

AMENDED IN ASSEMBLY JUNE 22, 2022

AMENDED IN ASSEMBLY JUNE 6, 2022

AMENDED IN SENATE MAY 19, 2022

AMENDED IN SENATE MARCH 29, 2022

**SENATE BILL**

**No. 1097**

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**Introduced by Senator Pan**

February 16, 2022

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An act to add Sections ~~26070.3, 26121, and 26151.5~~ *26070.3 and 26121* to the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

SB 1097, as amended, Pan. Cannabis and cannabis products: labeling and advertisement.

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity, under the jurisdiction of the Department of Cannabis Control.

Existing law requires cannabis and cannabis product labels and inserts to include specified warnings about the safety of cannabis use.

~~This bill, on and after January 1, 2025, and in addition to the currently prescribed warnings, would require cannabis or a cannabis product, other than those for topical use, to include a warning label that covers~~

at least  $\frac{1}{3}$  of the front or principal face of a product, is in the largest type possible for the area, is bright yellow, and includes a pictorial or graphic element, as specified, and one of a series of warnings. The bill would require the licensee to use a mandated rotating warnings approach where batches of products are equally divided between the prescribed messages: *bill would require the department, on or before July 1, 2025, to adopt regulations to require cannabis and cannabis product labels and inserts to include a clear and prominent warning regarding the risks that cannabis use may contribute to mental health problems, in addition to existing labeling requirements.* The bill would require the department, in consultation with the State Department of Public Health and the University of California, including the University of California San Francisco Center for Tobacco Control Research and Education, to either recertify the warnings or provide updated warning label language and designs *reevaluate the regulations every 5 years years, commencing January 1, 2030: 2030, to determine whether the regulations reflect the state of the evolving science on cannabis health effects and on effective communication of health warnings.*

This bill would require the department, on or before January 1, 2024, and in consultation with the State Department of Public Health, to create and post for public use a single-page flat or folded brochure that includes steps for safer use of cannabis and the set of health warnings required for the labels: *prescribed information, including, among other things, the recommendation that new users start with lower doses and the dangers of purchasing illegally sold cannabis and cannabis products.* The bill would require, on and after March 1, 2024, a retailer or microbusiness selling, or person delivering, cannabis or cannabis products to a consumer to *provide offer each new consumer with a copy of the brochure at the time of first purchase or delivery and to have the brochures visibly available at point of service. The bill would require, until the brochure is developed, a retailer or microbusiness selling, or person delivering, cannabis or cannabis products to a consumer to provide a new consumer with a flier including the health warnings, as specified.* The bill would require the department, commencing January 1, 2030, and every 5 years thereafter, to either recertify the information in the brochure or provide updated language, as specified.

Existing law places restrictions on the marketing of cannabis and cannabis products, including requiring that all advertising and marketing accurately and legibly identify the licensee and prohibiting advertising or marketing placed in broadcast cable, radio, print, and digital

communication unless at least 71.6% of the audience is reasonably expected to be 21 years of age or older.

~~This bill, on and after January 1, 2024, would require print advertisements and written internet advertisement displays that promote cannabis, a cannabis product, or a cannabis brand, as defined, to include the pictorial or graphic element and the rotating warnings in a manner similar to what is required on the labels, to cover at least 15% of the face of the advertisement. The bill would also require the rotating warnings for radio, television, and video advertisement, whether in traditional media or online, that promote cannabis, a cannabis product, or a cannabis brand, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Current health warnings required for cannabis products are
- 4 insufficient to clearly and effectively communicate well-established
- 5 and pertinent health risks to consumers of cannabis.
- 6 (b) Many consumers are unaware of the risks more likely to be
- 7 present in cannabis from the illicit market, such as those associated
- 8 with harmful contaminants, including mold, pesticides, or heavy
- 9 metals or of unsafe additives.
- 10 (c) Perceptions of harm from use of cannabis by consumers of
- 11 all ages, including teens, has declined dramatically, while patterns
- 12 of higher risk daily or near-daily use, cannabis use disorder,
- 13 emergency room visits, and other risks have increased, associated
- 14 with changes in the products marketed, notably the increasing
- 15 content of tetrahydrocannabinol (THC) and insufficient knowledge
- 16 of principles of safer use.
- 17 (d) The percentage of California teens 12 to 17 years of age
- 18 using cannabis increased significantly between 2016 and 2019 in
- 19 the National Survey on Drug Use and Health.
- 20 (e) Cannabis use among pregnant women is common and has
- 21 increased in recent years in the United States, from an estimated
- 22 3.4 percent in 2002 to 7 percent in 2017, and use increased in
- 23 pregnant women in northern California by 25 percent in the first
- 24 9 months of the pandemic relative to the prepandemic period,

1 raising the risk of low birth weight and other harms for the  
2 newborn.

3 (f) The number of adults in the United States who use cannabis  
4 more than doubled from 22.6 million in 2008 to 45.0 million in  
5 2019, and the number of daily or near-daily users almost tripled  
6 from 3.6 million to 9.8 million in 2019.

7 (g) In 2017, the National Academies of Science, Engineering  
8 and Medicine concluded that, in addition to certain therapeutic  
9 benefits, there is substantial evidence of the association of cannabis  
10 use with certain health harms, including motor vehicle accidents,  
11 psychosis and schizophrenia, respiratory disease with regular  
12 smoking, emergence of problem use or frequent use or early age  
13 of onset of use, and low birth weight after use during pregnancy.  
14 In 2019, the United States Surgeon General issued an advisory on  
15 risks to the developing brain of cannabis use during youth and  
16 pregnancy, and particularly of higher THC content products. In  
17 2021, National Institutes of Health researchers found major  
18 increases in suicidal ideation among cannabis users nationally,  
19 even those without major depression, with tripling of risk with  
20 daily use.

21 (h) As the California legal cannabis market matures and expands,  
22 there is an urgent need for more clear, prominent, and  
23 comprehensive information for consumers on key  
24 well-demonstrated health risks associated with cannabis use, and  
25 on the risks of products from the illicit market, to complement  
26 existing requirements.

27 (i) There is a large body of scientific research from tobacco  
28 control and a growing body on cannabis identifying best practices  
29 for effectively communicating health warnings to consumers.

30 (j) The United States Food and Drug Administration, based on  
31 evidence, is currently finalizing requirements for prominent,  
32 front-of-pack, rotating, pictorial warning messages on cigarettes  
33 and on tobacco advertising that incorporates this research.

34 (k) Globally, as part of the World Health Organization's  
35 Framework Convention on Tobacco Control and in over 90  
36 countries, these best practices for conveying health warnings have  
37 been adopted for tobacco.

38 (l) Canada has adopted prominent front-of-pack rotating health  
39 warnings for cannabis.

1 (m) After Proposition 64, approved by the voters at the  
2 November 8, 2016, statewide general election, legalized the  
3 recreational use of cannabis, the Medicinal and Adult Use of  
4 Cannabis Regulation and Safety Act (MAUCRSA) promised  
5 California citizens that “The protection of the public shall be the  
6 highest priority for all licensing authorities... Whenever the  
7 protection of the public is inconsistent with other interests sought  
8 to be promoted, the protection of the public shall be paramount”  
9 (Section 26011.5 of the Business and Professions Code). This  
10 principle should guide the provision of health warning information  
11 to consumers.

12 SEC. 2. Section 26070.3 is added to the Business and  
13 Professions Code, to read:

14 26070.3. (a) (1) On or before January 1, 2024, the department,  
15 in consultation with the State Department of Public Health, shall  
16 create and post for public use a single-page flat or folded brochure  
17 that includes steps for safer use of cannabis, including ~~starting~~  
18 ~~with lower doses, care with delayed effects of edibles, and the set~~  
19 ~~of health warnings specified in paragraph (5) of subdivision (a) of~~  
20 ~~Section 26121.~~ *The all of the following information:*

21 (A) *A recommendation that new consumers start with lower*  
22 *doses.*

23 (B) *That care should be taken for the delayed effects of edibles,*  
24 *including warnings that it can take up to four hours to feel the full*  
25 *effects from eating or drinking cannabis and that consuming more*  
26 *within this time period can result in more adverse effects that may*  
27 *require medical attention.*

28 (C) *The dangers of purchasing illegally sold cannabis and*  
29 *cannabis products, including the increased risk that untested*  
30 *cannabis may contain unsafe additives or harmful contaminants*  
31 *such as mold or pesticides.*

32 (D) *Warnings against consuming cannabis or cannabis products*  
33 *while pregnant or breastfeeding and that exposure to cannabis*  
34 *during pregnancy may harm the baby’s health, including causing*  
35 *low birth weight.*

