

SENATE BILL NO. 375—SENATOR SEGERBLOM

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Authorizes agreements between the Governor and Indian tribes in this State relating to the regulation of the use of marijuana. (BDR 40-321)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the medical use of marijuana; authorizing the Governor or his or her designee to enter into agreements with Indian tribes in this State relating to the regulation of the use of marijuana; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The United States Constitution reserves the power to regulate commerce with  
2 tribal governments to the United States Congress. (U.S. Const., Art. I, § 8)  
3 Congress has delegated limited authority relating to Indian tribes to the  
4 states, authorizing certain states to exercise broad criminal jurisdiction and  
5 limited civil jurisdiction over tribal lands within those states. (Pub. Law No.  
6 83-280, 25 U.S.C. §§ 1321-1326; NRS 41.430) Subsequent decisions of the  
7 United States Supreme Court have clarified that this grant of jurisdiction  
8 to the states allows for jurisdiction over criminal matters and over private  
9 civil litigation, but not for the enforcement of general civil regulatory power on  
10 tribal lands. (*California v. Cabazon Band of Indians*, 480 U.S. 202 (1987)  
11 *superseded by statute in part*, Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et  
12 seq., *as recognized in U.S. v. E.C. Investments, Inc.*, 77 F.3d 327, 330 (9th Cir.  
13 1996))

14 Existing law exempts a person who holds a valid registry identification card,  
15 medical marijuana establishment registration certificate or medical marijuana  
16 establishment agent registration card from state prosecution for the possession,  
17 delivery, production, processing and use of marijuana and provides for the  
18 registration and regulation of medical marijuana establishments. (NRS 453A.200,  
19 453A.320-453A.370) **Sections 1 and 2** of this bill authorize the Governor or his or  
20 her designee to enter into agreements with tribal governments within this State to  
21 facilitate cooperation in the implementation of state laws and tribal laws governing  
22 the medical use of marijuana. **Section 3** of this bill authorizes the Governor, on or



23 after January 1, 2020, to enter into similar agreements relating to laws governing  
24 the adult, nonmedical use of marijuana.

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1 WHEREAS, Existing law in this State creates a limited exemption  
2 from state prosecution for persons who engage in the medical use of  
3 marijuana or who cultivate, produce or sell marijuana for medical  
4 use pursuant to a comprehensive program for the regulation of the  
5 medical use of marijuana; and

6 WHEREAS, Because states do not generally have regulatory  
7 power over tribal governments, the tribal governments within this  
8 State are not generally bound by the comprehensive program for the  
9 regulation of the medical use of marijuana created by the Nevada  
10 Legislature and may, subject to federal law, choose to create their  
11 own laws relating to the medical use of marijuana on tribal land;  
12 and

13 WHEREAS, A memorandum issued on August 29, 2013, by the  
14 Deputy Attorney General of the United States, James M. Cole,  
15 hereinafter referred to as the "Cole Memo," outlined eight priorities  
16 for federal law enforcement relating to marijuana and indicated that  
17 the Department of Justice will not devote law enforcement resources  
18 to prosecuting persons or businesses who comply with state or local  
19 laws relating to marijuana so long as those laws do not contradict  
20 the priorities outlined in the Cole Memo and are strongly enforced;  
21 and

22 WHEREAS, A subsequent memorandum issued on October 28,  
23 2014, by Monty Wilkinson, the Director of the Executive Office for  
24 United States Attorneys of the United States Department of Justice,  
25 hereinafter referred to as the "Wilkinson Memo," provided that the  
26 enforcement priorities outlined in the Cole Memo will also guide  
27 enforcement efforts on tribal lands; and

28 WHEREAS, Tribal governments have begun to implement the  
29 guidance contained in the Cole Memo and the Wilkinson Memo to  
30 adopt their own programs for the regulation of marijuana on tribal  
31 lands, creating the potential for conflicts with the program for the  
32 medical use of marijuana created by the Nevada Legislature which  
33 may threaten public health and safety and create uncertainty for  
34 businesses operating in this State; and

35 WHEREAS, The State of Washington, when confronted with  
36 similar issues regarding the regulation of marijuana, created a  
37 successful system for cooperation with the tribal governments in its  
38 state by authorizing its Governor to enter into agreements with tribal  
39 governments to address issues involving both state and tribal  
40 interests or affecting state-tribal relations; and



