

SJ 31: COMBINED-USE ANALYSIS

BACKGROUND

At its April meeting, the Economic Affairs Interim Committee (EAIC) requested additional analysis on the combined-use marijuana license in 16-12-225, MCA.

Section 16-12-225(2), MCA, plainly states that a combined-use marijuana license consists of "one tier 1 canopy license and one dispensary license." Several stakeholders have raised the question if this means the license is limited to a tier 1 canopy or if this is the starting point of the canopy, and then the licensee will be able to increase tiers as allowed in the chapter.

Additional questions were raised regarding 16-12-225(2), MCA, as to why the combined-use marijuana licensee must operate the cultivation and dispensary facilities on the same licensed premises and why there is no revenue sharing agreement provided for the tribes in the Marijuana Regulation and Taxation Act.

ANALYSIS

Prior to the passage of I-190, the only licenses allowed were for medical marijuana providers. Those licenses were considered "vertical" licenses, meaning a licensee could cultivate and sell under the same license. Because marijuana is illegal on a federal level, no tribes owned medical marijuana licenses, and no medical marijuana providers were licensed on tribal trust land.

I-190 included a moratorium for new licensees in an attempt to give the medical marijuana industry in Montana a head start before out-of-state companies began applying for licenses. House Bill 701 extended the moratorium six months, and the moratorium is set to expire June 30, 2023. During the moratorium, only medical marijuana providers who were licensed or had applied for a license by November 3, 2020, are eligible to apply for any adult-use license.

HB 701 also changed the license structure from vertical (do all under one license) to horizontal, in which the licensee pays a separate fee and is subject to different licensing requirements based on the type of license.

In order to allow the federally recognized tribes in Montana the opportunity to participate in the recreational market immediately, HB 701 included the combined-use marijuana license that bypasses the moratorium.

Starting July 1, 2023, any eligible person may apply for a recreational marijuana license, including the tribes, so the combined-use marijuana license may only be relevant during the moratorium. To date, no tribes have applied for the license.

The EAIC has had several conversations with the Department of Revenue regarding the tier level of the license. A recent memo issued by the department states the license must remain at a tier 1 unless the Legislature chooses to amend the language in the statute.

The State-Tribal Cooperative Agreements Act under 18-11-101, MCA, discusses the intent of the agreements.

18-11-101. Short title – purpose.

(2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in *mutually beneficial activities and services*.

(3) It is the goal of the legislature to *prevent the possibility of dual taxation by governments* while promoting state, local, and tribal economic development.

(emphasis added)

Limitations to cooperative agreements include:

18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) *is not permitted by federal law*. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress. (emphasis added)

A memo provided to the State-Tribal Relations Interim Committee in the 2015-2016 interim details the history of the Act and outlines the current revenue sharing agreements in the state.

Entering into a cooperative agreement for marijuana tax revenue may present challenges as presently marijuana is illegal on a federal level and, because there are no dispensaries located on tribal land, there is no dual taxation occurring on sales.

RECOMMENDATION

In order to address the concerns by stakeholders on the canopy tier level and location requirements, the statute can be amended as follows:

(2) A combined-use marijuana license consists of one ~~tier 1~~ canopy license and one dispensary license allowing for the operation of a dispensary. ~~Cultivation and dispensary facilities must be located at the same licensed premises.~~

(3) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located: ~~(a) within 150 air miles of the exterior boundary of the associated tribal reservation or, for the Little Shell Chippewa tribe only, within 150 air miles of the tribal service area; and~~

~~(b)~~ in a county that has satisfied the local government approval provisions in 16-12-301 if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

If the EAIC chooses to amend the statute, an immediate effective date to the section is recommended so the new provisions apply prior to the end of the moratorium.

Alternatively, since the combined-use marijuana license may not be necessary after the moratorium ends, the EAIC may consider repealing the statute and inserting a grandfather clause in the event a tribe utilizes the license prior to October 1, 2023.

Additionally, the EAIC may consider creating a new section for cooperative agreements that add a provision for potential revenue sharing agreements if the agreement otherwise does not conflict with federal law. The EAIC can look to an existing cooperative agreement statute, like the motor fuel tax agreement in 15-70-450, MCA, for model language. The EAIC may consider including a "when effective" section or conditional effective date to delay effectiveness until marijuana is no longer illegal on a federal level.

COMMITTEE OPTIONS

Option A: Amend 16-12-225, MCA; add an immediate effective date.

Option B: Repeal 16-12-225, MCA; add a grandfather clause.

Option C: Add a new section regarding cooperative agreements.

Option D: Combination of Options A, B, and C.

Option E: Leave as is.