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SB-1498 Cannabis and industrial hemp: advertising: civil action. (2023-2024)

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Senate Bill No. 1498

CHAPTER 899

An act to amend Section 26152 of, and to add Section 26152.2 to, the Business and Professions Code, and to amend Section 111926 of the Health and Safety Code, relating to cannabis.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1498, Ashby. Cannabis and industrial hemp: advertising: civil action.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure, 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. Existing law, 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 and requires the Department of Cannabis Control to administer its provisions. Under MAUCRSA, the Department of Cannabis Control has sole authority to license and regulate commercial cannabis activity, which MAUCRSA defines to include, among other activities, the sale of cannabis and cannabis products. Existing law requires all civil penalties imposed and collected by a court in actions brought for violations of MAUCRSA to be deposited into the General Fund, except as provided.

Existing law places various advertising and marketing restrictions on licensees, including prohibiting a licensee from publishing or disseminating advertising or marketing that is attractive to children, and from advertising or marketing cannabis or cannabis products in a manner intended to encourage consumption by persons under 21 years of age or on an advertising sign within 1,000 feet of a daycare center, school, or youth center. Existing law also prohibits a licensee from advertising or marketing on a billboard or similar advertising device located on an interstate highway or on a state highway that crosses the California border.

This bill would expand the above-described restrictions to a person engaged in commercial cannabis activity, whether licensed or unlicensed.

Existing law governs the cultivation of industrial hemp in this state and establishes a registration program administered by county agricultural commissioners and the Department of Food and Agriculture for growers of industrial hemp, hemp breeders, and established agricultural research institutions, as defined. The Sherman Food, Drug, and Cosmetic Law, among other things, regulates the labeling of food, beverages, and cosmetics and makes it a crime to distribute in commerce any food, drug, device, or cosmetic if its packaging or labeling does not conform to these provisions. Violation of the Sherman Food, Drug, and Cosmetic Law is a misdemeanor. Existing law imposes various advertising requirements on hemp manufacturers, as defined, including, among other things, prohibiting directly targeting advertising or marketing to children or to persons who are pregnant or breastfeeding.

This bill would instead require a manufacturer, distributor, or seller of industrial hemp to comply with advertising and marketing restrictions similar to those under MAUCRSA as described above. By expanding the scope of a misdemeanor, this bill would

impose a state-mandated local program.

This bill would authorize the Attorney General, a city attorney, or a county counsel to bring and maintain an action to redress a violation of the above-described advertising and marketing restrictions. The bill would require the Attorney General, a city attorney, or a county counsel who prevails in an action to be awarded injunctive relief and would authorize them to be awarded reasonable attorney's fees and costs and civil penalties of not more than \$5,000 per violation for a licensed cannabis business or an industrial hemp registrant and not more than \$30,000 for an unlicensed cannabis business or an unregistered business engaged in the sale of products that contain industrial hemp, as specified. The bill would require civil penalties awarded in an action to be distributed pursuant to existing law provisions referenced above. The bill would prohibit a defendant from being subject to more than one action in connection with the same, or substantially similar, advertising or marketing, except as provided. The bill would prohibit these provisions from being construed to limit or otherwise alter, in any way, any other authority conferred by law upon the Attorney General, the department, or any other state or local officer or agency, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 26152 of the Business and Professions Code is amended to read:

26152. A person engaged in commercial cannabis activity, whether licensed or unlicensed, shall not do any of the following:

- (a) 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.
- (b) Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) Publish or disseminate advertising or marketing that is attractive to children.
- (g) Advertise or market cannabis or cannabis products on an advertising sign within 1,000 feet of a daycare center, school providing instruction in kindergarten or any of grades 1 to 12, inclusive, playground, or youth center.
- (h) Publish or disseminate advertising or marketing for unlicensed commercial cannabis activity or for licensed commercial cannabis activity while the licensee's license is suspended.

SEC. 2. Section 26152.2 is added to the Business and Professions Code, to read:

26152.2. (a) The Attorney General, on behalf of the people, a city attorney, or a county counsel may bring and maintain an action to redress a violation of subdivisions (d), (e), (f), and (g) of Section 26152, or subdivision (b) of Section 111926 of the Health and Safety Code.

