

HOUSE BILL NO. 2428

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on January 31, 2023)

(Patron Prior to Substitute--Delegate Wilt)

A BILL to amend and reenact § 4.1-600 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-1116 and by adding in Chapter 14 of Title 4.1 sections numbered 4.1-1404 and 4.1-1405, relating to marijuana; advertising restrictions; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-600 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-1116 and by adding in Chapter 14 of Title 4.1 sections numbered 4.1-1404 and 4.1-1405 as follows:

§ 4.1-600. Definitions.

As used in this subtitle, unless the context requires a different meaning:

"Advertisement" or "advertising" means any written or verbal statement, illustration, or depiction that is calculated to induce sales of retail marijuana, retail marijuana products, marijuana plants, or marijuana seeds, including any written, printed, graphic, digital, electronic, or other material, billboard, sign, or other outdoor display, publication, or radio or television broadcast.

"Authority" means the Virginia Cannabis Control Authority created pursuant to this subtitle.

"Board" means the Board of Directors of the Virginia Cannabis Control Authority.

"Cannabis Control Act" means Subtitle II (§ 4.1-600 et seq.).

"Child-resistant" means, with respect to packaging or a container, (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) for any product intended for more than a single use or that contains multiple servings, resealable.

26 "Cultivation" or "cultivate" means the planting, propagation, growing, harvesting, drying, curing,
27 grading, trimming, or other similar processing of marijuana for use or sale. "Cultivation" or "cultivate"
28 does not include manufacturing or testing.

29 "Edible marijuana product" means a marijuana product intended to be consumed orally, including
30 marijuana intended to be consumed orally or marijuana concentrate intended to be consumed orally.

31 "Immature plant" means a nonflowering marijuana plant that is no taller than eight inches and no
32 wider than eight inches, is produced from a cutting, clipping, or seedling, and is growing in a container.

33 "Licensed" means the holding of a valid license granted by the Authority.

34 "Licensee" means any person to whom a license has been granted by the Authority.

35 "Manufacturing" or "manufacture" means the production of marijuana products or the blending,
36 infusing, compounding, or other preparation of marijuana and marijuana products, including marijuana
37 extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not
38 include cultivation or testing.

39 "Marijuana" means any part of a plant of the genus Cannabis, whether growing or not, its seeds or
40 resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds,
41 its resin, or any extract containing one or more cannabinoids. "Marijuana" does not include the mature
42 stalks of such plant, fiber produced from such stalk, or oil or cake made from the seed of such plant, unless
43 such stalks, fiber, oil, or cake is combined with other parts of plants of the genus Cannabis. "Marijuana"
44 does not include (i) industrial hemp, as defined in § 3.2-4112, that is possessed by a person registered
45 pursuant to subsection A of § 3.2-4115 or his agent or (ii) a hemp product, as defined in § 3.2-4112,
46 containing a tetrahydrocannabinol concentration of no greater than 0.3 percent that is derived from
47 industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or
48 federal law.

49 "Marijuana concentrate" means marijuana that has undergone a process to concentrate one or more
50 active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a
51 marijuana plant is a concentrate for purposes of this subtitle.

52 "Marijuana cultivation facility" means a facility licensed under this subtitle to cultivate, label, and
53 package retail marijuana; to purchase or take possession of marijuana plants and seeds from other
54 marijuana cultivation facilities; to transfer possession of and sell retail marijuana, immature marijuana
55 plants, and marijuana seeds to marijuana wholesalers and retail marijuana stores; to transfer possession of
56 and sell retail marijuana, marijuana plants, and marijuana seeds to other marijuana cultivation facilities;
57 to transfer possession of and sell retail marijuana to marijuana manufacturing facilities; and to sell
58 immature marijuana plants and marijuana seeds to consumers for the purpose of cultivating marijuana at
59 home for personal use.

60 "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a
61 marijuana manufacturing facility, a marijuana wholesaler, or a retail marijuana store.

