

Unofficial Draft Copy

As of: 2020/05/07 11:20:52

Drafter: Corina Hach, 406-444-4026

PD 0003

67th Legislature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**** BILL NO. ****
INTRODUCED BY ****
BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PROCESS FOR WATE RIGHT OWNERSHIP
UPDATES; AMENDING THE PENALTY FOR NONCOMPLIANCE; AND AMENDING SECTIONS 85-2-424
AND 85-2-431, MCA."

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

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

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

(2) (a) If the realty transfer certificate or another instrument discloses that the water rights will transfer with the property, the ~~department's records must be updated~~department shall update its records to reflect the ~~purchaser of the property as the~~ new ownership of the water right ~~based on~~within 30 days of receipt of either:

(i) information received from the department of revenue if:

(A) the transferor of the property is the same as the owner of record for the water rights;

and

(B) the transferor conveys the entirety of the property associated with the place of use; or

Formatted: Indent: Left: 0.5"

(ii) an ownership update form provided by the department and submitted to the department with a copy of the deed or deeds together with any other instrument confirming the transferee's ownership of each water right listed on the form.

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

Unofficial Draft Copy

As of: 2020/05/07 11:20:52

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0003

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

3 (d) If the department receives notice from the department of revenue that a property transfer has
4 occurred and the proper fee was not received by the department, the department shall send a notice to the
5 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department
6 may assess a penalty against the transferee pursuant to 85-2-431.

7 (3) (a) Except as provided in subsection (3)(b), if-if the realty transfer certificate discloses the division
8 of the place of use of a water right among separate parcels, the person dividing each transferee receiving a
9 portion of the water right shall complete and file with the department a water right ownership update form, a
10 map, a copy of the deed or other instrument confirming the transfer, and the required fee.

11 (b) If a water right update ownership form is not filed by all parties pursuant to subsection (3)(a), the
12 owners must be reflected as co-owners on the water right.

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

16 (5) If a person severs a water right from appurtenant property without selling-conveying the property,
17 the person shall file with the department, on a form provided by the department, information describing the
18 severance, any deed or other instrument evidencing the severance, and the appropriate fee.

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

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

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

Unofficial Draft Copy

As of: 2020/05/07 11:20:52

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0003

1 431 against the transferee.

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

4 "WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

5 By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to
6 the Montana Department of Natural Resources and Conservation for updating water right ownership may result
7 in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being
8 exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a
9 penalty against the transferee and rejection of the deed for recording."

10 (8) The department shall update its records to reflect new ownership without collection of a transfer
11 fee within 30 days of:

12 (a) receiving a withdrawal of a water right, or an interest in a water right, by an owner thereof;

13 (b) receiving an order from the water court that modifies or terminates ownership of a water right; or

14 (c) learning of a clerical error resulting from an error on a water right ownership update.

15 (9) (a) The department shall update its records to remove a party from the list of owners of a water right
16 within 30 days of:

17 (i) receiving an order terminating the party's interest from a court of competent jurisdiction or
18 department hearing examiner; or

19 (ii) providing written notice to and receiving written consent from the party being removed.

20 (b) If a court order terminating a party's ownership has not been issued and the party does not consent
21 in writing to being removed from the ownership record of the water right, the department shall, within 30
22 days of providing notice to the party:

23 (i) certify the matter to the water court for resolution, if the controversy involves an existing water right
24 as defined in 85-2-102; or

25 (ii) certify the matter to the department hearing examiner for determination of ownership, if the
26 controversy involves a permit issued by the department. The hearing examiner's decision regarding
27 ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo
28 review.

Unofficial Draft Copy

As of: 2020/05/07 11:20:52

Drafter: Corina Hach, 406-444-4026

PD 0003

67th Legislature

1 (10)(a) The department shall update its records to add a new owner to a water right within 30 days of:
2 (i) receiving an order from a court of competent jurisdiction or department hearing examiner;
3 (ii) receiving an ownership update form and deed or other instrument in accordance with subsection
4 (2)(a)(ii); or
5 (iii) providing written notice to and receiving written consent from the existing owners.
6 (b) In the event of a dispute over the ownership of a water right, the department shall, within 30 days of
7 learning of the dispute:
8 (i) certify the matter to the water court for resolution, if the controversy involves an existing water right
9 as defined in 85-2-102; or
10 (ii) certify the matter to the department hearing examiner for determination of ownership, if the
11 controversy involves a permit issued by the department. The hearing examiner's decision regarding
12 ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo
13 review.
14 (11) The department may not delay updating ownership based on non-payment of transfer fees by a
15 transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a
16 penalty and seek collection from the transferee pursuant to 85-2-431."

Formatted: Indent: Left: 0"

Formatted: Indent: First line: 0"

Formatted: Indent: Left: 0.5", First line: 0"

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

19 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
20 civil penalty of not more than ~~\$75~~ **\$200**.

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

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

26 ~~(3)~~(4) Any penalty fee collected under this section must be deposited in the water right appropriation
27 account provided for in 85-2-318."

Unofficial Draft Copy

As of: 2020/05/07 11:20:52

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0003

1

- END -

DRAFT

- 5 -

PD 3