(b) (1) The Attorney General, a city attorney, or a county counsel who prevails in an action pursuant to this section shall be awarded injunctive relief.

(2) The Attorney General, a city attorney, or a county counsel may also be awarded either or both of the following:

(A) Reasonable attorney's fees and costs.

(B) Civil penalties of not more than five thousand dollars (\$5,000) per violation by a licensed cannabis business or an industrial hemp registrant and not more than thirty thousand dollars (\$30,000) per violation by an unlicensed cannabis business or an unregistered business engaged in the sale of products that contain industrial hemp.

(3) The remedies provided in this section shall be in addition to any other remedies otherwise provided in any other law.

(c) In determining whether to award reasonable attorney's fees and costs and civil penalties, and in assessing the amount of any civil penalty, the court shall consider factors the court determines to be relevant, including, but not limited to, the following:

(1) The gravity of the violation.

(2) The defendant's good faith, or lack thereof.

(3) The defendant's history of previous violations.

(d) Civil penalties awarded in an action brought pursuant to this section shall be distributed as described in subdivision (d) of Section 26038.

(e) (1) Except as provided in paragraph (2), a defendant shall not be subject to more than one action pursuant to this section in connection with the same, or substantially similar, advertising or marketing.

(2) This subdivision does not prohibit a subsequent action pursuant to this section to redress a recurring or continuing violation of Section 26152 or of Section 111926 of the Health and Safety Code, after the defendant has previously been found to have engaged in the same violation of Section 26152 or of Section 111926 of the Health and Safety Code or a substantially similar violation. Such an action may be brought and maintained if all of the following conditions are satisfied:

(A) The defendant has previously been found, in an action pursuant to this section, to have violated one or more subdivisions of Section 26152 or subdivision (b) of Section 111926 of the Health and Safety Code.

(B) The defendant subsequently engages in the same advertising or marketing, or substantially similar advertising or marketing, that was previously found to violate Section 26152 or subdivision (b) of Section 111926 of the Health and Safety Code.

(C) The subsequent action is limited to advertising or marketing that occurred after entry of judgment in the prior action.

(f) (1) The causes of action, remedies, and penalties provided by this section are cumulative to each other and to the causes of action, remedies, and penalties available under all other laws of this state.

(2) This section shall not be construed to limit the availability of any cause of action, remedy, or penalty otherwise available under any other law of this state.

(g) (1) This section shall not be construed to limit or otherwise alter, in any way, any other authority conferred by law upon the Attorney General, the department, or any other state or local officer or agency.

(2) An action brought pursuant to this section shall not have preclusive effect upon the Attorney General, the department, or any other state or local officer or agency.

SEC. 3. Section 111926 of the Health and Safety Code is amended to read:

111926. (a) A manufacturer, distributor, or seller of an industrial hemp product shall follow packaging, labeling, and advertising laws, including, but not limited to, Chapter 4 (commencing with Section 110290), and federal laws incorporated or applicable in this state, including, but not limited to, Sections 110100, 110340, 110371, 110380, 110382, and 110407 and shall not violate this part.

(b) A manufacturer, distributor, or seller of industrial hemp shall not do any of the following:

(1) Directly target advertising or marketing to children or to persons who are pregnant or breastfeeding.

(2) Advertise or market on a billboard or similar advertising device located on an interstate highway or on a state highway that crosses the California border.

(3) Advertise or market industrial hemp products in a manner intended to encourage persons under 21 years of age to consume industrial hemp products.

(4) Publish or disseminate advertising or marketing that is attractive to children.

(5) Advertise or market industrial hemp products on an advertising sign within 1,000 feet of a daycare center, school providing instruction in kindergarten or any of grades 1 to 12, inclusive, playground, or youth center.

(c) Advertising or marketing placed in broadcast, cable, radio, print, or digital communications shall only be displayed where at least 70 percent of the audience is reasonably expected to be 18 years of age or older, as determined by reliable, up-to-date audience composition data.

(d) A violation of this section shall be subject to the requirements, fines, and penalties of Section 26152.2 of the Business and Professions Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.