62 "Marijuana manufacturing facility" means a facility licensed under this subtitle to manufacture,
63 label, and package retail marijuana and retail marijuana products; to purchase or take possession of retail
64 marijuana from a marijuana cultivation facility or another marijuana manufacturing facility; and to transfer
65 possession of and sell retail marijuana and retail marijuana products to marijuana wholesalers, retail
66 marijuana stores, or other marijuana manufacturing facilities.

67 "Marijuana paraphernalia" means all equipment, products, and materials of any kind that are either
68 designed for use or are intended for use in planting, propagating, cultivating, growing, harvesting,
69 manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing,
70 packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into
71 the human body marijuana.

72 "Marijuana products" means (i) products that are composed of marijuana and other ingredients and
73 are intended for use or consumption, ointments, and tinctures or (ii) marijuana concentrate.

74 "Marijuana testing facility" means a facility licensed under this subtitle to develop, research, or
75 test marijuana, marijuana products, and other substances.

76 "Marijuana wholesaler" means a facility licensed under this subtitle to purchase or take possession
77 of retail marijuana, retail marijuana products, immature marijuana plants, and marijuana seeds from a
78 marijuana cultivation facility, a marijuana manufacturing facility, or another marijuana wholesaler and to

79 transfer possession and sell or resell retail marijuana, retail marijuana products, immature marijuana
80 plants, and marijuana seeds to a marijuana cultivation facility, marijuana manufacturing facility, retail
81 marijuana store, or another marijuana wholesaler.

82 "Non-retail marijuana" means marijuana that is not cultivated, manufactured, or sold by a licensed
83 marijuana establishment.

84 "Non-retail marijuana products" means marijuana products that are not manufactured and sold by
85 a licensed marijuana establishment.

86 "Place or premises" means the real estate, together with any buildings or other improvements
87 thereon, designated in the application for a license as the place at which the cultivation, manufacture, sale,
88 or testing of retail marijuana or retail marijuana products shall be performed, except that portion of any
89 such building or other improvement actually and exclusively used as a private residence.

90 "Public place" means any place, building, or conveyance to which the public has, or is permitted
91 to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels,
92 and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any
93 highway, street, or lane.

94 "Residence" means any building or part of a building or structure where a person resides, but does
95 not include any part of a building that is not actually and exclusively used as a private residence, nor any
96 part of a hotel or club other than a private guest room thereof.

97 "Retail marijuana" means marijuana that is cultivated, manufactured, or sold by a licensed
98 marijuana establishment.

99 "Retail marijuana products" means marijuana products that are manufactured and sold by a
100 licensed marijuana establishment.

101 "Retail marijuana store" means a facility licensed under this subtitle to purchase or take possession
102 of retail marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds from a
103 marijuana cultivation facility, marijuana manufacturing facility, or marijuana wholesaler and to sell retail
104 marijuana, retail marijuana products, immature marijuana plants, or marijuana seeds to consumers.

105 "Sale" and "sell" includes soliciting or receiving an order for; keeping, offering, or exposing for
106 sale; peddling, exchanging, or bartering; or delivering otherwise than gratuitously, by any means, retail
107 marijuana or retail marijuana products.

108 "Special agent" means an employee of the Virginia Cannabis Control Authority whom the Board
109 has designated as a law-enforcement officer pursuant to this subtitle.

110 "Testing" or "test" means the research and analysis of marijuana, marijuana products, or other
111 substances for contaminants, safety, or potency. "Testing" or "test" does not include cultivation or
112 manufacturing.

113 "Tetrahydrocannabinol" or "THC" means any naturally occurring or synthetic
114 tetrahydrocannabinol, including its salts, isomers, synthetic derivatives, salts of isomers, or salts of
115 synthetic derivatives.

