

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 273 (Irwin) – As Introduced January 19, 2021

**SUBJECT:** Cannabis: advertisements: highways.

**SUMMARY:** Places numerous restrictions on the content of outdoor advertising by cannabis businesses and requires a licensing authority to suspend the license of any licensee who violates those restrictions for one year.

**EXISTING LAW:**

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)
- 2) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)
- 3) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)
- 4) Requires the BCC to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis. (BPC § 26014)
- 5) Provides the Department of Food and Agriculture (CDFA) with responsibility for regulating cannabis cultivators. (BPC § 26060)
- 6) Provides the Department of Public Health (CDPH) with responsibility for regulating cannabis manufacturers. (BPC § 26130)
- 7) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)
- 8) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

- 9) Authorizes the Legislature to, by majority vote, enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)
- 10) Defines "advertisement" as any written or verbal statement, illustration, or depiction which is calculated to induce sales of cannabis or cannabis 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 such term shall not include product label or news publications. (BPC § 26150(b))
- 11) Defines "advertising sign" as any sign, poster, display, billboard, or any other stationary or permanently affixed advertisement promoting the sale of cannabis or cannabis products which are not cultivated, manufactured, distributed, or sold on the same lot. (BPC § 26150(c))
- 12) Defines "market" or "marketing" as any act or process of promoting or selling cannabis or cannabis products, including, but not limited to, sponsorship of sporting events, point-of-sale advertising, and development of products specifically designed to appeal to certain demographics. (BPC § 26150(e))
- 13) Requires that all advertisements and marketing accurately and legibly identify the licensee responsible for its content, by adding, at a minimum, the licensee's license number, and prohibits an outdoor advertising company from displaying an advertisement by a licensee unless the advertisement displays the license number. (BPC § 26151)
- 14) Prohibits a cannabis licensee from doing any of the following:
  - a) Advertising or marketing in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.
  - b) Publishing or disseminating advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on its labeling.
  - c) Publishing or disseminating advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the cannabis originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement.
  - d) Advertising or marketing on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.
  - e) Advertising or marketing cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.
  - f) Publishing or disseminating advertising or marketing that is attractive to children.

- g) Advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 to 12, inclusive, playground, or youth center.
- h) Publishing or disseminating advertising or marketing while the licensee's license is suspended.

(BPC § 26152)

- 15) Prohibits a cannabis licensee from including on the label of any cannabis or cannabis product or publishing or disseminating advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption. (BPC § 26154)
- 16) Exempts from the prohibition against advertising within 1,000 feet of a day care, school, playground, or youth center the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products. (BPC § 26155)
- 17) Requires cannabis product advertisements to comply with the applicable provisions of the Outdoor Advertising Act. (BPC § 26156)
- 18) Authorizes the Legislature to, by majority vote, enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)

**THIS BILL:**

- 19) Makes various findings and declarations regarding the intent of Proposition 64 to protect children from marijuana advertisements, the proliferation of cannabis billboards, and reports that recreational marijuana legalization in California was associated with an increase in adolescent marijuana use.
- 20) Codifies regulations promulgated by the BCC requiring advertising and marketing that is placed in broadcast, cable, radio, print, and digital communications to meet certain requirements, as well as existing regulations specifically applicable to outdoor advertisements.
- 21) Enacts new restrictions on outdoor signs advertising cannabis, including billboards, as follows:
  - a) Prohibits advertisements from containing any text other than the licensee's name, address or location, website, and information accurately identifying the nature of the business.
  - b) Prohibits any images or depictions of animals, cannabis plants or leaves, or food or beverage products designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis, with numerous examples provided.

