

HOUSE BILL NO. 49

INTRODUCED BY B. BROWN

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DISCLOSURE LAWS RELATED TO WATER RIGHTS; CLARIFYING THE PROCESS FOR DISCLOSING TRANSFERS OF WATER RIGHTS; AUTHORIZING WATER JUDGES AND WATER MASTERS TO TERMINATE WATER RIGHTS IN CERTAIN CASES; AND AMENDING SECTION 85-2-424, 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 discloses that the water rights will transfer with the property, the department's records must be updated to reflect the purchaser of the property as the new owner of the water right based on: ~~information received from the department of revenue.~~

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

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

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

~~(e)(d)~~ If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the 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, on
6 a form provided by the department, information describing the exempting of the water right and the appropriate
7 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 right
12 is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there
13 is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the
14 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 case
16 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 recording,
19 in which case the certification must also require the transferee to acknowledge that failure to file the appropriate
20 documents and fee with the department will result in the department assessing the penalty in 85-2-431 against
21 the transferee.

22 (7) If a party fails to comply with the provisions of this section during a pending proceeding for the
23 adjudication of existing water rights before the water court, the chief water judge, associate water judge, division
24 water judge as provided in 3-7-201, or water master as provided in 3-7-301 may issue an order terminating the
25 water rights appurtenant to the property.

26 ~~(7)~~(8) Any written agreement to transfer land that has appurtenant water rights on record with the
27 department must contain the following disclosure or words of a similar nature:

28 "WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

29 By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the
30 Montana Department of Natural Resources and Conservation for updating water right ownership may result in

1 the transferee of the property being subject to a penalty and termination of the water right. Additionally, in the
2 case of water rights being exempted, severed, or divided, the failure of the parties to comply with section
3 85-2-424, MCA, could result in a penalty against the transferee, ~~and~~ rejection of the deed for recording, and
4 termination of the water right.""

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