36 (E) *The potential for cannabis use to contribute to mental health*  
37 *problems, including psychotic disorders such as schizophrenia*  
38 *and increased thoughts of suicide and suicide attempts, and that*  
39 *these risks are greatest for frequent users and when using products*  
40 *with high THC levels.*

1 (F) *The link between higher THC content and the likelihood of*  
2 *experiencing adverse effects and impairment, including severe*  
3 *anxiety and the disruption of memory and concentration.*

4 (G) *Cautions that driving while under the influence of cannabis*  
5 *is a DUI and that cannabis use increases the risk of motor vehicle*  
6 *crashes.*

7 (H) *Evidence that starting cannabis use at a young age or using*  
8 *frequently may lead to problem use and may harm the developing*  
9 *brain.*

10 (I) *That smoking cannabis may make breathing problems worse*  
11 *and that prolonged use of inhaled cannabis products may cause*  
12 *recurrent, severe nausea and vomiting.*

13 (2) *The brochure shall be printed in a type size not smaller than*  
14 *12 points. Printing and distribution shall be the responsibility of*  
15 *the retailer or microbusiness.*

16 ~~(2)~~

17 (3) *On or before January 1, 2030, and every five years thereafter,*  
18 *the department shall either recertify the information in the brochure*  
19 *or provide updated language that accurately reflects the state of*  
20 *the evolving science on cannabis health effects and safer use of*  
21 *cannabis. The review of the brochure shall be done in conjunction*  
22 *with the review required in ~~paragraph (2)~~ of subdivision ~~(b)~~ (c) of*  
23 *Section 26121.*

24 ~~(b) (4)~~ *On and after March 1, 2024, a retailer or microbusiness*  
25 *selling, or person delivering, cannabis or cannabis products to a*  
26 *consumer shall ~~provide~~ offer each new consumer ~~with a copy of~~*  
27 *the brochure created pursuant to subdivision (a) at the time of first*  
28 *purchase or delivery and shall have the brochures visibly available*  
29 *for other consumers at point of service.*

30 ~~(2)~~ *Until the brochure specified in subdivision (a) is developed,*  
31 *a retailer, microbusiness, or person delivering cannabis or cannabis*  
32 *products to a new consumer shall provide the consumer with a*  
33 *full-page flyer that includes the full text of the warnings listed in*  
34 *paragraph (5) of subdivision (a) of Section 26121, printed in at*  
35 *least 12-point type, at the time of first purchase or delivery. The*  
36 *flier delivered pursuant to this paragraph shall not include any*  
37 *advertising or promotional material and shall include the heading*  
38 *“Health Warning from the State of California.”*

39 ~~SEC. 3.~~ *Section 26121 is added to the Business and Professions*  
40 *Code, to read:*

1     ~~26121. (a) On and after January 1, 2025, in addition to the~~  
2 ~~warning required in Section 26120, cannabis or a cannabis product,~~  
3 ~~other than those for topical use, shall include a warning label that~~  
4 ~~meets the following requirements:~~  
5     ~~(1) The warning shall cover at least one-third of the front or~~  
6 ~~principal face of a product.~~  
7     ~~(2) The warning shall be in the largest type that fits in a label~~  
8 ~~covering one-third of the front or principal face of a product~~  
9 ~~package, using at least 12-point black type whenever feasible.~~  
10    ~~(3) The background shall be bright yellow.~~  
11    ~~(4) Employ a pictorial or graphic element appropriate to the~~  
12 ~~message.~~  
13    ~~(5) Use a mandated rotating warnings approach where batches~~  
14 ~~of products are equally divided between the following messages:~~  
15     ~~(A) WARNING: Do not buy illegally sold cannabis as it is more~~  
16 ~~likely to contain unsafe additives or harmful contaminants such~~  
17 ~~as mold or pesticides.~~  
18     ~~(B) WARNING: Do not use if pregnant or breastfeeding.~~  
19 ~~Exposure to cannabis during pregnancy may harm your baby's~~  
20 ~~health, including causing low birth weight.~~  
21     ~~(C) WARNING: Cannabis use may contribute to mental health~~  
22 ~~problems, including psychotic disorders such as schizophrenia.~~  
23 ~~Risk is greatest for frequent users and when using products with~~  
24 ~~high THC levels.~~  
25     ~~(D) WARNING: Cannabis use may contribute to mental health~~  
26 ~~problems, including increased thoughts of suicide and suicide~~  
27 ~~attempts. Risk is greatest for frequent users.~~  
28     ~~(E) WARNING: Driving while under the influence of cannabis~~  
29 ~~is a DUI. Cannabis use increases your risk of motor vehicle crashes.~~  
30     ~~(F) WARNING: Not for Kids or Teens! Starting cannabis use~~  
31 ~~young or using frequently may lead to problem use and, according~~  
32 ~~to the U.S. Surgeon General, may harm the developing brain.~~  
33     ~~(G) WARNING: The higher the THC content, the more likely~~  
34 ~~you are to experience adverse effects and impairment. THC may~~  
35 ~~cause severe anxiety and disrupt memory and concentration.~~  
36     ~~(H) For inhaled cannabis products, in addition to the warnings~~  
37 ~~in subparagraphs (A) to (G), inclusive, the rotating warning shall~~  
38 ~~include both of the following:~~  
39     ~~(i) WARNING: Smoking cannabis may make breathing~~  
40 ~~problems worse.~~

