

LEGAL REVIEW NOTE

Bill No.: HB 955

LC#: LC1208

Short Title: Legalize psilocybin use for PTSD/mental illness treatment

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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 955 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".

HB 955, as drafted, allows the therapeutic use of psilocybin for certain mental health conditions at therapeutic psilocybin treatment centers, establishes requirements for certifying a person to use therapeutic psilocybin, establishes requirements for licenses to administer psilocybin, and

allows cultivation, manufacture, packages, labelling, possession, and administration of psilocybin at licensed therapeutic psilocybin treatment centers.

Psilocybin is currently listed as a Schedule I drug under 21 U.S.C. 812 of the federal Controlled Substances Act, 21 U.S.C. 801, *et seq.* The United States Supreme Court has explained that under 21 U.S.C. 841(a) and 844(a) of the federal Controlled Substances Act, the manufacture, distribution, dispensation, and possession of a Schedule I substance is a criminal offense even when state law authorizes its use to treat medical conditions. *Gonzalez v Raich*, 545 U.S. 1, 29 (2005). Specifically, the Court in *Raich* held that under the Supremacy Clause, the federal statute superseded California's Compassionate Use Act authorizing the limited possession and cultivation of marijuana, a Schedule I substance, for medicinal purposes. *Raich*, 545 U.S. at 29. Similar to California's medical marijuana laws, HB 955's authorization of cultivation, manufacture, use, and possession of psilocybin for medicinal purposes may conflict with federal law.

As drafted, HB 955 may potentially conflict with federal law and, by extension, raise potential federal constitutional conformity issues related to the Supremacy Clause.