

Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 162(Allen) – As Amended April 19, 2017

SENATE VOTE: 40-0

SUBJECT: Marijuana and medical cannabis: marketing

SUMMARY: Prohibits a licensee from advertising medical or recreational cannabis or cannabis products through the use of branded merchandise, including, but not limited to, clothing, hats, or other merchandise with the name or logo of the product.

EXISTING LAW:

- 1) Establishes the Bureau of Marijuana Control, also referred to as the Bureau of Medical Cannabis Regulation (Bureau), under the Department of Consumer Affairs (DCA), to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of cannabis products. (Business and Professions Code (BPC) § 26000 et seq.; BPC § 19302)
- 2) Defines “advertise” to mean the publication or dissemination of an advertisement, which includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of marijuana or marijuana products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that “advertisement” shall not include a label affixed to any marijuana product, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling. (BPC § 26150)
- 3) Requires any advertising or marketing placed in broadcast, cable, radio, print and digital communications to only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data. (BPC § 26151 (b))
- 4) Prohibits marijuana and marijuana product packages and labels from being made to be attractive to children. (BPC §§ 19347, 26120 (b))
- 5) Prohibits marijuana products from being designed to be appealing to children or from easily confused with commercially sold candy or foods that do not contain marijuana. (BPC § 26130 (a)(1))
- 6) Prohibits a licensee from advertising or marketing marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products, or publishing or disseminating advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption. (BPC § 26152)

- 7) Prohibits any licensee from advertising or marketing marijuana or marijuana products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 through 12, playground, or youth center. (BPC § 26152 (g))

THIS BILL:

- 1) Prohibits a licensee from advertising medical or recreational cannabis or cannabis products through the use of branded merchandise, including, but not limited to, clothing, hats, or other merchandise with the name or logo of the product.
- 2) States that advertising prohibitions related to medical marijuana shall not apply to any noncommercial speech.
- 3) States legislative findings and declarations that this bill furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

FISCAL EFFECT: According to the Senate Appropriations Committee May 15, 2017 analysis, this bill will result in one-time costs of about \$290,000, and ongoing costs of about \$270,000 per year for the development of regulations and enforcement of the bill's restrictions on advertising by the Bureau of Cannabis Regulation.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "This bill aims to reduce teenage use of cannabis by extending the current ban on branded tobacco-related merchandise to marijuana products. A great deal of research has shown that branded merchandise such as t-shirts, sunglasses, or hats can be directly tied to higher use of tobacco and alcohol amongst teens.

Understanding the dangers of smoking to teens, and understanding the documented vulnerability of teens with relation to branded merchandise, the legislature in the past wisely took steps to protect teenagers by prohibiting the advertising of tobacco products through branded merchandise altogether. With the passage of Proposition 64, it would be wise for us to take similar steps to discourage teen marijuana use by extending the current prohibition on advertising tobacco products through branded merchandise to cannabis products as well."

Background. *Cannabis Regulation 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 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.

Section 3 of Proposition 64 states the intent of the law to "take nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment." Similarly, the language also states the law is meant to, "[p]rohibit marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present."

Federal Advertising Restrictions. Banning advertising of branded merchandise is not unusual. Federal law prohibits tobacco manufacturers and distributors from selling or distributing any item or service that bears the brand name, logo, motto or any identifiable slogan associated with any brand of cigarettes or smokeless tobacco.

Other States. Fifteen states, including California, have advertising restrictions for cannabis products. The restrictions range from guidelines for displaying signage at business to logos printed on merchandise.

Current Related Legislation. AB 420 (Wood) of the current Legislative Session would require an advertisement for the sale of medical cannabis or nonmedical marijuana products to include a licensee's license number. *STATUS: This bill is pending in the Senate Committee on Governance and Finance.*

AB 350 (Salas) of the current Legislative Session would specify that certain types of marijuana products are considered appealing to children. *STATUS: This bill is pending on the Senate Floor.*

AB 1143 (Gray) of the current Legislative Session would prohibit advertising marijuana within specified distances of certain highways. *STATUS: This bill is pending in the Assembly Committee on Governmental Organization.*

SB 175 (McGuire) of the current Legislative Session would prohibit the use of names that sound similar to county names when advertising marijuana products. *STATUS: This bill is pending in the Assembly Committee on Business and Professions.*

SB 663 (Nielsen) would establish criteria for packaging considered to be attractive to children. *STATUS: This bill is pending in the Assembly Committee on Business and Professions.*

ARGUMENTS IN SUPPORT:

The **American Academy of Pediatrics, California** supports the bill and writes, "Proposition 64 states the intent to '[p]rohibit marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present.' This is consistent with the recommendation of the American Academy of Pediatrics that '[i]n states that have legalized marijuana for recreational purposes, the AAP strongly recommends strict enforcement of rules and regulations that limit access and marketing and advertising to youth.' However, in order to fully protect children from marijuana marketing, branded merchandise such as t-shirts and other transportable items must be regulated, as not only are they are not location-specific, but they can also be among the most effective ways to advertise to children and youth.

The **California Police Chiefs Association** supports the bill and writes, "As teens migrate towards internet platforms and social media sites, often visiting the sites more than once a day, it is critical that our advertising restrictions reflect reality. SB 162 furthers the intents stated in Proposition 64 by ensuring that youth will not be exposed to marijuana advertising online or see branded merchandise created to increase sales. For these reasons, we are pleased to support SB 162."

ARGUMENTS IN OPPOSITION:

The **Consortium Management Group** writes in opposition, “CMG strongly supports efforts in law and in practice to ensure that cannabis products are not marketed or alluring to children. We support child protection provisions in the draft regulations under the Medical Cannabis Regulation and Safety Act, and we have supported current legislation with the same aim. SB 162 goes in a different direction altogether, prohibiting Caliva from selling branded clothing to adults and undercutting a legitimate revenue center for cannabis licensees...if the purpose of the bill is to keep young people from seeking to consume the product, we believe that the locked door at the front of every dispensary is better protection than banning a t-shirt.”

The **California Cannabis Manufacturers Association** writes in opposition, “CCMA firmly believes that the advertisement of medical marijuana should not be restricted in the same manner as that of commercial marijuana. Distinctions should be made between advertisements of recreational and medical marijuana- for example, 18-year-old adults with ADD may be a valid target market for some medical products, and SB 162 would prohibit a company’s ability to reach that consumer. The restriction of advertisements on any marijuana products on any branded merchandise...raises constitutional issues of freedom of speech and the rights of licensees to brand merchandise with the name and logo of their products.”

REGISTERED SUPPORT:

American Academy of Pediatrics California

California Police Chiefs Association

REGISTERED OPPOSITION:

California Cannabis Manufactures Association

Consortium Management Group

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