

Introduced by Senator PanFebruary 16, 2022

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1097, as introduced, 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 12-point type, 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. The bill would require the department, in consultation with the State Department of

Public Health and 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 every 5 years commencing January 1, 2030.

This bill would require the department, on or before January 1, 2024, and in consultation with the State Department of Public Health, to create 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. 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 the consumer with the brochure. 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 the 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:

1 (a) Current health warnings required for cannabis products are
2 insufficient to clearly and effectively communicate well-established
3 and pertinent health risks to consumers of cannabis.

4 (b) Many consumers are unaware of the risks more likely to be
5 present in cannabis from the illicit market, such as those associated
6 with harmful contaminants, including mold, pesticides, or heavy
7 metals or of unsafe additives.

8 (c) Perceptions of harm from use of cannabis by consumers of
9 all ages, including teens, has declined dramatically, while patterns
10 of higher risk daily or near-daily use, cannabis use disorder,
11 emergency room visits, and other risks have increased, associated
12 with changes in the products marketed, notably the increasing
13 content of tetrahydrocannabinol (THC) and insufficient knowledge
14 of principles of safer use.

15 (d) The percentage of California teens 12 to 17 years of age
16 using cannabis increased significantly between 2016 and 2019 in
17 the National Survey on Drug Use and Health.

18 (e) Cannabis use among pregnant women is common and has
19 increased in recent years in the United States, from an estimated
20 3.4 percent in 2002 to 7 percent in 2017, and use increased in
21 pregnant women in northern California by 25 percent in the first
22 9 months of the pandemic relative to the prepandemic period,
23 raising the risk of low birth weight and other harms for the
24 newborn.

25 (f) The number of adults in the United States who use cannabis
26 more than doubled from 22.6 million in 2008 to 45.0 million in
27 2019, and the number of daily or near-daily users almost tripled
28 from 3.6 million to 9.8 million in 2019.

29 (g) In 2017, the National Academies of Science, Engineering
30 and Medicine concluded that, in addition to certain therapeutic
31 benefits, there is substantial evidence of the association of cannabis
32 use with certain health harms, including motor vehicle accidents,
33 psychosis and schizophrenia, respiratory disease with regular
34 smoking, emergence of problem use or frequent use or early age
35 of onset of use, and low birth weight after use during pregnancy.
36 In 2019, the United States Surgeon General issued an advisory on
37 risks to the developing brain of cannabis use during youth and
38 pregnancy, and particularly of higher THC content products. In
39 2021, National Institutes of Health researchers found major
40 increases in suicidal ideation among cannabis users nationally,

1 even those without major depression, with tripling of risk with
2 daily use.

3 (h) As the California legal cannabis market matures and expands,
4 there is an urgent need for more clear, prominent, and
5 comprehensive information for consumers on key
6 well-demonstrated health risks associated with cannabis use, and
7 on the risks of products from the illicit market, to complement
8 existing requirements.

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

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

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

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

22 (m) After Proposition 64, approved by the voters at the
23 November 8, 2016, statewide general election, legalized the
24 recreational use of cannabis, the Medicinal and Adult Use of
25 Cannabis Regulation and Safety Act (MAUCRSA) promised
26 California citizens that "The protection of the public shall be the
27 highest priority for all licensing authorities... Whenever the
28 protection of the public is inconsistent with other interests sought
29 to be promoted, the protection of the public shall be paramount"
30 (Section 26011.5 of the Business and Professions Code). This
31 principle should guide the provision of health warning information
32 to consumers.

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

35 26070.3. (a) (1) On or before January 1, 2024, the department,
36 in consultation with the State Department of Public Health, shall
37 create a single-page flat or folded brochure that includes steps for
38 safer use of cannabis, including starting with lower doses, care
39 with delayed effects of edibles, and the set of health warnings

1 specified in paragraph (5) of subdivision (a) of Section 26121. The
2 brochure shall be printed in a type size not smaller than 12 points.

3 (2) On or before January 1, 2030, and every five years thereafter,
4 the department shall either recertify the information in the brochure
5 or provide updated language that accurately reflects the state of
6 the evolving science on cannabis health effects and safer use of
7 cannabis. The review of the brochure shall be done in conjunction
8 with the review required in paragraph (2) of subdivision (b) of
9 Section 26121.

10 (b) (1) On and after March 1, 2024, a retailer or microbusiness
11 selling, or person delivering, cannabis or cannabis products to a
12 consumer shall provide the consumer with the brochure created
13 pursuant to subdivision (a) at the time of delivery.

14 (2) Until the brochure specified in subdivision (a) is developed,
15 a retailer, microbusiness, or person delivering cannabis or cannabis
16 products to a consumer shall provide the consumer with a full-page
17 flyer that includes the full text of the warnings listed in paragraph
18 (5) of subdivision (a) of Section 26121, printed in at least 12-point
19 type, at the time of delivery. The flier delivered pursuant to this
20 paragraph shall not include any advertising or promotional material
21 and shall include the heading “Health Warning from the State of
22 California.”

23 SEC. 3. Section 26121 is added to the Business and Professions
24 Code, to read:

25 26121. (a) On and after January 1, 2025, in addition to the
26 warning required in Section 26120, cannabis or a cannabis product,
27 other than those for topical use, shall include a warning label that
28 meets the following requirements:

29 (1) The warning shall cover at least one-third of the front or
30 principal face of a product.

31 (2) The warning shall be in at least 12-point type.

32 (3) The background shall be bright yellow.

33 (4) Employ a pictorial or graphic element appropriate to the
34 message.

