

LEGAL REVIEW NOTE

Bill No.: SB 193

LC#: 562, To Legal Review Copy, as of
December 30, 2024

Short Title: Provide that members of the attorney's
examining board are appointed by the governor.

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Date: January 21, 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:

SB 193 amends section 37-61-102, which currently provides:

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1)

The supreme court shall appoint members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The board may not exceed seven members. The court may release, dismiss, or remove any member of the board and appoint other members at any time.

(2) A majority of the board is a quorum and may conduct examinations.

(3) The board shall perform the duties and render assistance in the examinations of applicants as prescribed by the court and is governed and controlled by the rules that the court may prescribe.

(Emphasis added). SB 193, as drafted, removes the authority of the supreme court to “appoint members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar” and places that authority with the governor.

SB 193 also removes the Supreme Court’s authority to “release, dismiss, or remove any member of the [examining] board and appoint other members at any time” and places that authority with the governor.

Lastly, SB 193 provides that the “[examining] board shall perform the duties and render assistance in the examinations of applicants as prescribed” by the governor instead of the Supreme Court.

SB 193, as drafted, may raise a potential separation of powers issue to the extent it prohibits the Supreme Court from making and then enforcing rules regarding the admission of members of the bar. Specifically, this raises a potential conflict with Article VII, section 2(3) of the Montana Constitution, which provides:

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

(Emphasis added). The separation of powers clause of the Montana Constitution at Article III, section 1, provides:

Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons

charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Requestor Comments: