

**Written Testimony in Opposition to Senate Bill 399**

Cannabis - Advertising - Prohibited Locations  
*Before the Finance Committee: March 7th, 2024*

Senate Bill 399 repeals Maryland’s prohibition on outdoor cannabis advertising and replaces it with a less protective law. SB 399 unnecessarily risks the health of Maryland's children by allowing outdoor cannabis advertising as long as it is five hundred feet or more from substance use treatment facilities, schools, child-care facilities, playgrounds, libraries, and public parks.

Senate Bill 399 must be rejected because (1) Maryland’s prohibition against outdoor cannabis advertising protects Maryland children from exposure to cannabis that results in adverse public health consequences; and (2) Maryland’s restriction against outdoor cannabis advertising complies with the commercial speech doctrine of the First Amendment. Because the existing regulatory framework of prohibiting outdoor cannabis advertising is in the best interest of public health, specifically related to Maryland children, and is constitutionally valid, we oppose SB 399 and urge an unfavorable report.

**Exposure to Outdoor Cannabis Advertising Has Significant Public Health Ramifications  
for Children**

Maryland’s prohibition against outdoor cannabis advertising protects Maryland children from unnecessary exposure to cannabis that results in adverse public health consequences. Research shows that children exposed to cannabis advertising are significantly more likely to use cannabis and have more positive perceptions about the drug.<sup>1</sup> Increased usage of cannabis during adolescence is linked to negative outcomes, such as academic unpreparedness and poor academic performance, increased delinquency, poor mental health, impaired cognitive development, development of psychosis, anxiety, depression, impaired cardiovascular health and heightened

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<sup>1</sup> Elizabeth J. D’Amico et al., *Gateway to Curiosity: Medical Marijuana Ads and Intention to Use During Middle School*, 29 PSYCH. ADD. BEHAV. 613 (2015); Elizabeth J. D’Amico et al., *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, 188 DRUG & ALCOHOL DEPEND. 385 (2018).

risk of cardiac arrest, higher risk of abuse or dependence in adulthood, obesity, and impaired immune system and cell function.<sup>2</sup> As a public health matter, cannabis use during adolescence results in more significant negative consequences than alcohol use.<sup>3</sup>

Cannabis outdoor advertising plays a substantial role in the problem because physical advertisements, such as billboards, have a much stronger effect on teens than other forms of advertising. For example, one study found that children frequently exposed to cannabis billboard advertising were seven times more likely to use cannabis and nearly six times as likely to have symptoms of cannabis use disorder.<sup>4</sup> Children exposed to cannabis advertisements are also more likely to miss school, have trouble concentrating, do something they regret, or get into trouble at school or home. Therefore, outdoor cannabis advertising has a profound effect on an adolescent's decision to use cannabis and related consequences.

Outdoor advertising for cannabis is even more dangerous for adolescents than outdoor advertising for other vices such as tobacco and alcohol. Advertising for cannabis is particularly problematic for two reasons: first, children hold positive perceptions of cannabis as a result of cannabis-positive messages conveyed through advertising and social media. For example, more than fifty percent of high schoolers believe that smoking marijuana regularly does not carry great risk. Twenty percent of teens report driving under the influence of cannabis, and of this, over thirty percent believe their driving ability was improved due to cannabis use. Second, the marketing methods of cannabis advertise the drug as a safe, natural, medicinal product, luring children into a false sense of security when deciding to use cannabis.<sup>5</sup> Compared to tobacco and alcohol, teens' positive perceptions of cannabis and cannabis marketing tactics render children

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<sup>2</sup> *Marijuana and Youth: The Impact of Marijuana Use on Teen Health and Wellbeing*, CTR. FOR DISEASE CONTROL & PREVENTION (Apr. 28, 2023) <https://www.cdc.gov/marijuana/featured-topics/marijuana-youth.html>; Sanjay B. Maggirwar et al., *The Link Between Cannabis Use, Immune System, and Viral Infections*, 13 *VIRUSES* 1099 (2021); Venkat N. Subramaniam, *The Cardiovascular Effects of Marijuana: Are the Potential Adverse Effects Worth the High?*, 116 *MO. MED* 146 (2019); Ryan S. Sultan et al., *Nondisordered Cannabis Use Among US Adolescents*, 6 *JAMA NETWORK OPEN* 1 (2023); Will Lawn, *The CannTeen Study: Cannabis Use Disorder, Depression, Anxiety, and Psychotic-like Symptoms in Adolescent and Adult Cannabis Users and Age-matched Controls*, 36 *J. PSYCHOPHARMACOL* 1350 (2022).

<sup>3</sup> Elizabeth J. D'Amico et al., *Understanding Rates of Marijuana Use and Consequences Among Adolescents in a Changing Legal Landscape*, *CURRENT ADD. REPS.* 343 (2017).

<sup>4</sup> Pamela J. Trangenstein et al., *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, 82 *J. Stud. Alcohol & Drugs* 288 (2021).

<sup>5</sup> *How Marijuana Ads Affect Youth: Q&A with Elizabeth D'Amico*, RAND (Aug. 21, 2018)

<https://www.rand.org/pubs/commentary/2018/08/how-marijuana-ads-affect-youth-qa-with-elizabeth-damico.html>.

even more susceptible to using cannabis after viewing cannabis advertisements such as billboards.

There is a reason why last session’s Cannabis Reform Bill prohibited cannabis businesses from utilizing outdoor advertising—legislators did not want cannabis businesses to be able to “directly or indirectly target individuals younger than age 21.”<sup>6</sup> The proposed 500-foot exclusionary zone in SB 399 is too lenient, does not adequately prevent cannabis businesses from marketing to children, and flouts the Cannabis Reform Act’s goal. First, the list of protected locations is underinclusive and leaves out many areas frequented by Maryland’s children, including museums, places of worship, and sporting facilities. Second, 500 feet is an insufficient buffer zone that does not adequately protect youth from exposure to cannabis billboards. It is difficult to believe that students would not be regularly exposed to a cannabis billboard 500 feet from their middle school. Because SB 399 would unnecessarily expose children to cannabis advertising near places frequented by youth, maintaining the current ban on outdoor advertising is essential.

Moreover, Maryland is one of many states that prohibits outdoor cannabis advertising. In addition to Maryland, twelve other states prohibit outdoor advertising.<sup>7</sup> For example, Virginia, New York, and Delaware prohibit billboard advertising of cannabis products and businesses.<sup>8</sup> Similarly, Minnesota’s statute prohibits outdoor advertising of any kind.<sup>9</sup> Going further than Maryland are states like Hawaii and Mississippi, which prohibit all forms of cannabis advertising.<sup>10</sup> Based on this legal landscape, Maryland’s complete prohibition against outdoor advertising of cannabis is not unique.

Therefore, Maryland must continue to ban the form of advertising that has the most significant impact on an adolescent’s decision to use cannabis—outdoor advertising. As such, SB 399 must be rejected.

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<sup>6</sup> 2023 Md. Laws Ch. 254.

<sup>7</sup> 18 VA. ADMIN. CODE § 110-60-215; N.Y. CANNABIS LAW § 86; MINN. STAT. § 342.64; NEW ENG HAW. CODE R. §§ 11-850-141, 145; DEL. CODE ANN. tit 16. § 4914A; ALA. ADMIN. CODE r. 538-X-4.17; FLA. STAT. ANN. § 381.986; 15 MISS. CODE R. § 22-3-1-2.2.1; MONT. ADMIN. R. 42.39.123; UTAH CODE ANN. § 4-41a-403; S.D. ADMIN. R. 44:90:10:14.01; OHIO ADMIN. CODE 3796:5-7-01.

<sup>8</sup> 18 VA. ADMIN. CODE § 110-60-215; N.Y. CANNABIS LAW § 86; DEL. CODE ANN. tit 16. § 4914A.

<sup>9</sup> MINN. STAT. § 342.64.

<sup>10</sup> HAW. CODE R. §§ 11-850-141, 145; 15 MISS. CODE R. § 22-3-1-2.2.1.

## **Maryland’s Restriction on Cannabis Advertising Is Not a Violation of the First Amendment**

Maryland is acting within its constitutional authority to regulate commercial speech by prohibiting outdoor cannabis advertising. This conclusion was reached the Maryland Attorney General when reviewing the advertising restriction of the Cannabis Reform Act last year. While the First Amendment protects commercial speech—any speech or writing which aims to promote commerce—it also permits states to enact restrictions that protect public welfare. In *Central Hudson*,<sup>11</sup> the Supreme Court created a four-part test to determine whether a restriction on commercial speech is constitutional: (1) the speech being restricted concerns lawful activity and is not misleading; (2) the asserted governmental interest is substantial; (3) the regulation directly advances that governmental interest; and (4) the regulation is not more extensive than necessary to serve the governmental interest. Our current regulatory framework survives this test because cannabis advertising is not a lawful activity under federal law, Maryland has a substantial interest in keeping cannabis out of the hands of individuals under twenty-one, and the current restrictions not only advance the state's interest, but are also narrowly tailored.

