

Legislative Analysis



TRIBAL MARIJUANA BUSINESSES

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House Bill 5706 (H-4) as reported from committee
Sponsor: Rep. Roger Hauck

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

House Bill 6060 as reported from committee
Sponsor: Yousef Rabhi

Committee: Regulatory Reform
Complete to 9-21-22

SUMMARY:

House Bills 5706 and 6060 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)¹ to enter into an agreement with an Indian tribe regarding marijuana-related regulatory matters. (HB 5706)
- Exempt sales of marijuana by tribal businesses located in Indian lands from the state's 10% excise tax if certain conditions are met. (HB 5706)
- Allow the Department of State Police to recover its costs from the CRA for assisting the CRA with implementing, administering, or enforcing the act. (HB 5706)
- Prohibit certain individuals from having a pecuniary interest in a tribal marijuana business. (HB 5706)
- Provide that transportation of marijuana by a licensee to or from a tribal marijuana business is not unlawful. (HB 5706)
- 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. (HB 6060)

House Bill 5706

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 bill refers to the Marijuana Regulatory Agency. Effective April 1, 2022, that agency was renamed the Cannabis Regulatory Agency (CRA) by Executive Order 2022-1 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.

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

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.

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.

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.

House Bill 6060

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.

House Bill 6060 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.)

The bill would not take effect unless House Bill 5706 is also enacted.

MCL 333.27964

BRIEF DISCUSSION:

When the possession, use, and sale of adult recreational marijuana was legalized in the state in 2018, the language of the proposal failed to include businesses owned and operated by tribal members and operated on tribal lands. As a result, such marijuana businesses cannot make use of Metrc—the state’s seed-to-sale tracking system that attaches tags to each marijuana plant and labels to wholesale product packages that enable marijuana inventory to be tracked through the entire supply chain. As the law is currently written, only businesses regulated by the state Cannabis Regulatory Agency (formerly the Marijuana Regulatory Agency) may make use of the seed-to-sale tracking system.

House Bill 5706 would authorize the CRA to enter into an agreement that would allow tribes to benefit economically from the burgeoning adult recreational marijuana business for businesses located on federally recognized tribal lands but also be able to use the state’s Metrc system to monitor and track the marijuana as it moves through the process of being grown, processed, tested, and sold to adult customers. This would not only benefit tribal businesses but would also add a protection to consumers, as it allows contaminated products to be identified and removed from the marketplace more efficiently and will also aid tribal law enforcement in mitigating diversion of marijuana products and underage sales.

House Bills 5706 and 6060 also would work together to balance the need to create a level playing field between tribal marijuana businesses and the current commercial adult recreational marijuana businesses by requiring tribes to create a tax structure similar to the 10% excise tax in place for the commercial businesses while acknowledging that Indian tribes are sovereign nations. Under the bills, 30% of the excise tax collected on sales would remain with the tribes on whose tribal land the business is located. Typically, this portion of excise tax from commercial businesses is distributed to the municipalities and counties in which an adult recreational business is located. Tribes could use this revenue for various purposes, such as to help fund tribal courts. The balance of the tax collected would be distributed as it is for commercial businesses, with 35% going to the state School Aid Fund and 35% going to the Michigan Transportation Fund for road repairs in the state.

FISCAL IMPACT:

House Bill 5706 would not have a significant fiscal impact on any unit of state or local government.

House Bill 6060 would have no impact on state revenue received from the marijuana excise tax, although the revenue (and distributions) to local governments would be impacted.

Under current law, after administrative costs and any other requirements, all remaining revenue from the 10% excise tax on recreational marijuana 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. HB 6060 would provide 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 gone to the county or local government instead would be allocated to the Indian tribe located on those tribal lands.

POSITIONS:

A representative of the Cannabis Regulatory Agency testified in support of HB 5706. (2-15-22)

The following entities indicated support for HB 5706:

- Gun Lake Tribe (6-14-22)
- Bay Mills Indian Community (2-15-22)

The Sault Ste. Marie Tribe of Chippewa Indians indicated opposition to the bills. (6-14-22)

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■ 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.