

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER RIGHT OWNERSHIP
6 UPDATES; AMENDING SECTIONS 85-2-424 AND 85-2-431, MCA."
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9

10 **Section 1.** Section 85-2-424, MCA, is amended to read:

11 **"85-2-424. Filing.** (1) Except in the case of a transfer of real property served by a public service water
12 supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property,
13 the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at
14 or before closing or transfer of real property, whether or not any water rights are associated with the property to
15 be transferred and whether or not any water rights will transfer with the real property.

16 (2) (a) If the realty transfer certificate discloses that the water rights will transfer with the property, the
17 department's records must be updated to reflect the purchaser of the property as the new owner of the water
18 right within 30 days of receipt of either:

- 19 (i) information received from the department of revenue; or
20 (ii) an ownership update form provided by the department and submitted to the department with a copy
21 of the deed.

22 (b) The appropriate fee must be paid at closing or upon completion of the transfer of real property as
23 provided in 85-2-426.

24 (c) The transferee of a water right, after receiving notice as provided in subsection (2)(d), is
25 responsible for compliance with this section.

26 (d) If the department receives notice from the department of revenue that a property transfer has
27 occurred and the proper fee was not received by the department, the department shall send a notice to the
28 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department

1 may assess a penalty against the transferee pursuant to 85-2-431.

2 (3) If the realty transfer certificate discloses the division of a water right among parcels, the person
3 dividing the water right shall complete and file with the department a water right ownership update form, a map,
4 and the required fee.

5 (4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department,
6 on a form provided by the department, information describing the exempting of the water right and the
7 appropriate fee.

8 (5) If a person severs a water right from appurtenant property without selling the property, the person
9 shall file with the department, on a form provided by the department, information describing the severance and
10 the appropriate fee.

11 (6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water
12 right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument
13 unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form
14 provided by the department and signed by the transferor and transferee, that states either:

15 (a) that the documents and fee necessary to comply with this section are held in escrow, in which
16 case the certification must also be signed by the escrow agent; or

17 (b) if there is no escrow, that the transferor and transferee certify that they have prepared the required
18 documents and will send the required documents and fee to the department within 60 business days of
19 recording, in which case the certification must also require the transferee to acknowledge that failure to file the
20 appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-
21 431 against the transferee.

22 (7) Any written agreement to transfer land that has appurtenant water rights on record with the
23 department must contain the following disclosure or words of a similar nature:

24 "WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

25 By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to
26 the Montana Department of Natural Resources and Conservation for updating water right ownership may result
27 in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being
28 exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a

1 penalty against the transferee and rejection of the deed for recording.""

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3 **Section 2.** Section 85-2-431, MCA, is amended to read:

4 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
5 civil penalty of not more than \$75.

6 (2) An action to recover the penalty must be brought by the department and filed in the district court
7 for the first judicial district. At the discretion of the department, the judgment may be certified to the district court
8 in the county where the real property is located.

9 (3) The department is entitled to recover its reasonable costs for recovering the penalty, including but
10 not limited to attorney fees or charges assessed by a collection agency.

11 (4) Any penalty fee collected under this section must be deposited in the water right appropriation
12 account provided for in 85-2-318."

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