For one, cannabis activity cannot be considered “lawful activity” where its use, possession, production, and distribution remains illegal under federal criminal law.<sup>12</sup> The Supremacy Clause of the U.S. Constitution dictates that federal law governs the “lawful activity” analysis. Thus, an activity that is not permitted by federal law—even if permitted by state law—is not a “lawful activity” within the meaning of *Central Hudson's* first factor. As such, outdoor advertising by cannabis businesses is not entitled to protection under the First Amendment.

If a Court were to determine that cannabis advertising is a “lawful activity,” Maryland’s restriction on outdoor advertising is still legal because it complies with the three remaining factors of the *Central Hudson* test.

First, Courts have established that states have a substantial interest in protecting the physical, mental and emotional health of children.<sup>13</sup> As discussed above, cannabis exposure poses a significant risk to this interest, given the adolescent brain is still undergoing crucial

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<sup>11</sup> *Central Hudson Gas & Elec. v. Public Serv. Comm’n*, 447 U.S. 557 (1980).

<sup>12</sup> *Mont. Cannabis Indus. Ass’n v. State*, 368 P.3d 1131 (Mont. 2016); *Cocroft v. Graham*, No. 23-cv-00431 (N.D. Miss. Jan. 22, 2024)

<sup>13</sup> *Seattle Events v. State*, 512 P.3d 926 (Wash. App. 2022); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001); *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996).

cognitive and neurological development. It is Maryland’s duty and right to protect its substantial interest by minimizing children’s exposure to cannabis advertisements.

Second, Maryland’s prohibition against outdoor cannabis advertising prohibits a handful of cannabis advertising methods that have been found to cause increased harm to youths. For instance, children exposed to billboard advertisements face a much greater risk of frequent cannabis use and cannabis use disorder. By prohibiting outdoor cannabis advertising, adolescents’ exposure to cannabis-related advertising will decrease significantly, which may in turn diminish teen cannabis usage—this was the case with other regulated products like alcohol and tobacco. Thus, Maryland’s current restrictions are directly advancing its substantial interest in preventing underage cannabis consumption.

Third, Maryland’s prohibition is narrowly tailored because the outdoor advertising restriction still leaves ample opportunities for licensed cannabis businesses to market their products to those who are of legal age (i.e. social media, print, website, etc.). The current restriction does not create an outright ban on cannabis advertising, but instead merely bans a handful of advertising methods that have been proven to negatively impact the health of children. The absence of outdoor cannabis advertising hasn’t detrimentally impacted the industry. Maryland’s legal cannabis sales totaled approximately \$800 million in 2023, underscoring the industry’s success without the use of outdoor advertising. In 2024, the industry in Maryland is projected to reach \$1.4 billion in sales.<sup>14</sup> The only reason to repeal the outdoor advertising ban is to attain more sales for an already profitable cannabis sector to the detriment of Maryland children.

Further, a complete prohibition is necessary because children are inherently transient; restricting outdoor advertisements solely around child-centered facilities would prove ineffective in preventing their exposure to such marketing, as adolescents’ mobility extends beyond these areas. As a result, it is practically impossible for parents to control their child’s exposure to outdoor cannabis advertising. As such, Maryland’s restriction is narrowly tailored to achieve the desired objective of preventing underage cannabis consumption.

As the Maryland Attorney General determined regarding the outdoor advertising restriction in Cannabis Reform Act: Maryland’s cannabis advertising restrictions are not

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<sup>14</sup> *MCA Medical and Adult-Use Cannabis Data Dashboard*, MD. CANNABIS ADMIN. (last updated Jan. 8, 2024) <https://mmcc.maryland.gov/Pages/Data-Dashboard.aspx>.

unconstitutional.<sup>15</sup> The outdoor cannabis advertising restrictions do not infringe upon the core principles of free expression but rather strike a delicate balance between individual liberties and the substantial governmental interest in children’s health. We urge an unfavorable report on SB 399.

### **Conclusion**

The limitations on outdoor cannabis advertising play a crucial role in shaping a responsible and informed cannabis market, mitigating the normalization of cannabis use, and reducing the inadvertent exposure of minors to potentially influential messages. Repealing the current prohibition under SB 399 would undermine these critical safeguards and compromise public health goals. Ultimately, the advertising restrictions on cannabis contribute to a healthier and more responsible cannabis industry, ensuring that the right to commercial speech is exercised in harmony with the paramount interest of protecting the well-being of the public, particularly the youth. For these reasons, we request an unfavorable report on Senate Bill 399.

*This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law or the University of Maryland system.*

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<sup>15</sup> RE: House Bill 556 and Senate Bill 516, “Cannabis Reform,” OFFICE OF COUNCIL TO THE GENERAL ASSEMBLY, [https://mgaleg.maryland.gov/2023RS/ag\\_letters/hb0556.pdf](https://mgaleg.maryland.gov/2023RS/ag_letters/hb0556.pdf).