

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 76 (Chau) – As Amended March 28, 2017

NOTE: This bill is double referred, and if passed by this Committee, it will be referred to the Assembly Committee on Privacy and Consumer Protection

SUBJECT: Adult-use marijuana: marketing.

SUMMARY: Bans the marketing of marijuana products or businesses to minors via the Internet; prohibits website operators from knowingly collecting, using, or selling data from minors for the purpose of marketing or advertising marijuana products or businesses; and, prohibits advertising marijuana products, paraphernalia, or businesses on websites or mobile applications directed at minors.

EXISTING LAW:

- 1) Sets restrictions for an operator of an Internet website, online service, online application, or mobile application on marketing and advertising to minors on websites, online services, applications, or mobile applications on the following products and services: (Business and Professions Code (BPC) Section 22580)
 - a) Alcoholic beverages (BPC Section 22580 (i)(1));
 - b) Firearms, handguns, handgun safety certificates, BB devices, less lethal weapons, and ammunition (BPC Section 22580 (i)(2-4, 8));
 - c) Aerosol paint containers and etching cream capable of defacing property (BPC Section 22580 (i)(5-6));
 - d) Tobacco, cigarettes, cigarette papers, blunt wraps, or any other tobacco product (BPC Section 22580 (i)(7));
 - e) Fireworks (BPC Section 22580 (i)(9));
 - f) Tanning beds (BPC Section 22580 (i)(10));
 - g) Dietary supplements containing ephedrine group alkaloids (BPC Section 22580 (i)(11));
 - h) Tickets or shares in lottery games (BPC Section 22580 (i)(12));
 - i) Salvia divinorum or Salvinorin A, or any substance containing salvia. (BPC Section 22580 (i)(13));
 - j) Body branding or tattoos (BPC Section 22580 (i)(14-15));
 - k) Drug paraphernalia or electronic cigarettes (BPC Section 22580 (i)(16-17)); and,

- 1) Obscene matter (Penal Code Section 311)(BPC Section 22580 (i)(18)).
- 2) States the provisions in number 1) above do not apply to incidental placement of products or services embedded in content not distributed by the operator of the website, as specified. (BPC Section 22580 (j))
- 3) Prohibits the advertising of marijuana products or services to audiences composed of more than 28.9 percent minors. (BPC Section 26151 (b))

THIS BILL:

- 1) Adds marijuana, marijuana paraphernalia, and marijuana products on the list of products and services that are prohibited from being advertised to individuals 20 years of age or younger.
- 2) Prohibits the advertising and marketing of marijuana, marijuana products or businesses on any website, online service, online application, or mobile application that caters to largely under-21 audience and is specifically targeted to a person based on identifying information.
- 3) Deems an operator to be in compliance with number 2) above if they have made reasonable actions in good faith to comply with the provisions.
- 4) Prohibits the knowing collection and dissemination of personal information of a person under 21 years of age with actual knowledge that the use of said data is for the purpose of marketing or advertising marijuana.
- 5) Defines an "operator" to mean any person or entity that owns an internet website, online service, online application, or mobile application and does not include any third party that operates, hosts, or manages but does not own an Internet website, online service, online application, or mobile application on the owner's behalf or processes information on the owner's behalf.
- 6) Specifies that the provisions of this bill do not require an operator of an Internet website, online service, online application, or mobile application to collect or retain age information about users.
- 7) Makes declarations and findings related to the marketing of marijuana to persons under 21 years old.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "In an effort to ensure that children and underage consumers aren't exposed to the marketing of marijuana businesses and products, AB 76 expands the Privacy Rights for California Minors in the Digital World and the Adult Use of Marijuana Act by prohibiting an operator of an Internet website, online service, online application, or mobile application from marketing marijuana products or marijuana businesses to a person under the age of 21, whom the operator has knowledge is using their online service. By prohibiting the targeted marketing of children and underage consumers, we

can spare our most vulnerable citizens from being exposed to a product they can't legally consume.”

Background. This bill extends existing prohibitions on marketing and advertising dangerous or harmful products to minors. Under the provisions of this bill, marijuana and marijuana products are included on a list of other harmful and dangerous products, including, tobacco, salvia, spray paint, firearms, and fireworks.

The bill also places strict prohibitions on the collection and use of data from underage users, explicitly stating that personally identifiable information may not be collected in the course of advertising or seeking to advertise marijuana or related products and services.

