LEGAL REVIEW NOTE

Bill No.: HB371

LC#: LC1463, To Legal Review Copy, as of January 14, 2025

Short Title: Ban mRNA vaccines in Montana for humans

Attorney Reviewer: Todd Everts
Julie Johnson

Date: January 31, 2025

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:

HB 371, as drafted, would ban the use of gene-based vaccines for humans in the state. Section 1 of HB 371 provides:

> (1) (a) A person may not provide or administer a gene-based vaccine to any human within the state of Montana.
> (b) For the purposes of this section, "gene-based vaccine" means a vaccine developed

using messenger ribonucleic acid (mRNA) technology, modified messenger ribonucleic acid technology, self-amplifying messenger ribonucleic acid technology, or deoxyribonucleic acid technology.

HB 371 also contains a penalty provision that states that a "person who violates this section is guilty of a misdemeanor and is subject to a $500 fine per incident." The codification instruction indicates that Section 1 should be codified in Title 45 (Crimes), ch. 5 (Offenses against the person).

As drafted, HB 371, may raise potential federal constitutional issues. The Supremacy Clause establishes that federal law "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2. Where state and federal law "directly conflict," state law must give way. Wyeth v. Levine, 555 U.S. 555, 583, 129 S. Ct. 1187 (2009) (Thomas, J., concurring in judgment); see also Crosby v. National Foreign Trade Council, 530 U.S. 363, 372, 120 S. Ct. 2288 (2000) ("[S]tate law is naturally preempted to the extent of any conflict with a federal statute"), and PLIVA, Inc. v. Mensing, 564 U.S. 604, 617-18, 131 S. Ct. 2567, 2577 (2011).

On August 22, 2024, the U.S. Food and Drug Administration approved and granted emergency use authorization (EUA) for updated mRNA COVID-19 vaccines (2024-2025 formula) to include a monovalent (single) component that corresponds to the Omicron variant KP.2 strain of SARS-CoV-2. This is a gene-based vaccine that if LC 1463 passed would be banned in the state although authorized by the federal government.

Therefore, HB 371 may raise a potential constitutional conformity question as to whether this legislation conflicts with the Supremacy Clause of the U.S. Constitution.

Requester Comments:

The Tenth Amendment of the United States Constitution authorizes the "states to establish laws and regulations protecting the health, safety and general welfare of their citizens." (1) Certainly, questions arise when a state law or medical practice is in direct conflict with federal law, such as Montana's legalization of medical and recreational cannabis. However, this question has been put to the test in often referenced case law, U.S. Supreme Court ruling Jacobson v. Massachusetts, 197 U.S. 11 (1905), in which the court upheld that "the police power of the state may be allowed to constrain individual liberties through reasonable regulations when required to protect public safety." (2)

Furthermore, Emergency Use Authorization (EUA) of an experimental gene-based vaccine does not mean that there is a federal law requiring availability of said experimental vaccine. In fact, granting EUA of a medical countermeasure (MCM) is a function of a federal government bureaucratic agency-the Food and Drug Administration (FDA)- which is supposed to assure Americans' safety regarding their food, medications, and medical devices. The US Supreme Court's decision overturning the Chevron Doctrine makes it clear that bureaucrats do NOT make laws and cannot enforce their interpretation of rules and regulations.

Moreover, the recent extension of the EUA for the experimental Covid-19 vaccine was a very controversial move by the FDA, a conflicted agency whose members have previously worked for the

industry that they purport to regulate. This extension was seen as an avenue to prevent accountability for the enormous number of deaths, disabilities and serious adverse reactions caused by the experimental Covid-19 vaccines, by continuing the liability protections afforded by the declaration.

Many physicians and scientists have argued that EUA status should have never been granted for this experimental vaccine because the Covid-19 vaccine did not meet the FDA's own requirements: 1.) a medical countermeasure (MCM) may be used to prevent serious or life-threatening disease or condition, and 2.) the benefits outweigh the risks, and 3.) there "must be no adequate, approved, and available alternative to the candidate product for diagnosing, preventing, or treating the disease or condition." (3) Certainly, four years after the EUA declaration, we know without a doubt that these requirements have NOT been met.

