

## LEGAL REVIEW NOTE

**Bill No.:** HB 933

**LC#:** LC 3986, To Legal Review Copy, as  
of March 1, 2023

**Short Title:** Adopt the original 13<sup>th</sup>  
Amendment

**Attorney Reviewer:** Todd Everts  
Julie Johnson

**Date:** March 24, 2023

### 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 933 may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution. Article VI, clause 2, of the United States Constitution provides that federal law is the "supreme Law of the Land".

Section 2(1) of HB 933 proposes that the state of Montana recognize and ratify a version

of the 13<sup>th</sup> Amendment to the United State Constitution that is referred to as the original 13<sup>th</sup> Amendment. This version of the 13<sup>th</sup> Amendment provides:

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any Emperor, King, Prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them or either of them.

Section 2(2) provides that "[m]embers of the Montana bar association may hold an office of trust or profit under them until the original 13th Amendment is ratified by three-fourths of the states and becomes part of the United States constitution."

The 13<sup>th</sup> Amendment to the United States Constitution currently provides:

**Section 1**

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Section 2**

Congress shall have power to enforce this article by appropriate legislation.

As drafted, HB 933 provides that the State will recognize and ratify a different version of the 13<sup>th</sup> Amendment to the United States Constitution and therefore may raise potential federal constitutional issues related to the Supremacy Clause.

**Requester Comments:**