

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1894 (Luz Rivas) – As Amended April 6, 2022

**SUBJECT:** Integrated cannabis vaporizer: packaging, labeling, advertisement, and marketing.

**SUMMARY:** Places additional requirements and restrictions for the packages and labels of integrated cannabis vaporizers, as well as for the advertisement and marketing of those products.

**EXISTING LAW:**

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) 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) Establishes the Department of Cannabis Control (DCC) within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)
- 3) 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)
- 4) Prohibits cannabis and cannabis product packages and labels from being made to be attractive to children and requires specified language to be prominently displayed in a clear and legible fashion, including a warning that cannabis is a Schedule I controlled substance and various other information depending on the type of product. (BPC § 26120)
- 5) Requires a cannabis cartridge or integrated cannabis vaporizer to bear a universal symbol and defines “integrated cannabis vaporizer” as a singular device that contains both cannabis oil and an integrated electronic device that creates an aerosol or vapor. (BPC § 26122)
- 6) 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))
- 7) 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))

- 8) 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))
- 9) 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)
- 10) 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)
- 11) 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)
- 12) Requires the DCC to promulgate regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. (BPC § 26130)

**THIS BILL:**

- 1) Requires the package and label of an integrated cannabis vaporizer to prominently display in a clear and legible fashion: “Properly dispose of as household hazardous waste.”
- 2) Prohibits the package and label of an integrated cannabis vaporizer from indicating that it is disposable or implying that it may be thrown in the trash or recycling streams.
- 3) Requires all advertisement and marketing of an integrated cannabis vaporizer to prominently provide in a clear and legible fashion: “An integrated cannabis vaporizer shall be properly disposed of as household hazardous waste.”
- 4) Prohibits the advertisement and marketing of an integrated cannabis vaporizer from indicating that an integrated cannabis vaporizer is disposable or implying that it may be thrown in the trash or recycling streams.

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

**COMMENTS:**

**Purpose.** This bill is sponsored by the **National Stewardship Action Council**. According to the author:

“To distinguish from the various electronic cigarette products (vapes) on the market, vapes in AB 1894 are defined as a one-time-use, cannabis-oil-filled device with an attached Lithium-ion battery (battery and cartridge in one). The major components of vapes pens are the battery, atomizer, e-liquid, cartridge, and aerosol. While vapes are made largely with recyclable materials, they contain elements of both universal waste including the electronic and the battery, and cannabis which is “special regulated waste.” Therefore, these vapes needs to be stored, handled, transported, processed and tracked in ways that comply with state regulations. The wastes from vaping components creates significant environmental issues. Yet, there is no traditional recycling system to collect and properly manage cannabis vapes. While vapes are being marketed as disposable, they are not legally disposable. In order to educate consumers and prevent these vapes from going in the trash, we must stop the marketing of these products in any way that implies they can be disposed of in trash or recycling systems, and are clearly labeled to ensure the consumer is aware they must be disposed of as hazardous waste.”

**Background.**

*Brief Overview of Cannabis Regulation in California.* After several prior 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. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed 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.

On January 16, 2019, the state’s three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the California Department of Public Health—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.

In early 2021, the Department of Finance released trailer bill language to create a new Department with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities’ cannabis programs. As of July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA.

*Integrated Cannabis Vaporizers.* The type of product sought to be further regulated by this bill can be simply described as single-use vape pens. According to a report published by Arcview Market Research and Greentank, yearly revenue from the sales of cannabis vaping products has exceeded \$1 billion, with the market growing as vaping continues to be a popular way to consume cannabis products. The majority of cannabis vaping products are cartridges that are inserted into reusable vaporizers or vape pens. However, approximately 10 percent of vaping products are vaporizers that combine both the cannabis product and a built-in electronic device that creates the aerosol or vapor, essentially constituting a single-use, all-in-one product.

The issue this bill seeks to address is that the single-use nature of these integrated cannabis vaporizer products creates an implication that the products are “disposable.” While they are not easily refilled or reused, these integrated devices contain batteries, and are therefore considered “hazardous waste.” According to the California Department of Resources Recycling and Recovery (CalRecycle), batteries are considered hazardous waste when they are discarded because of the metals and other toxic or corrosive materials they contain.

Further exacerbating the issue of consumers inappropriately disposing integrated cannabis vaporizers containing batteries is the fact that some major manufacturers have been found to expressly state that the products are “disposable.” The largest manufacturer of these products, which currently sells about 25 percent of vape products in California, sells its integrated vaping products with “DISPOSABLE THC PEN” prominently displayed on the packaging. The author believes that this misleading and potentially hazardous labeling and advertising practice should be prohibited and that consumers should be better informed about how these products should be properly disposed.

**Current Related Legislation.** AB 1646 (Chen) would allow cannabis beverages to be packaged in containers made of any material. *This bill is pending in the Assembly Committee on Appropriations.*

**Prior Related Legislation.** AB 1529 (Low, Chapter 830, Statutes of 2019) reduced the minimum size of the universal cannabis symbol required on integrated cannabis vaporizers.

**ARGUMENTS IN SUPPORT:**

The **National Stewardship Action Council** (NSAC) is sponsoring this bill. According to the NSAC: “Vaping devices have become an increasingly popular method of consuming cannabis. Powered by a battery, these electronics are considered hazardous waste in California and banned from disposal in the trash or recycling. However, many brands instruct consumers to simply throw them away, which results in vapes being improperly disposed of in our materials management system where they have the potential to cause explosions and fires that can endanger people, expensive infrastructure, and the environment. These fires have become more commonplace in the industry, and operators are at risk of losing their insurance coverage.”

**ARGUMENTS IN OPPOSITION:**

**The Parent Company** opposes this bill unless amended. The Parent Company argues that while they “agree that the message about properly disposing of vaporizers is an important one,” they are concerned that “the method for delivering this message is very troubling in the context of other contemporary efforts to crowd more messaging onto the current densely packed cannabis warning labels. The effect of these other efforts cumulatively is to pile on massive amounts of information on products that are small, in most cases not much bigger than 2 by 3 inches.”

**AMENDMENTS:**

- 1) To allow the cannabis industry time to update its packaging and marketing materials, delay implementation of the bill’s requirements until July 1, 2024.
- 2) To clarify that “household hazardous waste” is not a well-defined term, strike the word “household” and instead provide that the required statements should simply read “hazardous waste.”

**REGISTERED SUPPORT:**

National Stewardship Action Council (*Sponsor*)  
California NORML  
STIIIZY

**REGISTERED OPPOSITION:**

The Parent Company

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