SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3/26/13
BILL NO. SB 303-377

LEGAL REVIEW NOTE

LC#: LC0776, To Legal Review Copy, as of February 14, 2013

Short Title: Generally revise laws related to medical marijuana

Attorney Reviewers: Todd Everts/Julianne Burkhardt

Date: February 18, 2013

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 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.

Legal Reviewer Comments:

The 2011 Legislature enacted the "Montana Marijuana Act" (section 50-46-301, MCA, *et seq.).* The Montana Marijuana Act creates a framework enabling people with a qualifying medical condition to obtain and possess marijuana for medicinal purposes without threat of prosecution under Montana state law.

The Montana Marijuana Act raises potential federal constitutional issues related to the Supremacy Clause under the United States Constitution, Art. VI, cl. 2, that provides that federal law is the "supreme law of the land". The United States Supreme Court has ruled that the federal Controlled Substances Act, 21 U.S.C. 801, *et seq.,* prohibits the manufacture, distribution, dispensation, and possession of marijuana even when state law authorizes its use to treat medical conditions. *Gonzales v. Raich,* 545 U.S. 1, 29, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (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 Specifically, the Court in *Raich* held that under the Supremacy Clause, the federal statute superseded California's Compassionate Use Act authorizing the limited possession and cultivation of marijuana for medicinal purposes. (at 33-17, *Raich*).

Similar to California's medical marijuana laws, the Montana Marijuana Act's authorization of use and possession of marijuana for medicinal purposes likely conflicts with federal law. This

conflict may raise potential Supremacy Clause constitutional issues as noted in *Raich*.

LC0776 as drafted amends the Montana Marijuana Act to create the Montana Medicinal Cannabis Act that retains provisions of law and enacts new laws that authorize of the use and possession of marijuana for medicinal purposes and, therefore, likely conflicts with federal law and, by extension, may run afoul of the United States Supreme Court holding in *Raich*.

Requester Comments: None.