

LEGAL REVIEW NOTE

Bill No.: HB 658

LC#: LC1251 To Legal Review Copy, as of
March 11, 2019

Short Title: Generally revise healthcare laws and
permanently expand Medicaid

Attorney Reviewer: Todd Everts / Jaret Coles

Date: March 14, 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:

LC1251 as drafted makes the medicaid program permanent by repealing the termination date of the Montana Health and Economic Livelihood Partnership Act (HELP Act). Section 10 of LC1251(amending section 15-30-2660(3), MCA) imposes "taxpayer integrity fees" for certain participants in the HELP Act. One of the fees provides that an entity organized under 26 U.S.C. 501(d) is assessed a fee when the entity has members who receive medicaid coverage. An entity organized under 26 U.S.C. 501(d) includes "religious or apostolic associations or corporations"

with a common treasury or community treasury where members include a portion of the taxable income of the association or corporation on their federal tax return. Additionally, pursuant to section 1(3)(i), a member of an entity subject to this fee is exempt from the community engagement activities.

By subjecting one group of people that are members of a religious or apostolic association with a fee while not imposing a fee on other organizations, section 10 of LC1251 may raise potential constitutional conformity issues with respect to the Equal Protection requirements of Article II, section 4, of the Montana Constitution, as well as the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution. There is also a similar potential constitutional conformity issue with granting members of one religious organization an exemption from the community engagement requirement without providing the same benefit to other individuals of another organization.

Article II, section 4, of the Montana Constitution provides:

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political *or religious ideas*. (emphasis added).

In *Montana Department of Revenue v. Barron*, 245 Mont. 100, 799 P.2d 533 (1990), the Supreme Court determined that a property tax statute that caused certain similarly situated taxpayers to bear a disproportionate share of Montana's tax burden violated the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution, and Art. II, § 4, 1972 Montana Constitution. *Id.* at 111. Imposing a fee on one religious entity while also providing a benefit to the same entity is arguably more significant. Moreover, since the differential treatment is based on religious status, it is likely the Supreme Court would apply a higher level of review than rational basis. See *Butte Cmty. Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986)¹.

Consequently, section 10 of LC1251 as drafted may raise potential constitutional conformity issues with the Equal Protection requirements of Article II, section 4, of the Montana Constitution.

Requester Comments:

Superseded on other grounds as recognized in *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 938 P.2d 658 (1997), and *Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).