Let us look at these requirements:

1. The MCM (Covid-19 vaccine) may be used to PREVENT disease. We now know that these vaccines do NOT prevent disease, nor transmission of disease. In fact, the more shots one receives, the more likely they are to get Covid. (4)
2. The benefits outweigh the risks. There have been more deaths due to the Covid-19 vaccines than due to Covid infection. As of Dec 27, 2024, VAERS (Vaccine Adverse Events Reporting System) showed that the Covid-19 vaccines caused 38,264 deaths, 219,594 hospitalizations, and 1,658,330 adverse events. There were reports of 28,814 cases of myocarditis, which often affects adolescent males and young men. (5) Sadly, there is a 50% mortality rate at 5 years for those who suffer this adverse event. It is also important to keep in mind that there is an under-reporting factor to 31-100. Even our own Montana Attorney General, Austin Knutsen, along with thirteen other Attorneys General, has appealed to the Department of Health and Human Services on behalf of the Covid-19 vaccine-injured, hoping to provide monetary relief from the Countermeasures Injury Compensation Program (CICP). (6)
3. There must be no alternative product for preventing and treating the disease. This is where hundreds of years of medical knowledge was swept away with the stroke of a pen! It is called **natural immunity**: that immunity to an infectious disease which is conferred upon a person who has recovered from said infection. Since the EUA Covid-19 vaccines only became available to the public ONE YEAR AFTER the onset of the pandemic, many people had natural immunity and never needed an experimental vaccine. In fact, there are over 160 published studies that showed natural immunity to Covid-19 was superior and more enduring than vaccination immunity. (7) In addition, there were many medications that were effective at preventing and treating Covid-19, including Vitamin D, Zinc, Povidone iodine nasal spray and gargles, Pepcid, Melatonin, Azithromycin, Aerosolized Budesonide, Fluvoxamine, Ivermectin, and Hydroxychloroquine, just to name a few.

The people of Montana have every right to bring forth legislation to advance and protect the health, life, liberty, and livelihood of the state's citizenry. This legislative bill is necessary because federal bureaucrats, like those at the FDA, have failed to do their job. They have allowed a dangerous medical product that has caused death and suffering of millions of US citizens, to remain on the market. This complete failure is even more grotesque than the famous Vioxx recall in 2004, after at least 140,000 users suffered heart attacks, and 60,000 people died. Though Merck eventually voluntarily recalled the dangerous medication, subsequent investigations criticized the FDA for its "expedited review process and its timeliness in conducting and stopping clinical trials when adverse information is found that potentially puts the public at risk." (After Vioxx received approval from the FDA to treat arthritis pain, Merck began a clinical trial using Vioxx for prevention colorectal polyps. During this trial, it was evident that Vioxx increased the risk of stroke and heart attack, but this information was not revealed to the public in a timely fashion.) (8) Furthermore, the FDA was criticized for "its seemingly cozy relationship with Merck. At a Senate Finance Committee hearing, witnesses described how danger signals of Vioxx went ignored." (8)

In the last 2 years, several other states have passed laws, or brought forth legislation which would prohibit many FDA-approved products to safeguard their citizens health and well-being, as allowed by the Tenth Amendment of the U.S. Constitution. These include:

1. California Food Safety Act (AB-418) passed 10/9/23, which states: "No person or entity can manufacture, sell, deliver, distribute, hold, or offer for sale, in commerce a food product for human consumption that contains brominated vegetable oil, potassium bromate, propylparaben, or red dye 3. (Up to $5,000 for a first violation; up to $10,000 each subsequent violation.)" (9)
2. Illinois Prohibited Food Additives (SB2637) which had its second reading on 2/22/24 and is currently listed as 'session sine die', and states: "a person or entity shall not manufacture, sell, deliver, distribute, hold, or offer for sale a food product for human consumption that contains brominated vegetable oil, potassium bromate, propylparaben, or red dye 3. (Up to $5,000 for a first violation; up to $10,000 each subsequent violation.)" (9)
3. New York Bill A6424A which was amended/ re-referred to Agriculture 2/22/24, and which states: "It shall be unlawful for any person, firm, association, or corporation to manufacture, compound, brew, distill, produce, process, sell, deliver, distribute, hold, offer or expose for sale any of the following substances as food additives or food color additives or any food or food product containing azodicarbonamide, brominated vegetable oil (BVO), butylated hydroxyanisole (BHA), potassium bromate, propylparaben, Red 3, and titanium dioxide. (Dairy products containing titanium dioxide are exempted.)" (9)