- c) Prohibits the depiction of smoking, vaporizing, or ingesting of cannabis or cannabis products, or food or beverages implied to be cannabis infused.
  - d) Prohibits any text, display, depiction, or image that contains or implies any content associated with any television, film, or print generally marketed toward minors.
- 22) Requires a licensing authority to suspend the license of any licensee who violates the provisions of the bill for one year.
- 23) Provides that in construing and enforcing the advertising restrictions, any action, omission, or failure of an advertising agent, representative, or contractor retained by the licensee shall in every case be deemed the act, omission, or failure of the licensee.
- 24) Provides that any provision held invalid shall be severed from the remaining portions of the law.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author:

“Proponents of Proposition 64 sold their initiative to voters with the promise that the cannabis industry would not target or advertise to children. Five years later, with billboards advertising cannabis infused gummies and hard candies, with shops named “Cookies” touting flavors like lemonade, and with some advertisements mimicking the logo of shows featured on Disney+, it is easy to see that the industry has broken their promise and that it is time to reform the law. According to the study out of Rutgers University, using data from the California Healthy Kids Survey, researchers observed significant increases in marijuana use among nearly all demographic groups from 2017-2018 to 2018-2019. The study cited an 18% increase in the likelihood of lifetime use and a 23% increase in past-30-day use. Unfortunately, this increase follows a 7-year decline in marijuana use from 2010–2011 to 2016–2017. The data doesn’t lie that more adolescents are using cannabis after legalization. Prop 64 itself makes it clear that cannabis sellers shall not “advertise or market marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products.” Yet, we continue to see billboards with cartoon animals hocking cannabis infused candies and chocolates. The exact same items that we hand out to children every Halloween. It is time for some commonsense rules relating to what kinds of content should be allowed relating to advertisements for a drug that millions of Californians -- of all ages -- see every single day.”

**Background.**

*Early History of Cannabis Regulation in California.* Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included

findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MMP's identification cards were intended to help law enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

Without the adoption of a formal framework to provide for state licensure and regulation of medicinal cannabis, a proliferation of informally regulated cannabis collectives and cooperatives were largely left to the enforcement of local governments. As a result, a patchwork of local regulations was created with little statewide involvement. More restrictive laws and ordinances by cities and counties were ultimately upheld by the California Supreme Court in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4<sup>th</sup> 729, which held that state law did not expressly or implicitly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medicinal cannabis be prohibited from operating within its borders.

Even after several years of allowable cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. The constant threat of action by the federal government created apprehension among California's cannabis community.

A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

*MCRSA.* After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

- The BCC to license and regulate dispensaries, distributors, transporters, and (subsequently) testing laboratories, and to provide oversight for the state's regulatory framework;
- The CDPH to license and regulate manufacturers; and
- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

*AUMA.* Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the original 17 in MCRSA, and provides the Department of Consumer Affairs (and the BCC) with exclusive authority to license and regulate the transportation of cannabis. The AUMA also authorizes vertical integration models which allows for the holding of multiple license types, as previously prohibited under MCRSA. Additionally, while MCRSA required both a state and local license to operate, the AUMA only stipulated a state license; however, the state is also directed not to issue a license to an applicant if it would "violate the provisions of any local ordinance or regulation."

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

*MAUCRSA.* In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of

the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

*Regulations.* On January 16, 2019, the state's three cannabis licensing authorities—the BCC, the CDPH, and the CDFA—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively. These final regulations replaced emergency regulations that had previously been in place, and made various changes to earlier requirements following the public rulemaking process. The adoption of final rules provided a sense of finality to the state's long history in providing for the regulation of lawful cannabis sale and use.

*Consolidation of Regulatory Entities.* In early 2021, the Department of Finance released trailer bill language proposing to create a new Department of Cannabis Control with centralized authority for cannabis licensing and enforcement activities. This new department would be created through a consolidation of the three current licensing authorities' current programs. If the proposed reorganization is successful, there will likely need to be additional rulemaking to reconcile the state's regulations with the newly created department.

