

HOUSE BILL NO. 229

INTRODUCED BY B. HAMLETT, K. ABBOTT, D. ANKNEY, B. BROWN, Z. BROWN, A. DOANE,
 M. DUNWELL, N. DURAM, D. FERN, R. FITZGERALD, W. GALT, B. GILLESPIE, S. HINEBAUCH,
 B. HOVEN, T. JACOBSON, L. JONES, J. KEANE, R. LYNCH, B. MERCER, S. MORIGEAU, A. OLSZEWSKI,
 R. PEPPERS, T. RICHMOND, T. RUNNINGWOLF, S. SALES, C. SCHREINER, R. SHAW, J. SMALL,
 B. SMITH, C. SMITH, S. STEWART PEREGOY, R. TEMPEL, G. VANCE, G. VUCKOVICH,
 M. WEATHERWAX, S. WEBBER, J. WELBORN, K. WHITE, J. WINDY BOY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS TO DISTINGUISH FOSSILS FROM
 MINERALS; STATING A PURPOSE; DEFINING FOSSILS AND FOSSILIZATION; EXEMPTING FOSSILS FROM
 TITLE 82, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 DATE."

WHEREAS, fossils are part of Montana's history and landscape; and

~~WHEREAS, fossils situated upon private lands have customarily been deemed owned by the fee title
 owner of the land; and~~

~~WHEREAS, in Earl Douglass, 44 Pub. Lands Dec. 325, 1915 WL 1202 (1915), the Department of Interior
 said clearly that fossil remains of dinosaurs and other prehistoric animals are not minerals within the meaning
 of the United States mining laws, and lands containing such remains are not subject to entry under such laws;
 and~~

~~WHEREAS, the court in Hunterfly Realty Corp. v. State of New York, 346 N.Y.S.2d 455 (N.Y.Ct.Cl. 1973)
 held that mastodon fossils are not considered minerals; and~~

~~WHEREAS, no Montana court or agency, nor any other state or federal court or agency, has ever before
 defined or construed the term "minerals" in a real property conveyance agreement to include fossils; and~~

~~WHEREAS, no scientific or legal journal, treatise, or other academic writing has ever defined or construed
 the term "minerals" in a real property conveyance agreement to include fossils; and~~

~~WHEREAS, the U.S. District Court, sitting in diversity jurisdiction and interpreting state law, in the case
 of Murray v. Billings Garfield Land Company, 187 F.Supp.3d 1203 (D.Mont. 2016), correctly held that the term
 "minerals" in an instrument is exclusive of fossils; and~~

~~WHEREAS, a three-judge panel of the Ninth Circuit Court of Appeals, sitting in diversity jurisdiction and~~

1 interpreting state law, incorrectly reversed the U.S. District Court in the case of Murray v. BEJ Minerals, LLC, 908
 2 F.3d 437 (9th Cir. 2018), holding in a 2-1 split decision filed on November 6, 2018, that the term "minerals" in an
 3 instrument includes fossils; and

4 ~~WHEREAS, the Montana Legislature finds that the two-judge majority opinion abrogates a century of real
 5 estate custom and practice in Montana and threatens private property rights; and~~

6 ~~WHEREAS, the Montana Legislature may properly distinguish fossils and minerals by legislation to
 7 conform with Montana custom; and~~

8 ~~WHEREAS, the Montana Legislature determines as matters of policy of the State of Montana and
 9 preservation of private property rights that the term "minerals" in an instrument does not include fossils.~~

10 WHEREAS, FOR FOSSILS FOUND ON FEDERAL LAND, THE FEDERAL GOVERNMENT TREATS FOSSILS AS PART OF
 11 THE SURFACE ESTATE AND NOT MINERALS; AND

12 WHEREAS, THE MONTANA LEGISLATURE, AS A MATTER OF THE POLICY OF THE STATE, PRESUMES THAT FOR
 13 INSTRUMENTS GOVERNED BY MONTANA LAW, THE TERM "MINERALS" IN AN INSTRUMENT DOES NOT INCLUDE FOSSILS.

14

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

16

17 NEW SECTION. Section 1. Purpose. (1) The purpose of [sections 1 through 3] is to enact into law the
 18 ~~traditional~~ APRESUMPTIVE understanding that fossils are not minerals and that fossils belong to the surface estate,
 19 unless conveyed by a clear and express grant.

20 (2) It is the intent of the legislature that [sections 1 through 3] apply prospectively and retroactively to
 21 INSTRUMENTS GOVERNED BY MONTANA LAW TO the maximum extent possible under the constitutions of the United
 22 States and the state of Montana.

23

24 NEW SECTION. Section 2. Fossils distinguished. (1) When used in any instrument, unless the clear
 25 and express terms of the instrument provide otherwise, the term "minerals" does not include fossils.

26 (2) For purposes of this section:

27 (a) "Fossilized" means ~~to have been~~ preserved by natural processes, including but not limited to:

28 (i) burial in accumulated sediment;

29 (ii) preservation in ice or amber; ~~and~~ OR

30 ~~(iii) replacement or alteration of organic material or pore spaces in the organic material by minerals or~~

1 ~~by chemical processes such as permineralization regardless of alteration of the original organic content.~~

2 (III) REPLACEMENT BY MINERALS OR ALTERATION BY CHEMICAL PROCESSES SUCH AS PERMINERALIZATION WHERE
3 MINERALS ARE DEPOSITED IN THE PORE SPACES OF THE HARD PARTS OF AN ORGANISM'S REMAINS, WHICH MAY OR MAY
4 NOT ALTER THE ORIGINAL ORGANIC CONTENT.

5 (b) "Fossils" means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's
6 crust.

7 (3) Fossils are considered part of the surface estate, subject to severance by the fee title owner of the
8 land pursuant to a clear and express grant.

9 (4) Fossils are not subject to the provisions of Title 82.

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11 NEW SECTION. Section 3. Fossils exempted. Fossils, as defined in [section 2], are not minerals and
12 are exempt from the provisions of this title.

13
14 NEW SECTION. Section 4. Codification instruction. (1) [Sections 1 and 2] are intended to be codified
15 as an integral part of Title 1, chapter 4, and the provisions of Title 1, chapter 4, apply to [sections 1 and 2].

16 (2) [Section 3] is intended to be codified as an integral part of Title 82, and the provisions of Title 82 apply
17 to [section 3].

18
19 NEW SECTION. Section 5. Saving clause. [This act] does not affect penalties that were incurred; or
20 proceedings in federal courts inferior to the Ninth Circuit Court of Appeals that were begun before [the effective
21 date of this act].

22
23 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are severable from the invalid applications.

26
27 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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29 NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the
30 meaning of 1-2-109, to instruments severing mineral estates from surface estates that do not convey fossils by

1 a clear and express grant.

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