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**AB-3067 Internet: marketing: minors: cannabis.** (2017-2018)

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**Assembly Bill No. 3067**

**CHAPTER 347**

An act to amend Section 22580 of the Business and Professions Code, relating to the Internet.

[ Approved by Governor September 11, 2018. Filed with Secretary of State September 11, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 3067, Chau. Internet: marketing: minors: cannabis.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of marijuana for nonmedical purposes by people 21 years of age and older. 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. MAUCRSA prohibits any advertising or marketing placed in broadcast, cable, radio, print, and digital communications from being displayed unless at least 71.6% of the audience is reasonably expected to be 21 years of age or older.

Existing law prohibits an operator of an Internet Web site, online service, online application, or mobile application directed to minors from marketing or advertising certain products or services, including any instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or any controlled substance and also makes this prohibition applicable to an advertising service that is notified by an operator that the site, service, or application is directed to minors. Existing law also prohibits an operator from knowingly using, disclosing, or compiling, or allowing a 3rd party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising specified types of products or services.

This bill would prohibit an operator of an Internet Web site, online service, online application, or mobile application directed to minors, or an advertising service that is notified by an operator that the site, service, or application is directed to minors, from marketing or advertising any cannabis, cannabis product, cannabis business, or cannabis-related instrument or paraphernalia on the Internet Web site, online service, online application, or mobile application. The bill would also prohibit an operator from knowingly using, disclosing, or compiling, the personal information of a minor for the purpose of marketing or advertising any cannabis, cannabis product, cannabis business, or cannabis-related instrument or paraphernalia.

The AUMA authorizes the Legislature to amend the act to further the purposes and intent of the act with a  $\frac{2}{3}$  vote of the membership of both houses of the Legislature, except as provided.

This bill would declare that its provisions further specified purposes and intent of AUMA.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 22580 of the Business and Professions Code is amended to read:

**22580.** (a) An operator of an Internet Web site, online service, online application, or mobile application directed to minors shall not market or advertise a product or a service described in subdivision (i) on its Internet Web site, online service, online application, or mobile application directed to minors.

(b) An operator of an Internet Web site, online service, online application, or mobile application:

(1) Shall not market or advertise a product or service described in subdivision (i) to a minor who the operator has actual knowledge is using its Internet Web site, online service, online application, or mobile application and is a minor, if the marketing or advertising is specifically directed to that minor based upon information specific to that minor, including, but not limited to, the minor's profile, activity, address, or location sufficient to establish contact with a minor, and excluding Internet Protocol (IP) address and product identification numbers for the operation of a service.

(2) Shall be deemed to be in compliance with paragraph (1) if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under circumstances prohibited under paragraph (1).

(c) An operator of an Internet Web site, online service, online application, or mobile application directed to minors or who has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application, shall not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising products or services to that minor for a product described in subdivision (i).

(d) "Minor" means a natural person under 18 years of age who resides in this state.

(e) "Internet Web site, online service, online application, or mobile application directed to minors" mean an Internet Web site, online service, online application, or mobile application, or a portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults. Provided, however, that an Internet Web site, online service, online application, or mobile application, or a portion thereof, shall not be deemed to be directed at minors solely because it refers or links to an Internet Web site, online service, online application, or mobile application directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(f) "Operator" means any person or entity that owns an Internet Web site, online service, online application, or mobile application. It does not include any third party that operates, hosts, or manages, but does not own, an Internet Web site, online service, online application, or mobile application on the owner's behalf or processes information on the owner's behalf.

(g) This section shall not be construed to require an operator of an Internet Web site, online service, online application, or mobile application to collect or retain age information about users.

(h) (1) With respect to marketing or advertising provided by an advertising service, the operator of an Internet Web site, online service, online application, or mobile application directed to minors shall be deemed to be in compliance with subdivision (a) if the operator notifies the advertising service, in the manner required by the advertising service, that the site, service, or application is directed to minors.

(2) If an advertising service is notified, in the manner required by the advertising service, that an Internet Web site, online service, online application, or mobile application is directed to minors pursuant to paragraph (1), the advertising service shall not market or advertise a product or service on the operator's Internet Web site, online service, online application, or mobile application that is described in subdivision (i).

(i) The marketing and advertising restrictions described in subdivisions (a) and (b) shall apply to the following products and services as they are defined under state law:

(1) Alcoholic beverages, as referenced in Sections 23003 to 23007, inclusive, and Section 25658.

(2) Firearms or handguns, as referenced in Sections 16520, 16640, and 27505 of the Penal Code.

(3) Ammunition or reloaded ammunition, as referenced in Sections 16150 and 30300 of the Penal Code.

(4) Handgun safety certificates, as referenced in Sections 31625 and 31655 of the Penal Code.

(5) Aerosol container of paint that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(6) Etching cream that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(7) Any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, as referenced in Division 8.5 (commencing with Section 22950) and Sections 308, 308.1, 308.2, and 308.3 of the Penal Code.

(8) Notwithstanding subdivision (b) of Section 26151, any cannabis, cannabis product, cannabis business, or any instrument or paraphernalia that is designed for the smoking or ingestion of cannabis or cannabis products.

(9) BB device, as referenced in Sections 16250 and 19910 of the Penal Code.

(10) Dangerous fireworks, as referenced in Sections 12505 and 12689 of the Health and Safety Code.

(11) Tanning in an ultraviolet tanning device, as referenced in Sections 22702 and 22706.

(12) Dietary supplement products containing ephedrine group alkaloids, as referenced in Section 110423.2 of the Health and Safety Code.

(13) Tickets or shares in a lottery game, as referenced in Sections 8880.12 and 8880.52 of the Government Code.

(14) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, as referenced in Section 379 of the Penal Code.

(15) Body branding, as referenced in Sections 119301 and 119302 of the Health and Safety Code.

(16) Permanent tattoo, as referenced in Sections 119301 and 119302 of the Health and Safety Code and Section 653 of the Penal Code.

(17) Drug paraphernalia, as referenced in Section 11364.5 of the Health and Safety Code.

(18) Electronic cigarette, as referenced in Section 119406 of the Health and Safety Code.

(19) Obscene matter, as referenced in Section 311 of the Penal Code.

(20) A less lethal weapon, as referenced in Sections 16780 and 19405 of the Penal Code.

(j) The marketing and advertising restrictions described in subdivisions (a), (b), and (c) shall not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising of the products or services described in subdivision (i).

(k) "Marketing or advertising" means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

**SEC. 2.** The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act for the following reason:

(a) The Privacy Rights for California Minors in the Digital World (Section 22580 of the Business and Professions Code) prohibits an operator of an Internet Web site, online service, online application, or mobile application directed to minors from marketing specified types of products or services to a minor, including any instrument or paraphernalia that is designed for the smoking or ingestion of any controlled substance.

(b) Under both the federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) and the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), cannabis is classified as a Schedule I controlled substance.

(c) While subdivision (b) of Section 26151 of the Business and Professions Code, a provision of Proposition 64, allows for the display of any advertising or marketing of cannabis products in various ways, including digital communications, where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data, subdivision (j) of Section 3 of Proposition 64 states that it was the intent of the people in approving AUMA to prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years of age or near schools or other places where children are present.

(d) Legislation is needed to ensure that minors are not exposed to marketing and advertising of cannabis, cannabis products, and cannabis businesses either online or on mobile applications.

(e) Therefore, this act would further the purpose and intent of both the Privacy Rights for California Minors in the Digital World and the AUMA by protecting minors from being exposed to advertising and marketing of cannabis, cannabis products, and

