

Legislative Analysis



TRIBAL MARIJUANA BUSINESSES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 179 as reported from House committee
Sponsor: Sen. Jeff Irwin

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 180 (S-1) as reported from House committee
Sponsor: Sen. Roger Hauck

House Committee: Regulatory Reform
Senate Committee: Regulatory Affairs
Complete to 10-4-23

SUMMARY:

Senate Bills 179 and 180 would amend the Michigan Regulation and Taxation of Marihuana Act, which regulates the adult recreational marijuana market, to do all of the following:

- Allow the *Cannabis Regulatory Agency* (CRA) to enter into an agreement with an Indian tribe regarding marijuana-related regulatory matters. (SB 180)
- Exempt sales of marijuana by tribal businesses located in Indian lands from the state's 10% excise tax if certain conditions are met. (SB 180)
- Prohibit certain individuals from having a pecuniary interest in a tribal marijuana business. (SB 180)
- Provide that transportation of marijuana by a licensee to or from a tribal marijuana business is not unlawful. (SB 180)
- Allocate a portion of the unexpended balance of the Marihuana Regulation Fund to an Indian tribe for certain sales of marijuana attributable to a marijuana retailer or microbusiness located in that tribe's Indian lands. (SB 179)

Cannabis Regulatory Agency would mean the Marijuana Regulatory Agency that was renamed the Cannabis Regulatory Agency under Executive Order 2022-1.¹

Senate Bill 180

The act now allows the CRA to enter into an agreement with an advisor or consultant as necessary to adequately perform its duties. The bill would additionally allow the CRA to enter into an agreement with an *Indian tribe* regarding marijuana-related regulatory issues that involve the interests of Michigan and the Indian tribe, including those related to the commercial growing, processing, sale, testing, transportation, and possession of marijuana.

Indian tribe would mean any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the U.S. Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians, and is recognized as possessing powers of self-government.

¹ The Marijuana Regulatory Agency was renamed the Cannabis Regulatory Agency in part to reflect a regulatory authority that includes hemp as well as marijuana. (Regulation of processors-handlers of hemp is the purview of the CRA, while regulation of industrial hemp cultivation remains the responsibility of the Michigan Department of Agriculture and Rural Development (MDARD).)

Currently, a person having a pecuniary interest, directly or indirectly, in a marijuana establishment is prohibited from being an employee, advisor, or consultant involved in the act's implementation, administration, or enforcement. The bill would apply this prohibition also to a direct or indirect pecuniary interest in a **tribal marijuana business**.²

Tribal marijuana business would mean a business that meets all of the following:

- It engages in the type of activities licensed under the act.
- It is not a marijuana establishment.
- It is wholly owned by a **qualifying Indian tribe**, the enrolled members of a qualifying Indian tribe, or a combination of a qualifying Indian tribe and the members of that qualifying Indian tribe.
- It is located in Michigan and in the qualifying Indian tribe's **Indian lands**.
- It is subject to a tax or fee that the qualifying Indian tribe imposes on the sale or transfer of marijuana and that meets all of the following requirements:
 - It is based on the sales price of the marijuana.
 - Its rate is equal to or greater than the rate of the excise tax described below.
 - It is imposed on marijuana sold or otherwise transferred to a person other than a marijuana establishment or tribal marijuana business. (This provision would not prohibit a qualifying Indian tribe from imposing its tax or fee on sales or transfers of marijuana that are not described in this provision.)

Qualifying Indian tribe would mean an Indian tribe that meets both of the following conditions:

- The Indian tribe has entered into an agreement with the Cannabis Regulatory Agency as described above, and that agreement is in effect.
- The Indian tribe has entered into an agreement with the Department of Treasury under 1941 PA 122 that specifies the applicability of the excise tax described below to the Indian tribe, the tribe's members, and a person that conducts business with the tribe or its members, and that agreement is in effect.

Indian lands would mean either of the following:

- All lands within the limits of an Indian reservation.
- Any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Acts that are not unlawful

The act currently provides that certain acts performed by licensees are not unlawful; not an offense; not grounds for seizing or forfeiting property; not grounds for arrest, prosecution, or penalty in any manner; not grounds for search or inspection except as authorized by the act; and not grounds to deny any other right or privilege.

² Note that, in accordance with the conventions of Michigan law, the defined term is actually "tribal *marihuana* business." This summary uses the spelling *marijuana* except when referring to a named act or fund.

The bill would add *transporting marijuana to or from a tribal marijuana business* to the acts that are not unlawful for each category of licensee.

10% excise tax on sales of marijuana

Currently, in addition to any other tax, an excise tax is imposed on each marijuana *retailer and on each marijuana microbusiness* at the rate of 10% of the sales price for marijuana sold or otherwise transferred to anyone other than a marijuana establishment.

