

SENATE THIRD READING

SB 378 (Wiener)

As Amended September 02, 2025

Majority vote

SUMMARY

Requires websites that facilitate the sale of cannabis or cannabis products to either verify that sellers are licensed or display a warning to the consumer that sellers on the website may be unlicensed; requires websites that sell either cannabis or intoxicating hemp products to provide a mechanism for any individual to report advertisements on the website relating to unlicensed sellers of cannabis or intoxicating hemp products; and establishes additional requirements, enforcement processes, liabilities, and penalties for websites that facilitate the sale of cannabis by unlicensed sellers or the sale of intoxicating hemp products.

Major Provisions

- 1) Defines various terms for purposes of the bill.
- 2) Requires an online cannabis marketplace to address the following in its terms of service:
 - a) Whether the marketplace permits advertisements from, or business information about, unlicensed sellers of cannabis or cannabis products to be viewed by Californians.
 - b) Whether the online cannabis marketplace verifies that a seller of cannabis or cannabis products has a valid, unexpired license by consulting the license look-up function on the DCC's website before displaying, storing, or hosting the seller's advertisements or business information in a manner that is viewable to Californians.
- 3) Requires an online cannabis marketplace that does not verify that a seller of cannabis or cannabis products is licensed to display a clear and conspicuous graphic that a consumer must acknowledge and click through before viewing or engaging with the marketplace warning the consumer that the marketplace may be displaying, storing, or hosting unlicensed sellers of cannabis or cannabis products.
- 4) Subjects a marketplace that displays, stores, or hosts an advertisement from, or business information about, an unlicensed seller in violation of the warning graphic requirement to a civil penalty of up to \$250,000 in an action brought by any person who identifies that the marketplace violated the requirement, in addition to reasonable attorneys' fees and costs.
- 5) Provides that a marketplace that violates an injunction requiring compliance with the warning graphic requirement shall be prohibited from operating in California until a receiver appointed by the court issuing the injunction affirms that the marketplace is in compliance.
- 6) Provides that in any action to enforce an injunction requiring compliance with the clear and conspicuous warning graphic requirement, the party obtaining enforcement shall be entitled to an award of twice its reasonable attorneys' fees and costs and a civil penalty of \$500,000.
- 7) Requires an online cannabis marketplace to establish a clear and conspicuous mechanism for any person to report unlicensed sellers of cannabis or cannabis products to the online cannabis marketplace, which must feature functionality to do the following:

- a) Allow for an individual to upload a screenshot or provide basic identifying information, such as an account identifier or URL.
 - b) Include a method for the marketplace to contact a reporting individual in writing, including a telephone number for purposes of sending text messages, an email address, or another reasonable electronic method of communication.
 - c) Provide the reporting individual with written confirmation that the report has been received within 36 hours of receipt.
 - d) Provide periodic written updates to the reporting individual as to the status of the marketplace's handling of the reported material, with the first written update provided as soon as reasonably feasible but no later than 14 days after either the date on which the written confirmation was provided or the date of the most recent written update.
 - e) Require review of each report by a natural person.
 - f) Issue a final written determination to the reporting individual, which shall state one of several outcomes, including confirmation that the seller's advertisements and business information have been blocked from being viewable on the marketplace.
- 8) Requires the final written determination to be provided to the reporting individual within 30 days of receiving the report, and provides that if the marketplace cannot comply with that timeline due to circumstances beyond the reasonable control of the marketplace, the marketplace shall comply no later than 60 days after the date on which the report was received and promptly provide written notice of the delay, no later than 48 hours from the time the marketplace knew the delay was likely to occur, to the reporting individual.
- 9) Subjects online cannabis marketplaces that violate any of the above reporting mechanism requirements to a civil penalty of up to \$10,000 for each violation and for compensatory damages, punitive damages, and any civil remedies, penalties, or sanctions for harms caused by the marketplace's failure to comply, which damages shall be adjudicated and awarded apart from any harms attributable to the existence of the reported content alone.
- 10) Provides that a person may bring an action to enforce the reporting mechanism requirements, and that in addition to other equitable relief, the court may order injunctive relief to obtain compliance and shall award reasonable attorney's fees and costs to the prevailing plaintiff.
- 11) Clarifies that the duties and obligations imposed by the bill are cumulative with any other duties or obligations imposed under other law and shall not be construed to relieve any party from any duties or obligations imposed under other law.
- 12) Applies substantially the same reporting mechanism requirements applicable to online cannabis marketplaces to online hemp marketplaces.
- 13) Prohibits either an online cannabis marketplace or an online hemp marketplace from engaging in paid online advertising related to unlicensed sellers of cannabis or cannabis products or intoxicating hemp products.

