

Amendment No. 299

Senate Amendment to Senate Bill No. 375	(BDR 40-321)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: Yes Title: Yes Preamble: Amend Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AAK/BJE



Date: 4/21/2017

S.B. No. 375—Authorizes agreements between the Governor and Indian tribes in this State relating to the regulation of the use of marijuana.  
(BDR 40-321)





## 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 ~~140-321~~ 18-321)

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:**

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) ~~(Sections 1 and 2 of this bill)~~ 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~~ 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 ~~medical~~ use of marijuana. ~~Section 3 of this bill authorizes the Governor, on or after January 1, 2020, to enter into similar agreements relating to laws governing the adult, nonmedical use of marijuana.~~

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 ~~program for the medical~~ 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 ~~453A~~ 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 ~~medical~~ 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, ~~and~~ marijuana-infused products ~~and~~ 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, ~~and~~ marijuana-infused products ~~and~~ 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 ~~“tribal”~~:

(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.

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

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

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

~~(b) Possession or delivery of paraphernalia;~~

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

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

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

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

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

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

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

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

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

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

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

~~→ The persons described in this subsection must ensure that the usable marijuana and marijuana plants described in this subsection are safeguarded in an enclosed, secure location.~~

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

~~(a) Are not exempt from state prosecution for possession, delivery or production of marijuana;~~

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

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

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

~~(b) Possession or delivery of paraphernalia;~~

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

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

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

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

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

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

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

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

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

~~7. As used in this section, "marijuana" includes, without limitation, edible marijuana products and marijuana infused products. (Deleted by amendment.)~~

1        **Sec. 3.** ~~[Chapter 452D of NRS is hereby amended by adding thereto a new~~  
2 ~~section to read as follows:~~

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

8        ~~(a) Criminal and civil law enforcement;~~

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

11        ~~(c) The administration of laws relating to taxation;~~

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

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

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

19        ~~(a) Provide for the preservation of public health and safety;~~

20        ~~(b) Ensure the security of marijuana establishments and the corresponding~~  
21 ~~facilities on tribal land; and~~

22        ~~(c) Establish provisions regulating business involving marijuana which~~  
23 ~~passes between tribal land and nontribal land in this State.~~

24        ~~3. As used in this section, "tribal government" means a federally recognized~~  
25 ~~American Indian tribe pursuant to 25 C.F.R. §§ 83.1 to 83.13, inclusive.]~~  
26 ~~(Deleted by amendment.)~~

27        **Sec. 4.** ~~[1.]~~ This ~~[section and sections 1 and 2 of this]~~ act ~~[become]~~  
28 ~~becomes~~ effective upon passage and approval.

29        ~~[ 2. Section 3 of this act becomes effective on January 1, 2020.]~~