

TRIBAL MARIJUANA BUSINESSES

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

House Bill 5706 (proposed substitute H-2)

Sponsor: Rep. Roger Hauck

Committee: Regulatory Reform

Complete to 2-22-22

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

SUMMARY:

House Bill 5706 would amend the Michigan Regulation and Taxation of Marijuana Act, which regulates the adult recreational marijuana market, to do the following:

- Allow the Marijuana Regulatory Agency (MRA)¹ to enter into an agreement with an Indian tribe regarding marijuana-related regulatory matters.
- Exempt sales of marijuana by tribal businesses located in Indian lands from the state's 10% excise tax if certain conditions are met.
- Allocate a portion of the unexpended balance of the Marijuana 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.
- Allow the Department of State Police to recover its costs from the MRA for assisting the MRA with implementing, administering, or enforcing the act.
- Prohibit a pecuniary interest in a tribal marijuana business by certain individuals.

The act now allows the MRA to enter into an agreement with an advisor or consultant as necessary to adequately perform its duties. The bill would additionally allow the MRA 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.

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

¹ Under Executive Order 2022-1, the Marijuana Regulatory Agency will be renamed the Cannabis Regulatory Agency (CRA) effective April 1, 2022, to reflect a regulatory authority that will include hemp as well as marijuana. Regulation of processors-handlers of hemp will be the purview of the CRA, and the regulation of industrial hemp cultivation will remain with the Michigan Department of Agriculture and Rural Development (MDARD).

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.

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 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***.
- The qualifying Indian tribe imposes its own tax or fee on the sale or transfer of marijuana and the tax or fee meets both 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.

Qualifying Indian tribe would mean an Indian tribe that has entered into an agreement with the Marijuana Regulatory Agency as described above.

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.

The Department of State Police (MSP) currently is required to cooperate and assist the MRA in performing the agency's duties under the act, which includes conducting background investigations of applicants. The bill would allow MSP to recover its costs of cooperation and assistance from the MRA.

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 at the rate of 10% of the sales price for marijuana sold or otherwise transferred to anyone other than a marijuana establishment *or tribal marijuana business*.

However, the excise tax would not apply to marijuana sold or otherwise transferred from a tribal marijuana business to either of the following:

- Another tribal marijuana business.
- A person that is not a tribal marijuana business or marijuana establishment.

Marihuana Regulation Fund expenditures

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.

The bill would 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 333.27953 et seq.

FISCAL IMPACT:

A fiscal analysis is in progress.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ 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.