The bill would delete the text italicized above and instead provide that the excise tax is imposed on each marijuana *establishment and on each person who sells marijuana* at the rate of 10% of the sales price for marijuana sold or otherwise transferred to a *person* other than a marijuana establishment *or tribal marijuana business*.

However, the excise tax would not apply to marijuana sold or otherwise transferred in the following situations:

- From a tribal marijuana business.
- Under the Michigan Medical Marihuana Act.
- Under the Medical Marihuana Facilities Licensing Act.

MCL 333.27953 et seq.

Senate Bill 179

Money collected from the 10% excise tax and fees collected under the act are deposited into the Marihuana Regulation Fund and are to be expended first for the implementation, administration, and enforcement of the act, and second, until 2022 or for at least two years, to provide \$20.0 million annually to one or more clinical trials that are approved by the Food and Drug Administration (FDA) and sponsored by a nonprofit organization or researcher within an academic institution researching the efficacy of marijuana in treating the medical conditions of U.S. veterans and preventing veteran suicide.

Senate Bill 179 would amend the Michigan Regulation and Taxation of Marihuana Act to revise the above provisions to provide that the money must be expended from the fund for the implementation, administration, and enforcement of the act and that, until 2022 or for at least two years, whichever is later, \$20.0 million annually must be spent for one or more development and research projects, including clinical trials, that are approved by the FDA and sponsored by a nonprofit organization or researcher within an academic institution researching the efficacy of marijuana in treating the medical conditions and preventing the suicide of U.S. veterans.

The act currently requires the unexpended balance in the fund to be allocated in specified amounts to municipalities and counties in which a marijuana retailer or microbusiness is located, to the School Aid Fund, and to the Michigan Transportation Fund for the repair and maintenance of roads and bridges.

The bill would provide that, if a marijuana retailer or microbusiness is located in Indian lands, the portions of the unexpended balances attributable to the marijuana retailer or microbusiness that would otherwise have been allocated to a municipality and a county as described above must instead be allocated to the Indian tribe in whose Indian lands the marijuana retailer or

microbusiness is located. (Marijuana retailers and microbusinesses are defined in the act as entities that are licensed under the act.)

MCL 333.27964

Neither bill can take effect unless both are enacted.

BACKGROUND AND DISCUSSION:

According to committee testimony, the marijuana industry regulated by the CRA and businesses operated by tribal members on tribal lands are currently in two separate silos, meaning that product cannot be sold between these businesses. The bills are intended to allow for the sale of product between the two types of businesses while maintaining a level playing field by requiring tribal businesses to pay the same tax rate as other businesses. Supporters also argued that the bills would improve consumer safety by allowing communication between the CRA and tribal businesses to identify contaminated or recalled products.

The bills are similar to House Bills 5706 and 6060 of the 2021-22 legislative session, which were passed by the House.

FISCAL IMPACT:

Senate Bill 179 would alter the distribution of certain unexpended balances in the Marijuana Regulation Fund, which is a state restricted fund that receives revenue from fees collected under the Michigan Regulation and Taxation of Marijuana Act (2018 IL 1) and from a 10% excise tax levied on adult-use marijuana sales. SB 179 would also require taxes collected by the Department of Treasury under an agreement with an Indian tribe to be deposited to the fund. The primary fiscal impact from the bill would stem from the allocation of unexpended fund balances attributable to marijuana businesses located on Indian lands. Under current law, after administrative costs and any other required expenditures are made, all remaining revenue is distributed in the following manner: 35% to the School Aid Fund, 35% to the Michigan Transportation Fund, and 15% each to counties and local governments, based on the number of marijuana retail stores and microbusiness within their jurisdictions. SB 179 require that, to the degree marijuana retail stores and microbusinesses are located on tribal lands, the share of the revenue accruing from those stores and microbusinesses that would have otherwise been distributed to county or local governments would instead be allocated to the respective Indian tribe.

Senate Bill 180 would not have a direct fiscal impact on any units of state government. Under the bill, “qualifying Indian tribes” would need to impose a tax or fee on specific marijuana sales and transfers at a rate of at least 10%. Tribes would be to recipients of this revenue.

POSITIONS:

A representative of the Bay Mill Indian Community testified in support of the bill. (9-26-23)

The following entities indicated support for the bill:

- Cannabis Regulatory Agency (9-26-23)

- Grand Traverse Band of Ottawa and Chippewa Indians (9-26-23)
- Common Citizen (9-26-23)
- Saginaw Chippewa Indian Tribe (9-26-23)
- Michigan Cannabis Industry Association (10-3-23)

Legislative Analyst: Alex Stegbauer
Fiscal Analysts: Marcus Coffin
Jim Stansell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.