A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR OTHER COMMERCIAL TRANSACTION OF CULTURAL PATRIMONY AND SACRED OBJECTS; PROVIDING REQUIREMENTS TO ESTABLISH AN OBJECT AS CULTURAL PATRIMONY OR A SACRED OBJECT; PROVIDING A PENALTY; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 22-3-802, 22-3-803, 22-3-804, AND 22-3-808, MCA."

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

Section 1. Section 22-3-802, MCA, is amended to read:

"22-3-802. Legislative findings and intent. (1) The legislature of the state of Montana finds that:
(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;
(b) the state and its citizens have an obligation to protect objects of cultural patrimony and sacred objects from being part of a commercial transaction for profit and to return these objects to the Indian tribe or group of origin;
(c) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;
(d) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.
(e) private or commercial transaction for profit of objects of cultural patrimony and sacred objects results in the separation of these objects from the Indian tribe or group of origin and in the desecration of the nature of these objects of cultural patrimony and sacred objects;
(f) while some human skeletal remains and burial sites may be of interest to science, the needs of the
scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e)(g) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f)(h) notwithstanding any other provision of law, this part is the exclusive law governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) recognize the ongoing historical, traditional, and cultural importance of objects of cultural patrimony and sacred objects and to work to prevent the separation and promote the reunification of these objects with the Indian tribe or group of origin;

(e) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(f) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law."

Section 2. Section 22-3-803, MCA, is amended to read:

"22-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the burial preservation board established in 22-3-804.

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site."
(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Cultural patrimony" means an object:

(a) that has ongoing historical, traditional, or cultural importance central to an Indian tribe, group, or culture itself;

(b) that cannot be alienated, appropriated, or conveyed by an individual regardless of whether the individual is a member of the Indian tribe or group;

(c) that was considered inalienable by the Indian tribe or group at the time the object was separated from the Indian tribe or group; and

(d) for which the duties as a caretaker are transferred through a ceremonial transfer.

(4)(5) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5)(6) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(7) (a) "Sacred object" means a specific ceremonial object that is necessary to traditional Indian ceremonial leaders for the practice of traditional Indian ceremonies by their present-day adherents and requires a ceremonial transfer to be transferred from one person to another.

(b) The term does not include land, water, or any other geographical feature.

(c) The term does not include a fish or wildlife species or any portion of a fish or wildlife species legally taken pursuant to the laws of this state, any other state, the United States, or any federally recognized Indian tribe.

(6)(8) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7)(9) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations."

Section 3. Section 22-3-804, MCA, is amended to read:

"22-3-804. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board.
The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners’ association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners’ association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial material;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;}
(g) issue permits authorizing scientific analysis;
(h) provide for a process to evaluate and establish an object as an object of cultural patrimony or a sacred object pursuant to [section 5], including coordination and verification of the evidence presented regarding the object's history and nature;
(i) develop a method to retain and store an object under review while the board establishes the object's history and nature, determines if the object will be returned to an Indian tribe or group, and determines the method to return an object that has been designated for return to an Indian tribe or group;
(j) provide for a process to accept and return an object of cultural patrimony or a sacred object from someone who voluntarily turns over an object to be returned to an Indian tribe or group;
(4) The board is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.
(5) Each member of the board is entitled to be paid $50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

Section 4. Section 22-3-808, MCA, is amended to read:

"22-3-808. Prohibited acts -- penalties. (1) After July 1, 1991, unless authorized under this part or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under 22-3-805, a person may not:
(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;
(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of this part; or
(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.
(2) A person may not purposely or knowingly buy, sell, exchange, distribute, market, or otherwise conduct a commercial transaction for profit that involves an object of cultural patrimony or a sacred object.
A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed $1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed $20,000, be imprisoned for not more than 5 years, or both.

A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed $50,000, be imprisoned for not more than 20 years, or both.

A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed $500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed $10,000, be imprisoned for not more than 5 years, or both.

A person convicted under the provisions of subsection (2) may be fined an amount not to exceed $10,000, be imprisoned in the county jail for not more than 6 months, or both.

A person who knowingly fails to give notice as required by 22-3-805(1) may be fined an amount not less than $100 or more than $500.

A person who violates a provision of this section or any term or condition of a permit issued under 22-3-806 is subject to a civil penalty not to exceed $2,000 for the first violation and not to exceed $10,000 for a subsequent violation."

NEW SECTION. Section 5. Establishment of object as cultural patrimony or sacred object. An object may be established as an object of cultural patrimony or a sacred object by obtaining evidence of the history and nature of the object from:

(1) an Indian tribe or group that can show that the object of cultural patrimony was owned or controlled by the tribe or group;

(2) a direct lineal descendant of an individual who owned the sacred object;

(3) an Indian tribe or group that can show that the sacred object was owned or controlled by a member of that tribe or group; or

(4) an Indian tribe or group that can show that the object of cultural patrimony or the sacred object was transferred through a ceremonial transfer.

NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a
copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [section 5].

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