

SENATE BILL NO. 146

INTRODUCED BY B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRIVATE PROPERTY RIGHTS; PROVIDING PRIVATE PROPERTY PROTECTIONS; PROVIDING THAT GOVERNMENTAL ACTIONS MAY NOT RESTRICT THE USE OF PRIVATE PROPERTY UNLESS THE ACTION FULFILLS A COMPELLING GOVERNMENTAL INTEREST IN PUBLIC HEALTH OR SAFETY; PROVIDING FOR A CAUSE OF ACTION AND A STATUTE OF LIMITATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Article II, section 3, of the Montana Constitution provides that all persons are born free with certain inalienable rights, including the right of "acquiring, possessing and protecting property"; and

WHEREAS, the Montana Legislature recognizes that government increasingly relies on regulations that consume or otherwise negatively impact the use of private property; and

WHEREAS, the Montana Legislature is the proper branch of government to establish policies and principles related to property within the context of the provisions provided in Article II, section 3, of the Montana Constitution.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5 6] may be cited as the "Private Property Protection Act".

NEW SECTION. **Section 2. Findings and intent.** (1) The legislature has the highest interest in vindicating and protecting private property rights.

(2) The legislature finds that the constitutional right to acquire, possess, and protect property under Article II, section 3, of the Montana constitution also embodies the notion of the fundamental right to use property, including the use of property for financial gain or benefit.

(3) The legislature's intent is to ensure that property use restrictions are limited to those demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest in ~~public health or safety~~.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 5 6], unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Compelling governmental interest in ~~public health or safety~~" means a governmental interest of the highest order in ~~protecting the health and safety of the public~~ that cannot be achieved through less restrictive means.

(2) "Governmental entity" means any unit of state or local government, including but not limited to a state agency, county, city, town, consolidated city-county, or political subdivision of the state.

(3) "Private property" has the same meaning as "real property" as defined in 70-1-106 THAT IS OWNED BY A PRIVATE PERSON OR PRIVATE ENTITY.

(4) "Property use restriction" means any law, ordinance, resolution, regulation, rule, policy, ~~fee~~, condition, test, permit, or other administrative action that restricts the use and enjoyment of private property by the property owner OR OTHERS IN LAWFUL POSSESSION.

NEW SECTION. Section 4. Limitations on property use restrictions -- exceptions. (1) Except as provided in subsection (2), any property use restriction enacted by a governmental entity pursuant to Title 76, chapters 1, 2, 3, or 25, must be limited to those demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest in ~~public health or safety~~.

(2) [Sections 1 through 5 6] do not apply to:

(a) actions that prevent or abate nuisances as defined in 27-30-101;

(b) the enforcement of the terms of a license, permit, or authorization, including requirements imposed by federal law; or

(c) a government enforcement action that is the result of a final, nonappealable judicial determination;

(D) ACTIONS BY A TRIBAL GOVERNMENT AS DEFINED IN 2-15-141; OR

(E) A RESTRICTIVE COVENANT ENTERED INTO BETWEEN PRIVATE PARTIES, UNLESS THE IMPLEMENTATION OR ADOPTION OF THE RESTRICTIVE COVENANT WAS REQUIRED BY A GOVERNMENTAL ENTITY.

NEW SECTION. Section 5. Enforcement. (1) An owner of private property that is the subject of a property use restriction in violation of [section 4] may file an action in a court of competent jurisdiction to challenge the property use restriction.

(2) The plaintiff shall prevail in an action filed under this section unless the governmental entity demonstrates to the court ~~through clear and convincing evidence that:~~

(a) the property use restriction is demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest ~~in public health or safety;~~

(b) the property use restriction is the least restrictive means to achieve the stated purpose of the restriction; and

(c) ~~alternative mechanisms~~ REASONABLE ALTERNATIVES could not achieve the stated interest of the governmental entity.

(3) If a plaintiff prevails under subsection (2), the court shall permanently enjoin further enforcement of the property use restriction and shall award reasonable attorney fees and costs.

(4) Nothing in this section supersedes or preempts any existing cause of action that a person may have under the Montana or United States constitutions, any statute, or common law.

NEW SECTION. Section 6. STATUTE OF LIMITATION. THE PERIOD PRESCRIBED FOR THE COMMENCEMENT OF AN ACTION ALLOWED UNDER [SECTION 5] IS 5 YEARS FROM THE DATE A PERSON BECOMES AWARE OF, OR REASONABLY MAY HAVE BECOME AWARE OF, THE CAUSE OF ACTION HAVING ACCRUED.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 5 6] are intended to be codified as a new chapter in Title 76, and the provisions of Title 76 apply to [sections 1 through 5 6].

NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

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3 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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5 NEW SECTION. **Section 10. Applicability.** [This act] applies to ~~laws, ordinances, resolutions,~~
6 ~~regulations, rules, policies, fees, conditions, tests, permits, or other administrative actions~~ PROPERTY USE
7 RESTRICTIONS enacted or ~~enforced~~ ESTABLISHED on or after [the effective date of this act].

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