

February 17, 2025

The Honorable Kristina Roegner
Ohio Statehouse
1 Capitol Square
Columbus, OH 43215

Dear Chair Roegner,

On behalf of the Ohio Association of Broadcasters, which represents Ohio's over-the-air radio and television stations, I am writing to express our concerns regarding Sec. 3796.32 of S.B. 56. Our member stations are licensed by the federal government and regulated by the Federal Communications Commission (FCC). As federally licensed entities, Ohio's local radio and television stations are obligated to serve the public interest and risk losing their broadcast licenses if they fail to do so.

With that in mind, we recognize and appreciate the Legislature's intent to regulate marijuana advertising in a manner that limits exposure to children and youth. However, we respectfully urge reconsideration of certain provisions in the bill for the following reasons:

Administrative Rulemaking is Preferable and Will Better Serve the Public

We believe that advertising regulations should be developed through the administrative rulemaking process rather than through legislation. Regulatory agencies are best equipped to craft detailed and adaptable rules based on the evolving marketplace and public interest. Ohio has successfully followed this approach for other similarly situated regulated industries—for instance:

- The Ohio Liquor Control Commission establishes and periodically updates advertising regulations for alcoholic beverages.
- The Ohio Casino Control Commission is responsible for promulgating rules governing the advertising of gambling.

Following this model, the Division of Cannabis Control should be granted the flexibility to develop and revise advertising regulations as necessary rather than having rigid standards set in statute.

As Drafted, S.B. 56 Will Cause Confusion and Legal Uncertainty Regarding Advertising Standards

S.B. 56's requirement that advertising standards for adult-use marijuana be "at least as stringent as" those applied to tobacco and alcohol under state and federal law will create confusion and inconsistency. For example, tobacco advertising regulations vary widely depending on the product; advertising restrictions differ for cigarettes, cigars, and pipe tobacco. Alcohol advertising regulations also differ by product type, with distinct rules for beer, wine, and spirits.

Additionally, laws regarding tobacco and alcohol advertising are not always universally or equally applied across all platforms. Requiring marijuana advertising standards to align with them could therefore generate ambiguity and lead to legal challenges. Instead, the bill should simply rest on the clear statement in its subsection (A), which authorizes the Division of Cannabis Control to establish reasonable advertising guidelines that prevent marketing to minors or that would otherwise be illegal.

The Above Issues Generate and Illuminate Constitutional Concerns

Prohibitions on specific forms of advertising may be unconstitutional. In several cases in which the government has attempted to restrict advertising, federal courts have required the government to articulate a substantial governmental interest for such restriction and to narrowly tailor the applicable advertising ban or restriction. A prohibition specifically on broadcast advertising would not appear to fulfill either of these requirements.

OAB Recommends Removing Lines 2620-2623

The bill already grants the Division of Cannabis Control the authority to prohibit advertisements that target children or youth or that are otherwise illegal. To avoid confusion and potential constitutional concerns, we recommend the language in lines 2620-2623 about tobacco and alcohol advertisements be removed from the bill. Removing those lines will not affect the Division of Cannabis Control's rulemaking authority and will instead allow for the adoption of more tailored advertising regulations.

Again, we appreciate the Legislature's interest in ensuring responsible advertising practices, and we welcome the opportunity to collaborate on a regulatory approach that protects minors while respecting established legal principles.

Thank you for your time and consideration. Please do not hesitate to reach out if we can provide additional input or clarification.

Sincerely,

A handwritten signature in cursive script that reads "Chad Budreau".

Chad Budreau, President
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