

May 14, 2013

Senate President Therese Murray
State House
Room 332
Boston, MA 02133

Senator Stephen Brewer
Chair, Senate Ways & Means
State House
Room 212
Boston, MA 02133

Dear Senate President Murray and Senator Brewer,

On behalf of the patient population of Massachusetts, Americans for Safe Access (ASA) is concerned that Amendment #681 to H.3400 (see attachment), as passed by the House, could be interpreted in a manner to frustrate the purpose and intent of Chapter 369 of the Acts of 2012. ASA urges the Senate to omit this or similar language in its budget recommendations for FY'14 because the Department of Public Health regulations will more effectively guard against packaging that could prove harmful to patients and children.

The amendment states that marijuana-infused products (MIPs) "shall not bear a reasonable resemblance to any product available for consumption as a commercially available candy." ASA agrees that MIPs, should not be packaged and marketed in ways similar to existing candy products. Nor should products be marketed in a manner intended to promote them as non-medical products. However, language in the amendment would allow for such a wide interpretation of what "reasonable resemblance" means that it could be interpreted to mean two products with reasonably similar ingredient lists, even if the packaging characteristics differ. Such a provision would face a court challenge if it prevented patients from obtaining MIPs, as the "development of related products such as food" is specifically permitted and called for by Chapter 369 of the Acts of 2012.

Also of concern for patients is who would be responsible for enforcing this provision should it become law. While the Department of Public Health (DPH) would be administering the program, regulations issued by the DPH state that "[a]uthorized law enforcement personnel", shall have access to Registered Marijuana Dispensaries (RMDs) that are "acting within their lawful jurisdiction."¹ Chapter 369 of the Acts of 2012 states

1. 105 CMR 725.105(P)(2).

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those working at RMDs are exempt from criminal penalties for selling marijuana so long as their conduct is in accordance with the law.² It's possible that the language of Amendment #681 could be interpreted so broadly that MIPs merely having similar ingredient lists to commercially available candy could be found in violation. A law enforcement officer who has probable cause to believe that a RMD is selling MIPs with an ingredient list similar to commercially available candy could reasonably believe that such a RMD would be operating outside the conduct permitted by Chapter 369 of the Acts of 2012.

The solution to these concerns regarding packaging can be found in the DPH regulations that speak to this very issue with such clarity that would be difficult for any law enforcement officer or agency to misinterpret from its purpose. The regulations say that "MIPs shall be packaged in plain, opaque, **child-proof containers without depictions of the product, cartoons, or images other than the MMTC's logo,**" (emphasis added).³ Moreover, the regulation would create 11 specific requirements for the packaging of MIPs including an expiration date, allergy warning, active and inactive ingredients, and the following statement:

*"This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN."*⁴

It is clear DPH has issued sensible and thorough regulations that will prevent the production of edible MIPs that may be misconstrued as commercially available candy. Unlike the House amendment, the final DPH regulations protect the community without opening the door to possible abuses. If such abuses took place, they would harm Massachusetts patients by creating unnecessary instability to the continuity of their medical marijuana in the non-smoked form that works best for their treatment regimen. For a patient who lives in a building that does not permit smoking, a patient will be constrained to non-smoked forms of medical marijuana, and edible MIPs are a common form of non-smoked medical marijuana. Similarly, for a patient who's physician has recommended that they use medical marijuana to treat their debilitating condition, but should avoid smoking medical marijuana, they will also be at risk of being unable to access treatment.

For these reasons, we respectfully request that the Senate not include language similar to Amendment# 681 in adopting its budget recommendations.

2. Mass. Gen. Laws ch. 369 § 5, 9(D).

3. 105 CMR 725.105(E)(1).

4. 105 CMR 725.105(E)(2).

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For additional information, please contact Mary Ann Walsh, Governmental Strategies, Inc., 617.447.3711, mawalsh@governmentalstrategies.com.

Thank you.

Sincerely,

Michael Liszewski
Policy Director

Karen Munkacy, MD
Board of Directors

CC:

Senator Stanley Rosenberg
Majority Leader

Senator John Keenan
Senate Chair, Committee on Public Health

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Amendment #681, as adopted in H.3400, as passed by the House of Representatives:

Prohibiting the deceptive sale of Marijuana

Representatives Durant of Spencer, O'Connell of Taunton, Orrall of Lakeville, Kuros of Uxbridge and Ferguson of Holden Representatives Durant of Spencer, O'Connell of Taunton, Orrall of Lakeville, Kuros of Uxbridge and Ferguson of Holden move to further amend amendment 681 by striking the amendment in its entirety and replacing it with the following amendment:-

Representatives Durant of Spencer, O'Connell of Taunton, Orrall of Lakeville, Kuros of Uxbridge and Ferguson of Holden move to amend the bill by adding the following 2 sections:-

SECTION X. *Section 5 of chapter 94C of the General Laws is hereby amended by inserting at the end thereof the following:-*

The packaging of any marijuana product for dispensing or sale, as provided for in chapter 369 of the acts of 2012, shall not bear a reasonable resemblance to any product available for consumption as a commercially available candy.

As used in this section, "Commercially available candy", shall refer to any product that is manufactured and packaged for purchase from a retail market and for individual consumption in the form of bars, drops, or pieces and that includes a sweetened mixture of chocolate, caramel, nougat, nuts, fruit, cream, honey, marshmallow or any similar combination to create a dessert-like confection.

SECTION XX. *Nothing containing a synthetic cannabinoid or melatonin may be sold that bears a reasonable resemblance to any packaging of anything available for consumption as a candy. For the purposes of this section the department of public health shall develop regulations to determine what constitutes "reasonable resemblance" and "candy."*

As used in this section, "Synthetic cannabinoid", shall mean any of the following chemical compounds: (a) cp 47.497 and homologues: 2-[(1r,3s)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol); (b) hu-210: [(6ar, 10ar)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol)]; (c) hu-211: (dexanabinol, (6as, 10as)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol); (d) jwh-o18: 1-pentyl-3-(1-naphthoyl)indole; (e) jwh-o73: 1-butyl-3-(1-naphthoyl)indole and (f) any compound, manufacture, salt, derivative, mixture or preparation of any such chemical compounds.⁵

⁵. A681 to H.3400 (2013), <http://www.malegislature.gov/Bills/188/House/H3400/Amendment/House/681/ChangedText>, (last accessed May 13, 2013).

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