDITIONS ARE MET;  
6 PROVIDING AN EVIDENTIARY STANDARD FOR COURT PROCEEDINGS; PROVIDING A PENALTY;  
7 AMENDING SECTIONS 76-3-105 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE."

9

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

11

12 **Section 1.** Section 76-3-105, MCA, is amended to read:

13 **"76-3-105. Violations.** ~~Any~~ Except as provided in 76-3-207, any person who violates any provision of  
14 this chapter or any local regulations adopted pursuant ~~thereto to this chapter~~ shall be guilty of a misdemeanor  
15 and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not  
16 more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of  
17 land in violation of any provision of this chapter or any local regulation adopted pursuant ~~thereto to this chapter~~  
18 ~~shall~~ must be deemed a separate and distinct offense."

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20 **Section 2.** Section 76-3-207, MCA, is amended to read:

21 **"76-3-207. Divisions or aggregations of land exempted from review but subject to survey**  
22 **requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as  
23 provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter,  
24 the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot  
25 created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying  
26 requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to  
27 applicable zoning regulations adopted under Title 76, chapter 2:

28 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary

1 lines between adjoining properties;

2 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each  
3 county to each member of the landowner's immediate family;

4 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in  
5 which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs  
6 with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the  
7 provisions of 76-3-211;

8 (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

9 (e) divisions made for the purpose of relocating a common boundary line between a single lot  
10 within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the  
11 original platted lot or original unplatted parcel continues to apply to those areas.

12 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the  
13 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are  
14 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply  
15 to those areas.

16 (2) Notwithstanding the provisions of subsection (1);

17 (a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or  
18 rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or  
19 more lots must be reviewed and approved by the governing body before an amended plat may be filed with the  
20 county clerk and recorder;

21 (b) (i) a division within a platted subdivision is exempt from additional subdivision reviews and is  
22 subject to applicable zoning regulations adopted under Title 76, chapter 2, unless the method of disposition is  
23 adopted for the purpose of evading this chapter, if the division:

24 (A) is within a subdivision that has been approved by a local governing body;

25 (B) creates parcels of a size allowed within the subdivision; and

26 (C) is gifted or sold to a member of the landowner's immediate family; or

27 (ii) an amended plat must be filed with the county clerk and recorder after a division provided in  
28 subsection (2)(b)(i) occurs; AND

1           (III) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2)(B), A RESTRICTION OR REQUIREMENT ON  
2 THE PLATTED SUBDIVISION CONTINUES TO APPLY TO A DIVISION ALLOWED IN SUBSECTION (2)(B)(I);

3           (c) a division of land exempted under subsection (1)(b) that is also located in a zoning district is  
4 allowed if each family transfer parcel created by the division is at least 5 acres, unless the zoning district allows  
5 for smaller lot sizes; and

6           (d) a division of land transferred to an immediate family member pursuant to subsection (1)(b) or  
7 (1)(c) may be TRANSFERRED REGARDLESS OF AGE AND MAY BE owned jointly with that immediate family member's  
8 spouse.

9           (3)     (a) Subject to subsection (3)(b), a division of land may not be made under this section unless  
10 the county treasurer has certified that all real property taxes and special assessments assessed and levied on  
11 the land to be divided have been paid.

12           (b)     (i) If a division of land includes centrally assessed property and the property taxes applicable to  
13 the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate  
14 the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed  
15 property shall ensure that the prorated real property taxes and special assessments are paid on the land being  
16 sold before the division of land is made.

17           (ii)     The county treasurer may accept the amount of the tax prorated pursuant to this subsection  
18 (3)(b) as a partial payment of the total tax that is due.

19           (4)     The governing body may examine a division or aggregation of land to determine whether or not  
20 the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to  
21 exceed \$200, for the examination.

22           (5)     An immediate family member or the spouse of an immediate family member who receives a  
23 division of land pursuant to subsection (1)(b) or (2)(b) may not transfer or otherwise convey the division of land  
24 for a period of UP TO 2 years after the date of the division unless the governing body sets a period of less than 2  
25 years. A governing body may authorize variances from these requirements to address hardship situations.

26           (6)     If a governing body can prove by documented evidence in a court of competent jurisdiction that  
27 a person has knowingly attempted to evade EVADED subdivision regulations through the use of a division of land  
28 pursuant to subsection (1)(b) or (2)(b), that person is subject to a civil penalty of \$5,000 for each division of

1 land, payable to the governing body."

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

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