

Senate Bill No. 375–Senator Segerblom

CHAPTER.....

AN ACT relating to 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:

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 (*California v. Cabazon Band of Indians*, 480 U.S. 202 (1987) *superseded by statute in part*, Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq., *as recognized in U.S. v. E.C. Investments, Inc.*, 77 F.3d 327, 330 (9th Cir.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

Existing law exempts a person who holds a valid registry identification card, medical marijuana establishment registration certificate or medical marijuana establishment agent registration card from state prosecution for the possession, delivery, production, processing and use of marijuana and provides for the registration and regulation of medical marijuana establishments. (NRS 453A.200, 453A.320-453A.370) Existing law also generally prohibits prosecution of a person who possesses one ounce or less of marijuana or one-eighth of an ounce or less of concentrated marijuana or who holds a license as a marijuana establishment and engages in activities relating to marijuana which comply with state law. (NRS 453D.110, 453D.120) This bill authorizes the Governor or his or her designee to enter into agreements with tribal governments within this State to facilitate cooperation in the implementation of state laws and tribal laws governing the use of marijuana.

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

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

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



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

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

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

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

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

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

Section 1. Chapter 223 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Governor or his or her designee may enter into one or more agreements with tribal governments in this State to efficiently coordinate the cross-jurisdictional administration of the laws of this State and the laws of tribal governments relating to the



use of marijuana. Such an agreement may include, without limitation, provisions relating to:

- (a) Criminal and civil law enforcement;*
- (b) Regulatory issues relating to the possession, delivery, production, processing or use of marijuana, edible marijuana products, marijuana-infused products and marijuana products;*
- (c) Medical and pharmaceutical research involving marijuana;*
- (d) The administration of laws relating to taxation;*
- (e) Any immunity, preemption or conflict of law relating to the possession, delivery, production, processing, transportation or use of marijuana, edible marijuana products, marijuana-infused products and marijuana products; and*
- (f) The resolution of any disputes between a tribal government and this State, which may include, without limitation, the use of mediation or other nonjudicial processes.*

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

- (a) Provide for the preservation of public health and safety;*
- (b) Ensure the security of medical marijuana establishments and marijuana establishments and the corresponding facilities on tribal land; and*
- (c) Establish provisions regulating business involving marijuana which passes between tribal land and non-tribal land in this State.*

3. As used in this section:

- (a) "Edible marijuana products" has the meaning ascribed to it in NRS 453A.101.*
- (b) "Marijuana" has the meaning ascribed to it in NRS 453.096.*
- (c) "Marijuana establishment" has the meaning ascribed to it in NRS 453D.030.*
- (d) "Marijuana-infused products" has the meaning ascribed to it in NRS 453A.112.*
- (e) "Marijuana product" has the meaning ascribed to it in NRS 453D.030.*
- (f) "Tribal government" means a federally recognized American Indian tribe pursuant to 25 C.F.R. §§ 83.1 to 83.13, inclusive.*

Secs. 2 and 3. (Deleted by amendment.)

Sec. 4. This act becomes effective upon passage and approval.