1 WHEREAS, A similar system in this State would mitigate threats  
2 to public health and safety posed by potential conflicts between state  
3 and tribal laws relating to marijuana and bolster commerce by  
4 reducing uncertainty and allowing for the more efficient conduct of  
5 business in this State and on tribal lands; now, therefore,

6  
7 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
8 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:  
9

10 **Section 1.** Chapter 453A of NRS is hereby amended by  
11 adding thereto a new section to read as follows:

12 *1. The Governor or his or her designee may enter into one or*  
13 *more agreements with tribal governments in this State to*  
14 *efficiently coordinate the cross-jurisdictional administration of the*  
15 *laws of this State and the laws of tribal governments relating to the*  
16 *medical use of marijuana. Such an agreement may include,*  
17 *without limitation, provisions relating to:*

18 *(a) Criminal and civil law enforcement;*

19 *(b) Regulatory issues relating to the possession, delivery,*  
20 *production, processing or use of marijuana, edible marijuana*  
21 *products and marijuana-infused products;*

22 *(c) Medical and pharmaceutical research involving*  
23 *marijuana;*

24 *(d) The administration of laws relating to taxation;*

25 *(e) Any immunity, preemption or conflict of law relating to the*  
26 *possession, delivery, production, processing or use of marijuana,*  
27 *edible marijuana products and marijuana-infused products; and*

28 *(f) The resolution of any disputes between a tribal government*  
29 *and this State, which may include, without limitation, the use of*  
30 *mediation or other nonjudicial processes.*

31 *2. An agreement entered into pursuant to this section must:*

32 *(a) Provide for the preservation of public health and safety;*

33 *(b) Ensure the security of medical marijuana establishments*  
34 *and the corresponding facilities on tribal land; and*

35 *(c) Establish provisions regulating business involving*  
36 *marijuana which passes between tribal land and non-tribal land in*  
37 *this State.*

38 *3. As used in this section, "tribal government" means a*  
39 *federally recognized American Indian tribe pursuant to 25 C.F.R.*  
40 *§§ 83.1 to 83.13, inclusive.*

41 **Sec. 2.** NRS 453A.200 is hereby amended to read as follows:

42 453A.200 1. Except as otherwise provided in this section and  
43 NRS 453A.300, a person who holds a valid registry identification  
44 card issued to the person pursuant to NRS 453A.220 or 453A.250 is  
45 exempt from state prosecution for:



- 1 (a) Possession, delivery or production of marijuana;
- 2 (b) Possession or delivery of paraphernalia;
- 3 (c) Aiding and abetting another in the possession, delivery or
- 4 production of marijuana;
- 5 (d) Aiding and abetting another in the possession or delivery of
- 6 paraphernalia;
- 7 (e) Any combination of the acts described in paragraphs (a) to
- 8 (d), inclusive; and
- 9 (f) Any other criminal offense in which the possession, delivery
- 10 or production of marijuana or the possession or delivery of
- 11 paraphernalia is an element.

12 2. In addition to the provisions of subsections 1 and 5, no  
13 person may be subject to state prosecution for constructive  
14 possession, conspiracy or any other criminal offense solely for being  
15 in the presence or vicinity of the medical use of marijuana in  
16 accordance with the provisions of this chapter.

17 3. The exemption from state prosecution set forth in subsection  
18 1 applies only to the extent that a person who holds a registry  
19 identification card issued to the person pursuant to paragraph (a) of  
20 subsection 1 of NRS 453A.220 and the designated primary  
21 caregiver, if any, of such a person:

22 (a) Engage in or assist in, as applicable, the medical use of  
23 marijuana in accordance with the provisions of this chapter as  
24 justified to mitigate the symptoms or effects of a person's chronic or  
25 debilitating medical condition; and

26 (b) Do not, at any one time, collectively possess with another  
27 who is authorized to possess, deliver or produce more than:

28 (1) Two and one-half ounces of usable marijuana in any one  
29 14-day period;

30 (2) Twelve marijuana plants, irrespective of whether the  
31 marijuana plants are mature or immature; and

32 (3) A maximum allowable quantity of edible marijuana  
33 products and marijuana-infused products as established by  
34 regulation of the Division.

35 ➤ The persons described in this subsection must ensure that the  
36 usable marijuana and marijuana plants described in this subsection  
37 are safeguarded in an enclosed, secure location.