1 ~~(ii) WARNING: Prolonged use of cannabis products may cause~~  
2 ~~recurrent, severe nausea and vomiting.~~

3 ~~(f) For edible cannabis products only, in addition to the warnings~~  
4 ~~in subparagraphs (A) to (G), inclusive, the rotating warning shall~~  
5 ~~include: WARNING: It can take up to 4 hours to feel the full~~  
6 ~~effects from eating or drinking cannabis. Consuming more within~~  
7 ~~this time period can result in more adverse effects that may require~~  
8 ~~medical attention.~~

9 ~~(b) (1) The department shall publish proposed implementation~~  
10 ~~regulations for this section, including pictorial designs, on or before~~  
11 ~~January 1, 2024, and shall publish final regulations on or before~~  
12 ~~July 1, 2024.~~

13 ~~(2) On or before January 1, 2030, and every five years thereafter,~~  
14 ~~the department, in consultation with the State Department of Public~~  
15 ~~Health and the University of California, including the University~~  
16 ~~of California San Francisco Center for Tobacco Control Research~~  
17 ~~and Education, shall either recertify the warnings required in~~  
18 ~~paragraph (5) of subdivision (a) or provide updated warning label~~  
19 ~~language and designs that accurately reflect the state of the~~  
20 ~~evolving science on cannabis health effects and on effective~~  
21 ~~communication of health warnings. The revisions shall not diminish~~  
22 ~~the prominence of the warnings.~~

23 ~~(3) To inform the revisions required pursuant to paragraph (2),~~  
24 ~~the Legislature recommends, and the department may, use research~~  
25 ~~funded pursuant to subdivision (b) of Section 34019 of the Revenue~~  
26 ~~and Taxation Code that evaluates labeling and packaging and, in~~  
27 ~~conformance with the provisions of that subdivision, may~~  
28 ~~commission new research to assess the efficacy of the warnings~~  
29 ~~required by this section and approaches to identify future best~~  
30 ~~practices for cannabis health warning labels that are most effective~~  
31 ~~in changing knowledge and intent to consume or consumption,~~  
32 ~~especially of youth and during pregnancy.~~

33 ~~(e) Cannabis or cannabis products manufactured before July 1,~~  
34 ~~2024, may be sold before July 1, 2025, without the labeling~~  
35 ~~required by this section.~~

36 ~~SEC. 4. Section 26151.5 is added to the Business and~~  
37 ~~Professions Code, to read:~~

38 ~~26151.5. (a) Print advertisements and written internet~~  
39 ~~advertisement displays, including on mobile web and social media,~~  
40 ~~promoting cannabis, cannabis products, or a cannabis brand that~~

1 are purchased by a licensee, a cannabis service, or an advertiser  
2 on behalf of a licensee or cannabis service, shall meet all of the  
3 following requirements:

4 (1) Contain one of the pictorial or graphic elements, as specified  
5 in paragraph (4) of subdivision (a) of Section 26121.

6 (2) Contain one of the health warnings specified in paragraph  
7 (5) of subdivision (a) of Section 26121, or established in regulation  
8 by the department pursuant to paragraph (2) of subdivision (b) of  
9 Section 26121. The purchaser shall rotate the warnings used such  
10 that all required warnings are used, to the extent possible, in an  
11 equal distribution.

