

LEGAL REVIEW NOTE

Bill No.: HB 760

LC#: LC3979, as of February 10, 2022

Short Title: Revise laws related to foreign media corporations

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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:

As drafted, HB 760 generally requires a foreign media corporation to disclose the foreign corporation's jurisdiction of formation. Additionally, the draft requires a foreign corporation, or any business associated with a foreign corporation that is 51% owned by a foreign corporation and that generally describes itself as a media entity, to print, in at least 24-point font size, on each front page or cover of each hard copy edition and any online news content, the main headquarters of the foreign corporation.

As drafted, HB 760 potentially conflicts with several provisions of the U.S. and Montana Constitutions. However, HB 760 primarily implicates constitutional protections of freedom of the press guaranteed in the first amendment of the U.S. Constitution and Article II, Section 7 of the Montana constitution.

Freedom of the Press

The first amendment of the U.S. Constitution provides what is generally known as freedom of the press:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Similarly, Article II, section 7 of the Montana Constitution provides similar language establishing freedom of the press:

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

The Montana Supreme Court has noted that the state's constitutional provisions are "identical or nearly identical with like language in the United States Constitution and certainly identical in concept, each constitute separate and enforceable constitutional rights insofar as the jurisdiction of the State of Montana extends." Furthermore, the Montana Supreme Court noted that "[w]here state and federal constitutional provisions are identical, each is enforceable in its own respective sphere where those principles attach."¹ The end result is that an analysis of federal first amendment cases is highly persuasive in analyzing freedom of the press issues under the Montana Constitution.

Courts have interpreted a wide array of first amendment cases as it relates to freedom of speech and freedom of the press. Court cases have developed several categories that are considered in hearing a first amendment case. One category is generally known as content-neutral regulations that implicate first amendment rights. Content-neutral regulations are also commonly known as "time, place and manner restrictions" and involve a government law that places restrictions not on the content of the speech, but regulates the type of circumstances under which the speech may take place.

HB 760 potentially implicates the first amendment's protection for freedom of the press by generally requiring foreign media corporations to disclose in large font that the corporation or

¹ *Madison v. Yunker*, 180 Mont. 54, 589 P.2d 126 (1978)(citing *Department of Mental Hygiene v. Kirchner*, 62 Cal.2d 586, 43 Cal.Rptr. 329, 400 P.2d 321 (1965); *Emery v. State of Montana*, 177 Mont. 73, 580 P.2d 445 (1978)).

parent corporation is not from Montana. The law appears to implicate the plain language of the Montana constitution itself, which states that "[n]o law shall be passed impairing the freedom of speech or expression."