38 4. If the persons described in subsection 3 possess, deliver or  
39 produce marijuana in an amount which exceeds the amount  
40 described in paragraph (b) of that subsection, those persons:

41 (a) Are not exempt from state prosecution for possession,  
42 delivery or production of marijuana.

43 (b) May establish an affirmative defense to charges of  
44 possession, delivery or production of marijuana, or any combination  
45 of those acts, in the manner set forth in NRS 453A.310.



1 5. A person who holds a valid medical marijuana establishment  
2 registration certificate issued to the person pursuant to NRS  
3 453A.322 or a valid medical marijuana establishment agent  
4 registration card issued to the person pursuant to NRS 453A.332,  
5 and who confines his or her activities to those authorized by NRS  
6 453A.320 to 453A.370, inclusive, *and section 1 of this act*, and the  
7 regulations adopted by the Division pursuant thereto, is exempt  
8 from state prosecution for:

9 (a) Possession, delivery or production of marijuana;

10 (b) Possession or delivery of paraphernalia;

11 (c) Aiding and abetting another in the possession, delivery or  
12 production of marijuana;

13 (d) Aiding and abetting another in the possession or delivery of  
14 paraphernalia;

15 (e) Any combination of the acts described in paragraphs (a) to  
16 (d), inclusive; and

17 (f) Any other criminal offense in which the possession, delivery  
18 or production of marijuana or the possession or delivery of  
19 paraphernalia is an element.

20 6. Notwithstanding any other provision of law and except as  
21 otherwise provided in this subsection, after a medical marijuana  
22 dispensary opens in the county of residence of a person who holds a  
23 registry identification card, including, without limitation, a  
24 designated primary caregiver, such a person is not authorized to  
25 cultivate, grow or produce marijuana. The provisions of this  
26 subsection do not apply if:

27 (a) The person who holds the registry identification card was  
28 cultivating, growing or producing marijuana in accordance with this  
29 chapter on or before July 1, 2013;

30 (b) All the medical marijuana dispensaries in the county of  
31 residence of the person who holds the registry identification card  
32 close or are unable to supply the quantity or strain of marijuana  
33 necessary for the medical use of the person to treat his or her  
34 specific medical condition;

35 (c) Because of illness or lack of transportation, the person who  
36 holds the registry identification card is unable reasonably to travel to  
37 a medical marijuana dispensary; or

38 (d) No medical marijuana dispensary was operating within 25  
39 miles of the residence of the person who holds the registry  
40 identification card at the time the person first applied for his or her  
41 registry identification card.

42 7. As used in this section, "marijuana" includes, without  
43 limitation, edible marijuana products and marijuana-infused  
44 products.



1       **Sec. 3.** Chapter 453D of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       1. *The Governor or his or her designee may enter into one or*  
4 *more agreements with tribal governments in this State to*  
5 *efficiently coordinate the cross-jurisdictional administration of the*  
6 *laws of this State and the laws of tribal governments relating to the*  
7 *adult use of marijuana not for medical purposes. Such an*  
8 *agreement may include, without limitation, provisions relating to:*

9       (a) *Criminal and civil law enforcement;*

10       (b) *Regulatory issues relating to the possession, delivery,*  
11 *production, processing or use of marijuana and marijuana*  
12 *products;*

13       (c) *The administration of laws relating to taxation;*

14       (d) *Any immunity, preemption or conflict of law relating to the*  
15 *possession, delivery, production, processing or use of marijuana*  
16 *and marijuana products; and*

17       (e) *The resolution of any disputes between a tribal government*  
18 *and this State, which may include, without limitation, the use of*  
19 *mediation or other nonjudicial processes.*

20       2. *An agreement entered into pursuant to this section must:*

21       (a) *Provide for the preservation of public health and safety;*

22       (b) *Ensure the security of marijuana establishments and the*  
23 *corresponding facilities on tribal land; and*

24       (c) *Establish provisions regulating business involving*  
25 *marijuana which passes between tribal land and nontribal land in*  
26 *this State.*

27       3. *As used in this section, "tribal government" means a*  
28 *federally recognized American Indian tribe pursuant to 25 C.F.R.*  
29 *§§ 83.1 to 83.13, inclusive.*

30       **Sec. 4.** 1. This section and sections 1 and 2 of this act  
31 become effective upon passage and approval.

32       2. Section 3 of this act becomes effective on January 1, 2020.