History of Legal Cannabis in California - In 1996, California voters passed Proposition 215, legalizing the use of medical cannabis (MC) in the state. In October 2015, nearly 20 years after the authorization of the use of MC, Governor Jerry Brown signed into law a trio of bills [AB 243 (Wood), Chapter 688, Statutes of 2015, AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), Chapter 689, Statutes of 2015, and SB 643 (McGuire), Chapter 719, Statutes of 2015] collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA). MCRSA established the state's first regulatory framework for MC. In 2016, the voters of California passed Proposition 64, the Adult Use of Marijuana Act (AUMA), to legalize the recreational use of cannabis in the state by 2018.

As of 2016, 28 states, the District of Columbia, and Guam allow MC programs. Though California was the first to authorize the medical use of cannabis, it was the only state that allowed cannabis use without a robust state regulatory framework until passage of MCRSA. States with MC laws generally have a form of patient registry, which may provide some protection against arrest for possession up to a certain amount of cannabis for personal medicinal use. A limited number of states restrict MC usage to products with low to zero THC and high CBD concentrations, in an effort to more strictly limit the use of THC due to its known psychoactive effects. To date, eight states, Alaska, Colorado, Oregon, Washington, California, Nevada, Massachusetts, Maine, and the District of Columbia have legalized recreational cannabis.

The authors of AUMA sought to make use of much of the regulatory structure and authorities set out by MCRSA while making a few notable changes to the structure being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of recreational cannabis in addition to the regulations required in MCRSA that are scheduled to take effect on the same date. The same agencies as under MCRSA remain responsible for implementing regulations for adult use.

Under AUMA, the Department of Consumer Affairs (DCA), continues to serve as the lead regulatory agency for all cannabis, both medical and non-medical, and renames the existing Bureau of Medical Cannabis Regulation as the Bureau of Marijuana Control. AUMA includes 19 different license types compared to the 17 in MCRSA and authorizes DCA (and the Bureau) the exclusive authority to create and regulate a license for transportation of cannabis.

While the language of AUMA allows for modifications to the law by majority vote of the legislature, any legislative changes inconsistent with the original intent of the law may require

voter approval. If the state and its various agencies of jurisdiction have not finalized regulations, hired staff, and created technology solutions by January 1, 2018, it is unclear how wide-sweeping and detrimental the consequences may be.

Privacy Rights for California Minors in the Digital World - In 2014, the enactment of SB 568 (Steinberg), Chapter 336, Statutes of 2013, prohibited advertising certain categories of goods and services to minors through websites, applications, online services, and mobile applications. This bill would include cannabis, cannabis products, businesses, and paraphernalia in the existing statute and extend protections against data collection currently offered to minors, to the cannabis industry and its digital peripherals.

Current Related Legislation. AB 350 (Salas) requires that marijuana products shall not be manufactured in the shape of a person, animal, insect, fruit, or any other shape normally associated with candy. *STATUS: This bill has been referred to the Assembly Committee on Health.*

AB 389 (Salas) requires the Bureau to establish and make available a guide for consumers to educate the public on the regulation of medical and nonmedical marijuana. *STATUS: This bill has been referred to the Assembly Committee on Business and Professions.*

AB 64 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) Seeks to reconcile a number of differences between MCRSA and AUMA to provide clarity in regulation and enforcement of both medical and recreational cannabis. *STATUS: This bill has been referred to the Assembly Committee on Business and Professions and will be heard on April 18, 2017.*

Prior Related Legislation. SB 568 (Steinberg), Chapter 336, Statutes of 2013, Prohibited the operator of a website, online service, application, or mobile application, from marketing or advertising specified types of products or services to a minor. This bill prohibits an operator from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising specified types of products or services. This bill also made this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

ARGUMENTS IN SUPPORT:

Youth Forward “We appreciate your efforts through AB 76 to prohibit online marketing of marijuana to young people. Our kids spend a huge amount of time online and what they see greatly influences their choices.”

Nurse-Family Partnership “[We are] pleased to support AB 76 because it furthers the purpose and intent of both the Privacy Rights for California Minors in the Digital World and the AUMA by protecting persons under 21 years of age from being exposed to advertising and marketing of marijuana, marijuana products, and marijuana businesses.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

Youth Forward
Nurse-Family Partnership

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Jimmy Fremgen / B. & P. / 916-319-3301