35 (5) Use a mandated rotating warnings approach where batches
36 of products are equally divided between the following messages:

37 (A) WARNING: Buy Legal! Illegally sold cannabis is more
38 likely to contain unsafe additives or harmful contaminants such
39 as mold or pesticides.

1 (B) WARNING: Do not use if pregnant or breastfeeding.
2 Substances in cannabis are transferred from the mother to the child
3 and may harm your baby's health, including causing low birth
4 weight.

5 (C) WARNING: Cannabis use may contribute to mental health
6 problems, including psychotic disorders such as schizophrenia.
7 Risk is greatest for frequent users and when using products with
8 high THC levels.

9 (D) WARNING: Cannabis use may contribute to mental health
10 problems, including increased thoughts of suicide and suicide
11 attempts. Risk is greatest for frequent users.

12 (E) WARNING: Driving while high is a DUI. Cannabis use
13 increases your risk of motor vehicle crashes.

14 (F) WARNING: Not for Kids or Teens! Starting cannabis use
15 young or using frequently may lead to problem use and, according
16 to the U.S. Surgeon General, may harm the developing brain.

17 (G) WARNING: The higher the THC content, the more likely
18 you are to experience adverse effects and impairment. THC may
19 cause severe anxiety and disrupt memory and concentration.

20 (H) For inhaled cannabis products, both of the following:

21 (i) WARNING: Smoking cannabis may make breathing
22 problems worse.

23 (ii) WARNING: Prolonged use of cannabis products high in
24 THC may cause recurrent, severe nausea and vomiting.

25 (I) For edible cannabis products only: WARNING: It can take
26 up to 4 hours to feel the full effects from eating or drinking
27 cannabis. Consuming more within this time period can result in
28 adverse effects that may require medical attention.

29 (b) (1) The department shall publish proposed implementation
30 regulations for this section, including pictorial designs, on or before
31 January 1, 2024, and shall publish final regulations on or before
32 July 1, 2024.

33 (2) On or before January 1, 2030, and every five years thereafter,
34 the department, in consultation with the State Department of Public
35 Health and the University of California San Francisco Center for
36 Tobacco Control Research and Education, shall either recertify
37 the warnings required in paragraph (5) of subdivision (a) or provide
38 updated warning label language and designs that accurately reflect
39 the state of the evolving science on cannabis health effects and on

1 effective communication of health warnings. The revisions shall
2 not diminish the prominence of the warnings.

3 (3) To inform the revisions required pursuant to paragraph (2),
4 the Legislature recommends, and the department may, use research
5 funded pursuant to subdivision (b) of Section 34019 of the Revenue
6 and Taxation Code that evaluates labeling and packaging and, in
7 conformance with the provisions of that subdivision, may
8 commission new research to assess the efficacy of the warnings
9 required by this section and approaches to identify future best
10 practices for cannabis health warning labels that are most effective
11 in changing knowledge and intent to consume or consumption,
12 especially of youth and during pregnancy.

13 (c) Cannabis or cannabis products manufactured before July 1,
14 2024, may be sold before July 1, 2025, without the labeling
15 required by this section.

16 SEC. 4. Section 26151.5 is added to the Business and
17 Professions Code, to read:

18 26151.5. (a) Print advertisements and written internet
19 advertisement displays, including on mobile web and social media,
20 promoting cannabis, cannabis products, or a cannabis brand that
21 are purchased by a licensee, a cannabis service, or an advertiser
22 on behalf of a licensee or cannabis service, shall meet all of the
23 following requirements:

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

26 (2) Contain one of the health warnings specified in paragraph
27 (5) of subdivision (a) of Section 26121, or established in regulation
28 by the department pursuant to paragraph (2) of subdivision (b) of
29 Section 26121. The purchaser shall rotate the warnings used such
30 that all required warnings are used, to the extent possible, in an
31 equal distribution.

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

35 (4) Have a bright yellow background.

36 (b) Radio advertisements promoting cannabis, cannabis products,
37 or a cannabis brand that are purchased by a licensee, a cannabis
38 service, or an advertiser on behalf of a licensee or cannabis service
39 shall have a warning statement read aloud clearly at the same
40 volume and pace as the rest of the advertisement. Warnings

1 pursuant to this subdivision shall use a mandated rotating warnings
 2 approach where each company’s advertisements are equally divided
 3 between the applicable warnings specified in paragraph (5) of
 4 subdivision (a) of Section 26121 or established in regulation by
 5 the department pursuant to paragraph (2) of subdivision (b) of
 6 Section 26121, although a given creative may use a single
 7 randomly selected message.

8 (c) Television and video advertisements, in traditional media
 9 or an internet promotional content, including on mobile web and
 10 social media, promoting cannabis, cannabis products, or a cannabis
 11 brand, that are purchased by a licensee, a cannabis service, or an
 12 advertiser on behalf of a licensee or cannabis service, shall have
 13 a warning simultaneously read and legibly displayed on-screen
 14 with a yellow background. Warnings pursuant to this subdivision
 15 shall use a mandated rotating warnings approach where each
 16 company’s advertisements are equally divided between the
 17 applicable warnings specified in paragraph (5) of subdivision (a)
 18 of Section 26121 or established in regulation by the department
 19 pursuant to paragraph (2) of subdivision (b) of Section 26121,
 20 although a given creative may use a single randomly selected
 21 message.

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

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

26 (2) “Cannabis service” means a business that is not itself a
 27 licensee, but that interfaces with consumers on behalf of licensees,
 28 including by providing a platform to locate retailers or request
 29 delivery.

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

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