*Prohibitions against Advertising to Minors.* Prior to the AUMA being passed by the voters, arguments both for and against the initiative frequently focused on a debate over whether Proposition 64 would adequately protect children from exposure to the cannabis industry. In the official text of Proposition 64, the purpose and intent of the initiative was stated to include an intention to “prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present.” The AUMA includes a number of specified safeguards for minors, including:

- Prohibiting consumption of cannabis outside a residence within 1,000 feet of a school, day care center, or youth center while children are present.
- Requiring child-resistant packaging for cannabis products.
- Prohibiting packages and labels from being made to be attractive to children.
- Providing that cannabis products shall not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
- Prohibiting cannabis businesses from being located within 600 feet of schools and other areas where children congregate.
- Authorizing a licensing authority to deny a license if there is an unreasonable risk of minors being exposed to cannabis or cannabis products.
- Expressly prohibiting businesses selling recreational cannabis to minors under 21 or employing minors under 21.

Additionally, Proposition 64 included a prohibition against advertisers 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.” This language was heavily simplified when MCRSA and the AUMA were reconciled through the enactment of SB 94. Under MAUCRSA, licensees are instead prohibited

more generally from publishing or disseminating “advertising or marketing that is attractive to children.” However, similar language was incorporated into the BCC’s regulations governing advertisements placed in broadcast, cable, radio, print, and digital communications.

*Regulation of Cannabis Advertisements and Billboards.* MAUCRSA imposes a number of advertising and marketing restrictions for cannabis businesses. First, the initiative required all advertisements and marketing to accurately and legibly identify the licensee responsible for its content, which MAUCRSA provides must include the addition of a license number. Further, the AUMA required that “any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee.”

MAUCRSA places a series of specific prohibitions on forms of advertising and marketing by cannabis licensees. Cannabis licensees may not do any of the following:

- Advertise or market in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.
- Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.
- Publish or disseminate advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the cannabis originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement.
- Advertise or market on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.
- Advertise or market cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.
- Publish or disseminate advertising or marketing that is attractive to children.
- Advertise or market cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 to 12, inclusive, playground, or youth center.
- Publish or disseminate advertising or marketing while the licensee’s license is suspended.

In addition to these statutory requirements and prohibitions, the BCC’s regulations include a number of additional provisions relating to cannabis advertising. Advertisements placed in broadcast, cable, radio, print, and digital communications may only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older. These advertisements also may not depict images of minors, objects likely to be appealing to minors, or statements regarding free cannabis goods or giveaways.



The BCC's regulations also added more specific requirements to outdoor advertising of cannabis, including billboards. The BCC requires that, in addition to complying with the general provisions governing advertising, all outdoor signs must be affixed to a building or permanent structure. The BCC regulations also state that these ads must comply with the provisions of the Outdoor Advertising Act.

Finally, the BCC's regulations added more specificity to the AUMA's prohibition against advertising or marketing on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border. The BCC mirrored this prohibition in its regulations; however, it added the phrase "...within a 15-mile radius of the California border." This addition essentially clarified that cannabis billboards could be placed on an Interstate Highway or on a State Highway that crosses the California border, as long as it was placed farther than 15 miles from the state line.

In the BCC's final statement of reasons, it provided the following explanation for its rulemaking decisions in regards to outdoor advertising along highways:

"Subsection (b)(3) has been added to clarify that outdoor signs, including billboards, shall not be located within a 15-mile radius of the California border or an Interstate Highway or on a State Highway which crosses the California border. The Act prohibits certain advertisements along Interstate Highways and State Highways that cross the California border but does not clarify to what extent such prohibitions take place. This change is necessary to clarify the prohibitions found in section 26152(d) of the Business and Professions Code, by allowing the placement of outdoor signs or billboards along Interstate Highways or State Highways, provided that they are located further than 15-miles from the California border. The Bureau determined that a 15-mile radius was a necessary and appropriate distance from the California border because it satisfies that the intent of section 26152(d) of the Business and Professions Code, while assuring that Bureau licensees, including those located in jurisdictions along the California border, still have an opportunity to advertise and market their commercial cannabis operations along Interstate Highways and State Highways if they satisfy the identified radius limitations."

This statement of reasons essentially argued that the intent of Proposition 64 was not to necessarily prohibit *all* outdoor advertising along highways, and that the BC was authorized to add clarity to the extent of the prohibition.

In November 2020, the BCC's regulations language allowing for cannabis advertisements to be placed along highways farther than 15 miles from the border were challenged in court. In the case of *Farmer v. Bureau of Cannabis Control*, the plaintiffs argued that the BCC had no authority to promulgate regulations allowing for cannabis advertisements to be placed along highways when the initiative clearly prohibited them. The plaintiffs insisted that the plain language intent of Proposition 64 was to protect the public by limiting outdoor advertising.

In response, the BCC argued that the primary intent of the highway language in Proposition 64 was to avoid running afoul of the federal government's continued classification of cannabis as a Schedule I controlled substance. Cannabis placed on interstate highways or on state highways near the border could potentially be seen as encouraging "cannabis tourism" where individuals from out-of-state enter California to purchase from the state's legal market. The BCC argued that its regulations effectuated this intent while avoiding constitutional issues around free speech.

On January 11, 2021, the San Luis Obispo Superior Court entered a summary judgement that the BCC's regulation language allowing for cannabis billboards to be placed along highways was in direct conflict the law. The court found that "the Bureau exceeded its authority in promulgating the Advertising Placement Regulation" and that the regulation "is clearly inconsistent with the Advertising Placement Statute, expanding the scope of permissible advertising to most of California's State and Interstate Highway system, in direct contravention of the statute." The court invalidated the BCC's regulation and effectively instituted a full prohibition against outdoor advertising of cannabis along highways.

In response, the BCC issued a notice to licensees, informing them of the court's decision. The notice provided the following guidance: "To comply with the law and regulations, licensees may not place new advertising or marketing on any interstate highway or state highway that crosses the California border. Licensees should also begin the process of removing current advertising and marketing that meets this criteria."

As recently amended, this bill is not intended to either prohibit or expressly allow cannabis billboards along highways. However, to the extent that these or other outdoor advertisements are allowed, the bill would enact various new content restrictions. The bill would substantially limit the text that may appear on a billboard, and would specifically ban a number of images from being depicted. The intent of the author is to further what they believe to be the intent of the voters in enacting Proposition 64, which was to legalize recreational cannabis in a way that prioritized safeguards for children and minors.

**Current Related Legislation.** AB 1302 (Quirk) would allow cannabis licensees to advertise or market on a billboard on a highway that is farther than a 15-mile radius of the California border. *This bill is pending in the Assembly Committee on Business and Professions.*

**Prior Related Legislation.** AB 1417 (B. Rubio) would have established civil penalties for violating specified cannabis marketing or advertising requirements, and would have specified disbursement procedures for civil penalties. *This bill was held under submission on the Senate Appropriations Committee's suspense file.*

AB 2899 (B. Rubio, Chapter 923, Statutes of 2018) prohibits a licensee from publishing or disseminating advertisements or marketing of cannabis and cannabis products while the licensee's license is suspended.

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) combined AUMA and MCRSA into one system for the regulation of cannabis, resulting in MAUCRSA.

## **ARGUMENTS IN SUPPORT:**

The **Hazelden Betty Ford Foundation** supports this bill. According to the Foundation, "not only are the consequences of substance use often higher for children and youth, but so is their susceptibility to commercial marketing and advertising. Studies have shown that advertising changes teens' attitudes about alcohol and tobacco and can cause them to start using. Policymakers have long been aware of this issue, and have attempted, through legislation and regulation, to limit marketing and advertising of these substances to children. These public policies—dating back decades in the case of tobacco—have been effective at improving public health and reducing use. States across the country that have legalized marijuana have applied some of the same public health protections to their public policy on cannabis, including through

limiting or prohibiting advertising by marijuana interests. California voters attempted to do the same in Proposition 64, but those protections have failed to be implemented and enforced.”

### **ARGUMENTS IN OPPOSITION:**

The **California State Outdoor Advertising Association** (CSOAA) opposes this bill. The CSOAA argues that “as drafted, AB 273 seeks to do what the Supreme Courts says a law or ordinance can’t do: target speech based on its content. In this case the bill targets advertisements for cannabis products that have been expressly approved by the State of California as legal.” The CSOAA argues that “the CSOAA and its members support the right of businesses to promote legal products and services.”

### **POLICY ISSUE(S) FOR CONSIDERATION:**

This bill would place new bans on marketing content on billboards and other outdoor advertisements. This could potentially raise constitutionality issues in regards to the First Amendment’s protections regarding freedom of speech. Because the bill’s key prohibitions apply specifically to words and images used to advertise products, it would fall under caselaw relating to laws and regulations restricting commercial speech.

The Supreme Court of the United States established a test for determining whether restrictions on commercial speech violate the First Amendment of the Constitution. In *Central Hudson Gas Elec v. Public Service Comm of New York* 447 U.S. 557 (1980), the Court recognized commercial speech as constitutionally protected but established a multi-pronged test for determining whether restrictions are permissible. In its decision, the Court ruled that in order for the government to limit commercial speech, it must pass intermediate scrutiny and each of the following must be demonstrated:

- 1) The government must have a substantial interest.
- 2) The regulation must directly and materially advance the government’s substantial interest.
- 3) The regulation must be narrowly tailored.

In this instance, the author would likely argue that the government’s interest is in protecting children from exposure to cannabis advertisements. There is likely a strong argument that this interest is indeed substantial, and that the regulation would advance that interest. However, the author may wish to consider whether a court would be likely to find that the regulations imposed by this bill are sufficiently narrowly tailored to survive intermediate scrutiny.

### **REGISTERED SUPPORT:**

Alcohol Justice

American Automobile Association of Northern California, Nevada & Utah

Automobile Club of Southern California

Contra Costa County

Getting It Right From the Start

Hazelden Betty Ford Foundation

**REGISTERED OPPOSITION:**

Advanced Vapor Devices (AVD)  
Anthony Law Group  
Bizfed Central Valley  
Blackbird Distribution  
Bloom Farms  
Body and Mind  
Brite Labs  
California Cannabis Industry Association  
California Cannabis Manufacturers Association  
California NORML  
California State Outdoor Advertising Association  
Caliva  
Cannabis Connect  
Cannabis Distribution Association  
CannaCraft  
CannaSafe Labs  
Central Coast Agriculture  
CMG/Caliva  
Cresco Labs  
Dampen  
Dosist  
Double Barrel  
Eaze Technologies, INC.  
Eden  
Flow Kana  
Fume  
GAIACA Waste Revitalization  
Harborside  
Headstash  
Henry G. Wykowski & Associates  
Honey  
Humboldt's Finest  
Infinite Cal  
Island  
Jetty Extracts  
Kanha  
KGB Reserve  
Kiva  
La Vida Verde  
Law Office of Kimberly R. Simms  
Legal Cannabis for Consumer Safety (LCCS)  
Legion of Bloom  
Level Blends  
Los Angeles County Business Federation (BIZFED)  
Lowell Herb Co.  
Mammoth Distribution  
Meadow

MPP  
Nabis  
Natura  
NCIA  
NorCal Cannabis Company  
Old Pal  
PAX  
Perfect Union  
Pineapple Express  
Pure  
Rove  
Santa Monica Chamber of Commerce  
Se7enLeaf  
Select / Curaleaf  
Sparc  
Sunderstorm  
SVCA  
The Farmacy SB  
The London Fund  
The Werc Shop  
UCBA  
Utopia  
Valley Industry and Commerce Association (VICA)  
Venice Cookie Co.  
Yvette McDowell Consulting  
Weedmaps

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