Many groups, scientists, researchers, and physicians have called for a halt to these dangerous medical products, especially once it was learned that these mRNA vaccines are contaminated with hundreds of billions of copies of plasmid DNA, including the SV40 promoter/ enhancer gene, which increase cancer

risk in recipients. Those calling for an immediate moratorium include World Council for Health, The McCullough Foundation, Americans for Health Freedom, NORTH group, The Hope Accord, Doctors for COVID Ethics, Association of American Physicians and Surgeons, and Florida Surgeon General, Dr. Joseph Ladapo. (10) Five states' Attorneys General, including Texas and Kansas, have filed a suit against Pfizer for knowingly misrepresenting the efficacy of the Covid-19 vaccine, and for conspiring with social media platforms to censor criticism of the vaccines. (11)

In conclusion, the Tenth Amendment of the United States Constitution allows the state of Montana to establish laws and regulations to promote and protect the health, safety, and general welfare of Montanans. It is abundantly clear that mRNA vaccines (AKA gene-based vaccines) such as the Covid-19 vaccine are dangerous medical products. Federal regulatory agencies have failed. The hands of Justice move too slowly. Therefore, the people of Montana will use our representative form of government to enact a law that will ban gene-based vaccines from being administered in the state of Montana.

1. Strom S, J.D., Maggio E, Esq. "Federalism and the U.S. Constitution." Find Law. Oct 3, 2024. pp 1-8. https://constitution.findlaw.com/federalism-and-the-u-s--constitution.html
2. Justia U.S. Supreme Court Center. Jacobson v. Massachusetts 197 U.S. 11 (1905). pp 1-27. https://supreme.justia.com/cases/federal/us/197/11/
3. FDA. Office of the Commissioner, Office of the Chief Scientist, Office of Counterterrorism and Emerging Threats. "Emergency Use Authorization of Medical Products and Related Authorities." Guidance for Industry and Stakeholders. Jan 2017. pp 1-29. https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities
4. Shrestha, N.K., et al. Risk of Coronavirus Disease 2019 (Covid-19) among those up-to-date and not up-to-date on Covid-19 vaccination by US CDC criteria. PLOS One. Nov 8, 2023. https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0293449
5. https://openvaers.com/
6. Letter to Department of Health and Human Services from Attorneys General State of Kansas, and Utah, and twelve others. Re: COVID-19 Vaccine Injury Compensation Program, Dec 30,2024. Pp 1-9. https://www.sirillp.com/wp-content/uploads/2025/01/2024-12-30-Letter-re-Covid-Injury-Claims-under-CICP-7127ec397b54d5a3e2c7808570eaa2a5.pdf
7. Alexander, P.E., 160 Plus Research Studies Affirm Naturally Acquired Immunity to Covid-19: Documented, Linked, and Quoted. Brownstone Institute. Oct 17,2021. pp 1-57. https://brownstone.org/articles/research-studies-affirm-naturally-acquired-immunity/
8. Gerberich, A. Vioxx: Treatment for Arthritis and Recall for Patient Deaths. Drugwatch.com. Sept 5, 2023. pp 1-16. https://www.drugwatch.com/vioxx/

9. The Acheson Group. "Do Your Foods Have Any Chemicals on a State or Federal List?" March 19, 2024. pp1-7. https://achesongroup.com/do-your-foods-have-any-chemicals-on-a-state-or-federal-list/?cmid=52b18ff1-a174-49a9-8e6b-cd321519b07a
10. Hulscher, N. Calls for an Immediate Global Moratorium on COVID-19 mRNA Injections Intensify. Peter McCullough Substack. Nov 29,2024. pp1-8. https://petermccuIloughmd.substack.com/p/calls-for-an-immediate-moratorium?utm_source=publication-search
11. Ken Paxton, Attorney General of Texas. Attorney General Kan Paxton Continues Lawsuit Against Pfizer for Knowingly Misrepresenting the Efficacy of the COVID-19 Vaccine. Press Release. Jan 0,2025. pp 1-2. https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-continues-lawsuit-against-pfizer-knowingly-misrepresenting-efficacy