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:

SB 279, as drafted, may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution, Article VI, clause 2, which provides that the Constitution, federal laws passed pursuant to the Constitution, and treaties made under the Constitution's authority constitute the supreme law of the land. Under the Supremacy Clause, if a conflict between state law and federal law exists, federal law prevails. California v. ARC
SB 279, as drafted, creates a definition for a "local retail meat establishment," providing that it includes a commercial establishment at which meat or meat products are displayed for sale or provided to the public, with or without charge. The draft amends 81-9-218, MCA, which addresses meat inspection exemptions, to include a person who slaughters livestock or generally provides meat products for an individual or for a local retail meat establishment. The draft provides that the meat processing exemptions in 81-9-218 apply if the meat food products are marked as a local Montana product and prepared and packaged in a sanitary facility. In general, SB 279 creates an exemption from the Montana Meat and Poultry Inspection Act, sections 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, MCA, for certain individuals and local retail meat establishments.

The Federal Meat Inspection Act, 21 U.S.C. 601, et seq. (FMIA), generally requires that all meat sold commercially must be inspected and passed to ensure that it is safe, wholesome, and properly labeled. The FMIA requires inspection for any product intended for human consumption, wholly or in part, from the carcass of any parts of any cattle, sheep, swine, and goat. (See "Meat food product" definition, 21 U.S.C. 601(j).) The FMIA provides that the animals must be slaughtered and processed under federal inspection and the meat food products must be inspected and passed for human consumption. (See 21 U.S.C. 603 through 605, 608, 609, 615, and 616 for meat inspection requirements.)

The FMIA generally allows for exemptions; however, these do not apply for meat products that are sold commercially. (21 U.S.C. 623.) Specifically, a custom-exempt establishment is one that slaughters and prepares livestock belonging to someone else for the exclusive use of that person. (9 CFR 303.1(a)(2).)

Additionally, the FMIA provides for state meat inspections. (See 21 U.S.C. 661.) Specifically, establishments that produce meat products sold entirely within a state require federal inspection unless they are regulated under a state meat and poultry inspection program. The state programs are required to enforce requirements that are at least equal to those imposed under federal acts. (See 21 U.S.C. 661(a)(1).) Indeed, the Montana Meat and Poultry Inspection Act specifically recognizes compliance with federal authority:


Thus, SB 279, as drafted, may raise potential constitutional conformity issues with respect to the Supremacy Clause. The draft exempts certain local meat from the inspection requirements of the
FMIA, and it allows the sale and consumption of this local meat by the general public. Not only would the draft put the Montana Meat and Poultry Inspection Act out of compliance with the FMIA, but it also potentially conflicts with provisions in the FMIA relating to meat inspection for which no FMIA exemption applies.

**Requester Comments:**