- 14) Provides that an online marketplace that violates the above prohibition and that is a substantial factor in an unlawful transaction between a consumer and an unlicensed seller shall be jointly and severally liable for damages caused to the consumer by the product.
- 15) Specifies additional damages that may be recovered by plaintiffs against an online marketplace for violations of the above prohibition and provides certain affirmable defenses civil actions against an online marketplace.
- 16) Clarifies that the bill shall not be construed as applying to information or content displayed by a business on a computer or mobile device that is not a paid online advertisement.

COMMENTS

Enforcement Against Unlicensed Activity. A report published by the Reason Foundation estimates that as much as two-thirds of cannabis sales in California take place on the illicit market. This is consistent with widespread consensus that illicit cannabis continues to proliferate notwithstanding the enactment of MAUCRSA. Because unlicensed cannabis products do not receive state oversight and enforcement of various health and safety requirements, including laboratory testing, consumption of unlicensed cannabis products can pose a significant risk to consumers. Enforcement against the illicit market has attracted significant legislative attention, particularly within the California State Assembly.

Internet Advertising and Enforcement. In addition to provisions generally governing the advertising and marketing of cannabis businesses, MAUCRSA further specifies that "a technology platform shall not display an advertisement by a licensee on an Internet Web page unless the advertisement displays the license number of the licensee." As California's legal cannabis market developed, a number of online advertisers began soliciting and accepting agreements to advertise cannabis businesses. This included not only companies generally engaged in business advertising, but websites like Weedmaps and Leafly that specialized in advertising cannabis-related products and businesses.

In the years following the passage of the AUMA, legislators criticized companies engaged in cannabis business advertising for circumventing state laws and regulations, including the requirement that advertisements feature the license number of any advertised cannabis licensee. Arguments were made that these advertisers were arguably "aiding and abetting" the unlawful sale of cannabis by illegal operators and that greater enforcement against platforms that advertised unlicensed cannabis businesses was needed to effectively combat the illicit market. In February 2018, the Assembly Business and Professions Committee held an informational hearing titled *Cannabis Regulation: An Update on Statewide Implementation*. During the hearing, legislators cited specific examples of cannabis advertising where license numbers did not appear to be displayed, including both in traditional print media and on cannabis-focused websites.

During the Legislature's consideration of bills aimed at addressing online advertisements of unlicensed cannabis businesses, several issues were raised and discussed. Much of the discussion involved the applicability of a federal law commonly referred to as Section 230 of the Communications Decency Act, which stated that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This federal law has been historically interpreted by courts as providing broad immunity for internet service providers and internet websites against responsibility for content posted by third parties.

Intoxicating Hemp. Concerns have grown over the past several years regarding the perceived proliferation of intoxicating hemp products. In 2022, the California Cannabis Industry Association (CCIA) issued a white paper in October 2022 titled *Pandora's Box: The Dangers of a National, Unregulated, Hemp-Derived Intoxicating Cannabinoid Market*. The CCIA report argued that loopholes in the 2018 Farm Bill, which defined industrial hemp as having no more than 0.3 percent delta-9 THC content by dry weight, inadvertently created led to the proliferation of intoxicating hemp products. Specifically, the white paper points to a Ninth Circuit decision that the CCIA says "unleashed a Wild West of intoxicants when it ruled that products containing delta-8 THC meet the statutory definition of industrial hemp."

In September 2024, Governor Gavin Newsom announced that the Department of Public Health (CDPH) was issuing emergency regulations banning the sale of consumable hemp products containing any detectable levels of THC or other intoxicating cannabinoids. The regulations additionally prohibited sales of hemp products to individuals under 21 and limited servings to five per package. State regulators indicated that sellers would be required to implement purchase restrictions and remove consumable hemp products containing any levels of detectable THC from shelves immediately upon the effective date of the regulations. In March 2025, the CDPH extended the ban for another 90 days and will currently remain valid through June 2025. On June 13, 2025, the CDPH announced proposed regulations to make the ban permanent.

Proposed Requirements for Online Marketplaces. This bill would further seek to curtail the advertisement of unlicensed cannabis businesses, as well as unregistered or intoxicating hemp products, through the establishment of new prohibitions and requirements for internet companies that serve as online marketplaces for those products. First, the bill would expressly prohibit an online marketplace from engaging in paid online advertising related to unlicensed sellers of cannabis or cannabis products, intoxicating hemp products, or unregistered hemp products.

For a website or similar platform that facilitates the sale of cannabis or cannabis products, as specified, the marketplace would be required to address in its terms of service whether it permits advertisements from, or business information about, unlicensed sellers. Those marketplaces would also have to address whether they will verify that sellers advertised or displayed on the marketplace's platform are licensed. If an online cannabis marketplace does not verify that a seller of cannabis or cannabis products is licensed, this bill would require the consumer to be presented with a clear and conspicuous graphic immediately upon accessing the marketplace, which the consumer must acknowledge and click through before viewing or engaging with the marketplace. The bill provides that this graphic must "warn the consumer that the marketplace may be displaying, storing, or hosting unlicensed sellers of cannabis or cannabis products."

In addition to the above requirements, both online cannabis marketplaces and online hemp marketplaces, as defined, would be required under this bill to establish a clear and conspicuous mechanism within their internet-based services that allows any individual to report to the marketplace the display, storing, or hosting on the marketplace of advertisements from, or business information about, either an unlicensed seller of cannabis or cannabis products or an intoxicating hemp product. The bill includes several specific features required of this mechanism, including means of providing information to the marketplace. The bill would further require the marketplace to provide regular updates to the reporting individual, as well as a final outcome, within specified timeframes.

Finally, this bill would establish various penalties that may be assessed against violators of the bill's prohibitions and requirements. In addition to civil penalties, the bill provides for injunctive relief, attorneys' fees, and compensatory damages, punitive damages, and other civil remedies, penalties, or sanctions.

According to the Author

"California's legal cannabis industry has struggled in the face of a growing illicit market for so-called "hemp" products that doesn't provide any health or safety protections for consumers, or even prevent minors from purchasing dangerous intoxicating products. Consumers are finding products advertised as hemp on Amazon and other digital platforms, but studies show that these products contain alarming amounts of synthetic intoxicants, undermining both California's legal cannabis market and public health and safety. SB 378 provides enhanced consumer protections by holding online marketplaces liable for damages, and includes reporting requirements for users to flag and report illicit product. I have long supported cannabis legalization and safe access to it, including authoring laws to expand access to medical cannabis and reduce taxes on legal cannabis. By tackling illicit hemp products, we can support legal cannabis businesses and improve California's legal market while protecting minors and consumers from potentially dangerous unregulated substances."

Arguments in Support

This bill is sponsored by *United Food and Commercial Workers (UFCW) Western States Council*. According to UFCW: "SB 378 seeks to prevent the entire California industry from being driven out of business by the partnership of unlicensed cannabis businesses and the Internet corporate marketplaces that profitably facilitate their lawbreaking; a partnership that, in addition to destroying jobs, investments, and dreams, poses an immediate risk to public safety and health, especially to the safety and health of children." UFCW further argues: "Bold action is required. California simply cannot countenance Internet companies engaging in and profiting from brazen and open lawbreaking, especially when, as here, the lawbreaking contributes to violent crime, child endangerment, environmental catastrophes, and the destruction of a lawful business sector, employing thousands of Californians."

Arguments in Opposition

TechNet, the *Computer and Communications Industry Association*, the *California African American Chamber of Commerce*, and *Internet.works* write jointly in opposition of this bill: "SB 378 has an extremely broad definition of 'online cannabis marketplace' and 'online hemp marketplace.' These definitions include an internet website, online service, online application, or mobile application, or social medial platforms that create any connection between the seller of cannabis, cannabis products, or hemp products consumers. This is a highly broad definition that reflects an unprecedented expansion of strict liability." The coalition further writes: "SB 378 creates a heavy-handed approach that undermines established liability protections for online intermediaries, stifles e-commerce innovation, and ultimately fails to advance the intended goal of eliminating unlawful cannabis sales."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, cost pressures of an unknown but potentially significant amount, possibly in the tens of thousands to hundreds of thousands of dollars annually, to the courts to adjudicate civil actions authorized by this bill.

VOTES**SENATE FLOOR: 37-0-3**

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Grove, Ochoa Bogh, Reyes

ASM BUSINESS AND PROFESSIONS: 16-0-2

YES: Berman, Flora, Alanis, Bains, Bauer-Kahan, Caloza, Chen, Elhawary, Hadwick, Haney, Irwin, Jackson, Krell, Lowenthal, Nguyen, Pellerin
ABS, ABST OR NV: Ahrens, Macedo

ASM PRIVACY AND CONSUMER PROTECTION: 13-0-2

YES: Dixon, Haney, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Lackey, Pellerin, Petrie-Norris, Ward, Wicks, Wilson
ABS, ABST OR NV: DeMaio, Hoover

ASM JUDICIARY: 11-0-1

YES: Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur
ABS, ABST OR NV: Macedo

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache
ABS, ABST OR NV: Sanchez, Dixon, Ta, Tangipa

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CONSULTANT: Robert Sumner / B. & P. / (916) 319-3301

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