12 (3) Cover at least 15 percent of the advertisement in the upper  
13 right corner and be oriented in the same direction as the principal  
14 text.

15 (4) Have a bright yellow background.

16 (b) Radio advertisements promoting cannabis, cannabis products,  
17 or a cannabis brand that are purchased by a licensee, a cannabis  
18 service, or an advertiser on behalf of a licensee or cannabis service  
19 shall have a warning statement read aloud clearly at the same  
20 volume and pace as the rest of the advertisement. Warnings  
21 pursuant to this subdivision shall use a mandated rotating warnings  
22 approach where each company's advertisements are equally divided  
23 between the applicable warnings specified in paragraph (5) of  
24 subdivision (a) of Section 26121 or established in regulation by  
25 the department pursuant to paragraph (2) of subdivision (b) of  
26 Section 26121, although a given creative may use a single  
27 randomly selected message.

28 (c) Television and video advertisements, in traditional media  
29 or an internet promotional content, including on mobile web and  
30 social media, promoting cannabis, cannabis products, or a cannabis  
31 brand, that are purchased by a licensee, a cannabis service, or an  
32 advertiser on behalf of a licensee or cannabis service, shall have  
33 a warning simultaneously read and legibly displayed on-screen  
34 with a yellow background. Warnings pursuant to this subdivision  
35 shall use a mandated rotating warnings approach where each  
36 company's advertisements are equally divided between the  
37 applicable warnings specified in paragraph (5) of subdivision (a)  
38 of Section 26121 or established in regulation by the department  
39 pursuant to paragraph (2) of subdivision (b) of Section 26121,

1 ~~although a given creative may use a single randomly selected~~  
2 ~~message.~~

3 ~~(d) For purposes of this section, the following definitions apply:~~

4 ~~(1) “Cannabis brand” means a mark, name, or device used by~~  
5 ~~a licensee or other party to denote a line of cannabis or cannabis~~  
6 ~~products for marketing purposes.~~

7 ~~(2) “Cannabis service” means a business that is not itself a~~  
8 ~~licensee, but that interfaces with consumers on behalf of licensees,~~  
9 ~~including by providing a platform to locate retailers or request~~  
10 ~~delivery.~~

11 ~~(e) A cannabis service, or an advertiser purchasing advertising~~  
12 ~~on behalf of a licensee or cannabis service, that violates this section~~  
13 ~~shall be subject to penalties pursuant to Section 26031.5.~~

14 ~~(f) This section shall become operative on January 1, 2024.~~

15 *SEC. 3. Section 26121 is added to the Business and Professions*  
16 *Code, to read:*

17 *26121. (a) In addition to the information required in Section*  
18 *26120, the department, no later than July 1, 2025, shall adopt*  
19 *regulations to require cannabis and cannabis product labels and*  
20 *inserts to include a clear and prominent warning regarding the*  
21 *risks that cannabis use may contribute to mental health problems.*

22 *(b) The department shall consult with the State Department of*  
23 *Public Health and the University of California, as well as all*  
24 *additional stakeholders identified by the department during the*  
25 *rulemaking process, in its adoption of the regulations required by*  
26 *subdivision (a).*

27 *(c) (1) On or before January 1, 2030, and every five years*  
28 *thereafter, the department, in consultation with the State*  
29 *Department of Public Health and the University of California,*  
30 *including the University of California San Francisco Center for*  
31 *Tobacco Control Research and Education, shall reevaluate the*  
32 *regulations adopted pursuant to subdivision (a) to determine*  
33 *whether requirements imposed in those regulations reflect the state*  
34 *of the evolving science on cannabis health effects and on effective*  
35 *communication of health warnings.*

36 *(2) The Legislature recommends, and the department may, use*  
37 *research funded pursuant to subdivision (b) of Section 34019 of*  
38 *the Revenue and Taxation Code that evaluates labeling and*  
39 *packaging and, in conformance with the provisions of that*  
40 *subdivision, may commission new research to assess the efficacy*

1 *of the warnings required by subdivision (a) and approaches to*  
2 *identify future best practices for cannabis health warning labels*  
3 *that are most effective in changing knowledge and intent to*  
4 *consume or consumption.*

5 *(d) Cannabis or cannabis products manufactured before July*  
6 *1, 2025, may be sold before July 1, 2026, without meeting the*  
7 *labeling requirements imposed by the regulations adopted pursuant*  
8 *to subdivision (a).*

O