

LEGAL REVIEW NOTE

Bill No.: HB 381

LC#: LC2414, To Legal Review Copy, as of
January 10, 2019

Short Title: Revise THC limit in industrial hemp

Attorney Reviewer: Todd Everts

Date: January 18, 2019

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

LC2414, as drafted, may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution, Art. VI, cl. 2, which provides that federal law is the "supreme law of the land". Under the Supremacy Clause, if a conflict between state law and federal law exists, federal law prevails. *Gonzales v. Raich*, 545 U.S. 1, 29, 125 S. Ct. 2195, 2212 (2005).

Section 10113 of the Agricultural Improvement Act of 2018, passed by Congress and signed into

law on December 20, 2018, provides that industrial hemp authorized as an agricultural crop may not contain more than 0.3 % tetrahydrocannabinol (THC). Industrial hemp containing more than 0.3% percent THC would be considered non hemp cannabis under federal law.

LC2414, as drafted, provides that industrial hemp authorized as an agricultural crop may not contain more than 3% THC, which directly conflicts with Section 10113 of the Agricultural Improvement Act of 2018 and, by extension, may raise potential constitutional conformity issues with the Supremacy Clause pursuant to the United States Supreme Court holding in *Raich*.

Requester Comments: