

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 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 ~~12-point type~~, *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. 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 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~~ *each new* consumer with the ~~brochure~~ *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 ~~the~~ *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,  
25 raising the risk of low birth weight and other harms for the  
26 newborn.

27    (f) The number of adults in the United States who use cannabis  
28 more than doubled from 22.6 million in 2008 to 45.0 million in  
29 2019, and the number of daily or near-daily users almost tripled  
30 from 3.6 million to 9.8 million in 2019.

31    (g) In 2017, the National Academies of Science, Engineering  
32 and Medicine concluded that, in addition to certain therapeutic  
33 benefits, there is substantial evidence of the association of cannabis  
34 use with certain health harms, including motor vehicle accidents,  
35 psychosis and schizophrenia, respiratory disease with regular  
36 smoking, emergence of problem use or frequent use or early age  
37 of onset of use, and low birth weight after use during pregnancy.  
38 In 2019, the United States Surgeon General issued an advisory on

1 risks to the developing brain of cannabis use during youth and  
2 pregnancy, and particularly of higher THC content products. In  
3 2021, National Institutes of Health researchers found major  
4 increases in suicidal ideation among cannabis users nationally,  
5 even those without major depression, with tripling of risk with  
6 daily use.

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

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

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

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

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

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

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

39 26070.3. (a) (1) On or before January 1, 2024, the department,  
40 in consultation with the State Department of Public Health, shall

1 create a single-page flat or folded brochure that includes steps for  
2 safer use of cannabis, including starting with lower doses, care  
3 with delayed effects of edibles, and the set of health warnings  
4 specified in paragraph (5) of subdivision (a) of Section 26121. The  
5 brochure shall be printed in a type size not smaller than 12 points.

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

13 (b) (1) On and after March 1, 2024, a retailer or microbusiness  
14 selling, or person delivering, cannabis or cannabis products to a  
15 consumer shall provide ~~the~~ *each new* consumer with the brochure  
16 created pursuant to subdivision (a) at the time of ~~delivery~~. *first*  
17 *purchase or delivery and shall have the brochures visibly available*  
18 *for other consumers at point of service.*

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

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

30 26121. (a) On and after January 1, 2025, in addition to the  
31 warning required in Section 26120, cannabis or a cannabis product,  
32 other than those for topical use, shall include a warning label that  
33 meets the following requirements:

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

36 (2) The warning shall be in ~~at least 12-point type~~. *the largest*  
37 *type that fits in a label covering one-third of the front or principal*  
38 *face of a product package, using at least 12-point type whenever*  
39 *feasible.*

40 (3) The background shall be bright yellow.

1 (4) Employ a pictorial or graphic element appropriate to the  
2 message.

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

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

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

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

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

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

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

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

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

28 (i) WARNING: Smoking cannabis may make breathing  
29 problems worse.

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

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

36 (b) (1) The department shall publish proposed implementation  
37 regulations for this section, including pictorial designs, on or before  
38 January 1, 2024, and shall publish final regulations on or before  
39 July 1, 2024.

(2) On or before January 1, 2030, and every five years thereafter, 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, shall either recertify the warnings required in paragraph (5) of subdivision (a) or provide updated warning label language and designs that accurately reflect the state of the evolving science on cannabis health effects and on effective communication of health warnings. The revisions shall not diminish the prominence of the warnings.

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

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

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

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

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

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

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

4 (4) Have a bright yellow background.

5 (b) Radio advertisements promoting cannabis, cannabis products,  
6 or a cannabis brand that are purchased by a licensee, a cannabis  
7 service, or an advertiser on behalf of a licensee or cannabis service  
8 shall have a warning statement read aloud clearly at the same  
9 volume and pace as the rest of the advertisement. Warnings  
10 pursuant to this subdivision shall use a mandated rotating warnings  
11 approach where each company's advertisements are equally divided  
12 between the applicable warnings specified in paragraph (5) of  
13 subdivision (a) of Section 26121 or established in regulation by  
14 the department pursuant to paragraph (2) of subdivision (b) of  
15 Section 26121, although a given creative may use a single  
16 randomly selected message.

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

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

32 (1) "Cannabis brand" means a mark, name, or device used by  
33 a licensee or other party to denote a line of cannabis or cannabis  
34 products for marketing purposes.

35 (2) "Cannabis service" means a business that is not itself a  
36 licensee, but that interfaces with consumers on behalf of licensees,  
37 including by providing a platform to locate retailers or request  
38 delivery.



- 1 (e) A cannabis service, or an advertiser purchasing advertising
- 2 on behalf of a licensee or cannabis service, that violates this section
- 3 shall be subject to penalties pursuant to Section 26031.5.
- 4 (f) This section shall become operative on January 1, 2024.

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