

LEGAL REVIEW NOTE

Bill No.: SB201

LC#: LC1025, To Legal Review Copy, as of
January 29, 2019

Short Title: An act generally revising
qualifications necessary to hold a
mining permit.

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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, LC1025 generally revises qualifications necessary to hold a mining permit. Specifically, the draft proposes to require mine operators desiring a permit and any successor entities to provide evidence that the operators or successor entities will provide bonding or other financial assurance necessary to meet financial obligations for employee pensions. It is this portion relating to employee pensions that may potentially be preempted by the Employee

Retirement Income Security Act of 1974 (ERISA) and the Supremacy Clause of the U.S. Constitution.

ERISA generally requires qualifying private employee benefit plans to provide participants with plan information, features, funding, vesting, benefit accrual, claims, and appeals. Additionally, ERISA generally guarantees payment of certain benefits through the Pension Benefit Guaranty Corporation (PBGC) as well as providing other protections for participants of benefit plans.

The U.S. Supreme Court has noted that ERISA "seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures. Those systems and procedures are intended to be uniform." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 943-944 (2016) [internal citations omitted]. Thus, in order to ensure uniform regulation, ERISA broadly preempts state laws concerning employee benefit plans stating that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any [ERISA] employee benefit plan." ERISA, 514(a), 29 U.S.C. 1144. Indeed, this preemption clause has been deemed one of the broadest ever enacted. *See: Albert Feuer, When do State Laws Determine ERISA Plan Benefit Rights, 47 Marshall L. Rev. 145, 153 (2013).*

Thus, state laws affecting fundamental ERISA responsibilities are potentially preempted. This generally includes state laws pertaining to plan funding, reporting, disclosure, vesting, and fiduciary duties of private employee benefit plans. *See: N.Y. St. Conf. of Blue Cross & Blue Shield Plans v. Travelers*, 514 U.S. 645, 651 (1995). In other words, state laws that mandate benefits, bind employers or administrators, require additional reporting, or provide alternative enforcement mechanisms are potentially preempted under ERISA.

Recently, the U.S. Supreme Court upheld ERISA's broad preemption authority in *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016). There, the court held that a Vermont statute requiring disclosure of payments relating to health care claims and other health care services information was preempted by ERISA. The court held that reporting, disclosure, and recordkeeping were fundamental components of ERISA and the Vermont law infringed on those reporting requirements.

Importantly, the court noted that the purpose of ERISA was not necessarily guarantee benefits under covered plans, but rather to make promised benefits more stable and to make reporting uniform across the country:

ERISA does not guarantee substantive benefits. The statute, instead, seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures. [...] Those systems and procedures are intended to be uniform. [...] Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries.' [...]

Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936, 943-944 (internal citations omitted).

As drafted, LC1025 may potentially conflict with the provisions of ERISA by requiring mine operators and successor entities to provide evidence that pension plans have adequate funding. The draft relates to ERISA in that it requires reporting on financial solvency. Both the reporting and financial solvency requirements directly implicate two fundamental functions of ERISA. Additionally, LC1025 predicates mine permitting upon a sufficient showing of plan funding. Like the Vermont law at issue in *Gobeille*, LC1025 may potentially infringe upon ERISA's essential functions to govern plan reporting and administration.

Requestor Comments: