

1 HOUSE BILL NO. 382

2 INTRODUCED BY D. SKEES

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING INFRINGEMENT OF THE STATE OF MONTANA'S
5 CONSTITUTIONAL RIGHT TO NULLIFICATION OF ANY FEDERAL STATUTE, MANDATE, OR EXECUTIVE
6 ORDER CONSIDERED UNCONSTITUTIONAL BY THE STATE; ENACTING THE MONTANA NULLIFICATION
7 REAFFIRMATION ACT; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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9 WHEREAS, the State of Montana has a compelling interest as a sovereign state of the United States of
10 America in the proper implementation of protection and justice within its borders; and

11 WHEREAS, the 10th Amendment to the United States Constitution guarantees and reserves to the states
12 or their people all powers not specifically granted to the federal government elsewhere in the Constitution as they
13 were publicly understood at the time that the amendment was ratified on December 15, 1791, subject only to
14 modification by duly ratified subsequent amendments to the United States Constitution. The guaranty of those
15 powers is a matter of compact between the State and people of Montana and the United States as of the time
16 that Montana was admitted to statehood in 1889; and

17 WHEREAS, as a matter of compact between the State and people of Montana and the United States as
18 of the time that Montana was admitted to statehood in 1889, the 10th Amendment to the United States
19 Constitution guarantees to the State and people of Montana that other than the enumerated powers expressly
20 granted to the United States under Article I, section 8, of the United States Constitution, Congress and the federal
21 government will not exercise any purported additional control over or commandeer rights belonging to the State
22 of Montana or its people; and

23 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, the sole and
24 sovereign power to regulate the state business and affairs rested in the state legislature and has always been
25 a compelling state concern and central to state sovereignty. Accordingly, the foregoing public meaning and
26 understanding of Article I, section 8, the Establishment Clause of the 1st Amendment, and the 10th Amendment
27 of the United States Constitution is a matter of compact between the State and people of Montana and the United
28 States as of the time that Montana was admitted to statehood in 1889. Further, the power to regulate commerce
29 among the several states as delegated to Congress in Article I, section 8, clause 3, of the United States
30 Constitution, as understood at the time of the founding, was meant to empower Congress to regulate the buying

1 and selling of products made by others and sometimes land, associated finance and financial instruments, and
2 navigation and other carriage across state jurisdictional lines. This power to regulate "commerce" does not
3 include agriculture, manufacturing, mining, major crimes, or land use, nor does it include activities that merely
4 "substantially affect" commerce; and

5 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, the Commerce
6 Clause was not meant or understood to authorize Congress or the federal judiciary to regulate the state courts
7 in the matter of state substantive law or state judicial procedure. This meaning and understanding of Article I,
8 section 8, the Establishment Clause of the 1st Amendment, and the 10th Amendment of the United States
9 Constitution, as they pertain to the validity of religious, sectarian, or foreign law as being controlling or influential
10 precedent, has never been modified by any duly ratified amendment to the United States Constitution.
11 Accordingly, the foregoing public meaning and understanding of Article I, section 8, and the 10th Amendment of
12 the United States Constitution is a matter of compact between the State and people of Montana and the United
13 States as of the time that Montana was admitted to statehood in 1889; and

14 WHEREAS, Article I, section 8, clause 18, of the United States Constitution, the Necessary and Proper
15 Clause, is not a blank check that empowers the federal government to do anything it deems is necessary or
16 proper. It is instead a limitation of power under the common-law doctrine of "principals and incidents," which
17 allows Congress to exercise incidental powers. There are two main conditions required for something to be
18 incidental and therefore "necessary and proper". The law or power exercised must be:

19 (1) directly applicable to the main, enumerated power--some would say that without it, the enumerated
20 power would be impossible to exercise in current, common understanding; and

21 (2) "lesser" than the main power; and

22 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, Article I, section
23 8, clause 1, the General Welfare Clause, did not empower the federal government with the ability to do anything
24 it deems good. It is instead a general introduction explaining the exercise of the enumerated powers of Congress
25 that are set forth in Article I, section 8, of the United States Constitution. When James Madison was asked if this
26 clause were a grant of power, he replied with "If not only the means but the objects are unlimited, the parchment
27 [the Constitution] should be thrown into the fire at once." Thus, this clause is a limitation on the power of the
28 federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the
29 United States. And the Commerce Clause was not meant or understood to authorize Congress or the federal
30 judiciary to establish religious, sectarian, or foreign statute or case law as controlling or influential precedent. This

1 meaning and understanding of Article I, section 8, the Establishment Clause of the 1st Amendment, and the 10th
2 Amendment of the United States Constitution, as they pertain to controlling or influential legal authority, has never
3 been modified by any duly ratified amendment to the United States Constitution. Accordingly, the foregoing public
4 meaning and understanding of Article I, section 8, the Establishment Clause of the 1st Amendment, and the 10th
5 Amendment of the United States Constitution is a matter of compact between the State and people of Montana
6 and the United States as of the time that Montana was admitted to statehood in 1889; and

7 WHEREAS, accordingly, the Legislature knows and affirms that neither the Commerce Clause, the
8 General Welfare Clause, nor the Necessary and Proper Clause of the United States Constitution has ever been
9 expanded, modified, or amended, and therefore the Legislature specifically rejects and denies any expanded
10 authority that the federal government may attempt to enforce; and

11 WHEREAS, Congress and the federal government are denied the power to establish laws within the state
12 that are repugnant and obtrusive to state law and to the people within the state and are restrained and confined
13 in authority by the 18 clauses set forth in Article I, section 8, of the United States Constitution; and

14 WHEREAS, Congress and the federal government are denied the power to bind the states under foreign
15 statute or case law other than those provisions duly ratified by Congress as a treaty, so long as the treaty does
16 not violate a state constitution or the United States Constitution; and

17 WHEREAS, no authority has ever been given to the Legislative Branch, the Executive Branch, or the
18 Judicial Branch of the federal government to preempt state legislation; and

19 WHEREAS, [this act] serves as a notice and demand to the federal government to cease and desist all
20 activities outside the scope of the federal government's constitutionally designated powers.

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

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24 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana
25 Nullification Reaffirmation Act".

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27 NEW SECTION. **Section 2. Commission of recommendation.** (1) The legislature shall appoint a
28 commission of recommendation, consisting of 11 members. The commission is charged to recommend, propose,
29 and call for an up or down vote of simple majority to nullify in its entirety a specific federal law or regulation that
30 is outside the scope of the powers delegated by the people to the federal government in the United States

1 constitution. The commission shall respond with its recommendation within 30 days of receiving the federal
2 legislation for consideration.

3 (2) The commission of recommendation may take up and review all existing federal statutes, mandates,
4 and executive orders for the purpose of determining the constitutionality of the statute, mandate, or order. The
5 commission may recommend for nullification any existing federal statute, mandate, or executive order enacted
6 prior to [the effective date of this act].

7 (3) Upon recommendation for nullification, the legislature shall vote on the matter within 60 days after
8 the beginning of the next legislative session, regular or special, following the recommendation for nullification.
9 During the time between the recommendation for nullification and the legislative vote on nullification, the issue
10 in question remains out of force or effect until the legislative vote can be taken. The appropriate documentation
11 reflecting the vote must be documented in the official records of the acts of the legislature maintained by the
12 secretary of state.

13
14 **NEW SECTION. Section 3. Effect of nullification.** If the legislature votes by simple majority to nullify
15 a federal statute, mandate, or executive order on the grounds of constitutionality, the state and its citizens may
16 not recognize or be obligated to obey the nullified statute, mandate, or executive order.

17
18 **NEW SECTION. Section 4. Prevention of enforcement of nullified federal laws -- duty of**
19 **legislature -- jurisdiction.** (1) The legislature shall enact all measures necessary to prevent the enforcement
20 of federal laws or regulations nullified within the boundaries of this state.

21 (2) In a cause of action between this state and the federal government regarding nullification of federal
22 legislation, a judicial mandate, or an executive order, the proper jurisdiction for these issues lies with the supreme
23 court of the United States alone, as stated in Article III, section 2, of the United States constitution.

24
25 **NEW SECTION. Section 5. Reservations of state's rights and powers.** (1) Under the 10th
26 amendment to the United States constitution, the people and state of Montana retain their exclusive power to
27 regulate the state of Montana subject only to the 14th amendment's guarantee that the people and state of
28 Montana shall exercise sovereign power in accordance with each citizen's lawful privileges or immunities and in
29 compliance with the requirements of due process and equal protection of the law.

30 (2) The ninth amendment to the United States constitution secures and reserves to the people of

1 Montana as against the federal government their natural rights to life, liberty, and property as entailed by the
2 traditional Anglo-American conception of ordered liberty and as secured by state law, including but not limited
3 to their rights as they were understood and secured by the law at the time that the amendment was ratified on
4 December 15, 1791, as well as their rights as they were understood and secured by the law in the state of
5 Montana at the time the Montana constitution was adopted in 1889. The guarantee of those rights is a matter of
6 compact between the state and people of Montana and the United States at the time that Montana was admitted
7 to statehood in 1889.

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9 **NEW SECTION. Section 6. Communication to the several states.** (1) To ensure that this state
10 continues in the same esteem and friendship as currently exists, the commission shall communicate to the
11 legislatures of the several states the intentions of [this act] and the intention that this state considers union for
12 specific national purposes, and particularly those enumerated in the United States constitution, to be friendly to
13 the peace, happiness, and prosperity of all the states.

14 (2) A certified copy of [this act] must be sent to the president of the United States, the president of the
15 United States senate, the speaker and clerk of the United States house of representatives, and each member
16 of Montana's congressional delegation along with the request that [this act] be officially entered into the
17 congressional record.

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19 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified
20 as an integral part of Title 2, chapter 1, and the provisions of Title 2, chapter 1, apply to [sections 1 through 5].

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22 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are severable from the invalid applications.

25
26 **NEW SECTION. Section 9. Retroactive applicability.** [This act] applies retroactively, within the
27 meaning of 1-2-109, to any federal statute, mandate, or executive order entered into before [the effective date
28 of this act].

29 - END -