66th Legislature HB0229.01

1	HOUSE BILL NO. 229
2	INTRODUCED BY B. HAMLETT
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS TO DISTINGUISH FOSSILS FROM
5	MINERALS; STATING A PURPOSE; DEFINING FOSSILS AND FOSSILIZATION; EXEMPTING FOSSILS FROM
6	TITLE 82, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
7	DATE."
8	
9	WHEREAS, fossils are part of Montana's history and landscape; and
10	WHEREAS, fossils situated upon private lands have customarily been deemed owned by the fee title
11	owner of the land; and
12	WHEREAS, in Earl Douglass, 44 Pub. Lands Dec. 325, 1915 WL 1202 (1915), the Department of Interior
13	said clearly that fossil remains of dinosaurs and other prehistoric animals are not minerals within the meaning
14	of the United States mining laws, and lands containing such remains are not subject to entry under such laws;
15	and
16	WHEREAS, the court in Hunterfly Realty Corp. v. State of New York, 346 N.Y.S.2d 455 (N.Y.Ct.Cl. 1973)
17	held that mastodon fossils are not considered minerals; and
18	WHEREAS, no Montana court or agency, nor any other state or federal court or agency, has ever before
19	defined or construed the term "minerals" in a real property conveyance agreement to include fossils; and
20	WHEREAS, no scientific or legal journal, treatise, or other academic writing has ever defined or construed
21	the term "minerals" in a real property conveyance agreement to include fossils; and
22	WHEREAS, the U.S. District Court, sitting in diversity jurisdiction and interpreting state law, in the case
23	of Murray v. Billings Garfield Land Company, 187 F.Supp.3d 1203 (D.Mont. 2016), correctly held that the term
24	"minerals" in an instrument is exclusive of fossils; and
25	WHEREAS, a three-judge panel of the Ninth Circuit Court of Appeals, sitting in diversity jurisdiction and
26	interpreting state law, incorrectly reversed the U.S. District Court in the case of Murray v. BEJ Minerals, LLC, 908
27	F.3d 437 (9th Cir. 2018), holding in a 2-1 split decision filed on November 6, 2018, that the term "minerals" in an
28	instrument includes fossils; and
29	WHEREAS, the Montana Legislature finds that the two-judge majority opinion abrogates a century of real
30	estate custom and practice in Montana and threatens private property rights; and

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1 WHEREAS, the Montana Legislature may properly distinguish fossils and minerals by legislation to 2 conform with Montana custom; and 3 WHEREAS, the Montana Legislature determines as matters of policy of the State of Montana and preservation of private property rights that the term "minerals" in an instrument does not include fossils. 4 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 6 7 8 NEW SECTION. Section 1. Purpose. (1) The purpose of [sections 1 through 3] is to enact into law the 9 traditional understanding that fossils are not minerals and that fossils belong to the surface estate, unless 10 conveyed by a clear and express grant. 11 (2) It is the intent of the legislature that [sections 1 through 3] apply prospectively and retroactively to the 12 maximum extent possible under the constitutions of the United States and the state of Montana. 13 14 NEW SECTION. Section 2. Fossils distinguished. (1) When used in any instrument, unless the clear 15 and express terms of the instrument provide otherwise, the term "minerals" does not include fossils. 16 (2) For purposes of this section: 17 (a) "Fossilized" means to have been preserved by natural processes, including but not limited to: 18 (i) burial in accumulated sediment; 19 (ii) preservation in ice or amber; and 20 (iii) replacement or alteration of organic material or pore spaces in the organic material by minerals or 21 by chemical processes such as permineralization regardless of alteration of the original organic content. 22 (b) "Fossils" means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's 23 crust. 24 (3) Fossils are considered part of the surface estate, subject to severance by the fee title owner of the 25 land pursuant to a clear and express grant. 26 (4) Fossils are not subject to the provisions of Title 82. 27 28 NEW SECTION. Section 3. Fossils exempted. Fossils, as defined in [section 2], are not minerals and 29 are exempt from the provisions of this title. 30



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1	NEW SECTION. Section 4. Codification instruction. (1) [Sections 1 and 2] are intended to be codified
2	as an integral part of Title 1, chapter 4, and the provisions of Title 1, chapter 4, apply to [sections 1 and 2].
3	(2) [Section 3] is intended to be codified as an integral part of Title 82, and the provisions of Title 82 apply
4	to [section 3].
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6	NEW SECTION. Section 5. Saving clause. [This act] does not affect penalties that were incurred, or
7	proceedings in federal courts inferior to the Ninth Circuit Court of Appeals that were begun before [the effective
8	date of this act].
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10	NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable
11	from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
12	remains in effect in all valid applications that are severable from the invalid applications.
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14	NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.
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16	NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the
17	meaning of 1-2-109, to instruments severing mineral estates from surface estates that do not convey fossils by
18	a clear and express grant.
19	- END -

