

HOUSE BILL NO. 229

INTRODUCED BY B. HAMLETT

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

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



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
4 preservation of private property rights that the term "minerals" in an instrument does not include fossils.

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

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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.

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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.

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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.

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