116 **§ 4.1-1116. Illegal advertising; penalties; exception.**

117 A. No person shall advertise in or send any advertising material into the Commonwealth regarding
118 marijuana, marijuana products, or any substance containing a synthetic tetrahydrocannabinol other than
119 those that may be legally sold in the Commonwealth under this subtitle or Article 4.2 (§ 54.1-3442.5 et
120 seq.) of the Drug Control Act. Advertisements regarding marijuana, marijuana products, or any substance
121 containing a synthetic tetrahydrocannabinol shall comply with the provisions of this subtitle and Board
122 regulations.

123 B. Except as provided in subsection C, any person who violates the provisions of subsection A is
124 guilty of a Class 1 misdemeanor.

125 C. For violations of § 4.1-1405 relating to distance and zoning restrictions on outdoor advertising,
126 the Board shall give the advertiser written notice to take corrective action to either bring the advertisement
127 into compliance with this subtitle and Board regulations or to remove such advertisement. If corrective
128 action is not taken within 30 days, the advertiser is guilty of a Class 4 misdemeanor.

129 D. This section shall not apply to advertising conducted by pharmaceutical processors or cannabis
130 dispensing facilities in accordance with Article 4.2 (§ 54.1-3442.5 et seq.) of the Drug Control Act and
131 regulations of the Board of Pharmacy.

132 **§ 4.1-1404. General advertising restrictions.**

133 A. No person shall advertise in or send any advertising material into the Commonwealth regarding
134 marijuana, marijuana products, or any substance containing a synthetic tetrahydrocannabinol other than
135 those that may be legally sold in the Commonwealth under this subtitle or Article 4.2 (§ 54.1-3442.5 et
136 seq.) of the Drug Control Act.

137 B. Advertisements regarding marijuana, marijuana products, or any substance containing a
138 synthetic tetrahydrocannabinol shall:

139 1. Comply with the provisions of this subtitle, Board regulations, Chapter 12 (§ 33.2-1200 et seq.)
140 of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board, and
141 federal laws and regulations;

142 2. Accurately and legibly identify the person responsible for its content;

143 3. Include the following statement: "For use by adults 21 years of age and older"; and

144 4. If the advertisement involves direct, individualized communication or dialogue, utilize a method
145 of age affirmation to verify that the recipient is 21 years of age or older before engaging in such
146 communication or dialogue.

147 C. Advertisements regarding marijuana, marijuana products, or any substance containing a
148 synthetic tetrahydrocannabinol shall not:

149 1. Be broadcasted (i) through any means unless at least 71.6 percent of the audience is reasonably
150 expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data
151 or (ii) through digital pop-ups;

152 2. Be misleading, deceptive, or false;

153 3. Target or appeal particularly to persons younger than 21 years of age, including by use of
154 cartoons;

155 4. Imply that marijuana, marijuana products, or any substance containing a synthetic
156 tetrahydrocannabinol enhance athletic prowess or are government endorsed;

157 5. Be displayed on a billboard or at a sporting event;

158 6. Make any reference to the intoxicating effects of marijuana, marijuana products, or any
159 substance containing a synthetic tetrahydrocannabinol;

160 7. Promote overconsumption or consumption by persons younger than 21 years of age; or

161 8. Depict a person consuming marijuana, marijuana products, or any substance containing a
162 synthetic tetrahydrocannabinol or depict any person younger than 21 years of age.

163 D. The provisions of this section shall not apply to noncommercial speech.

164 **§ 4.1-1405. Outdoor advertising restrictions; limitations; variances.**

165 A. No outdoor advertising regarding marijuana, marijuana products, or any substance containing
166 a synthetic tetrahydrocannabinol shall be placed within 500 linear feet on the same side of the road, and
167 parallel to such road, measured from the nearest edge of the sign face upon which the advertisement is
168 placed to the nearest edge of a building or structure located on the real property of (i) a church, synagogue,
169 mosque, or other place of religious worship; (ii) a public, private, or parochial school or an institution of
170 higher education; (iii) a public or private playground or similar recreational facility; (iv) a substance use
171 disorder treatment center; or (v) a dwelling used for residential use.

172 B. However, (i) if there is no building or structure on a playground or similar recreational facility,
173 the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed
174 to the property line of such playground or similar recreational facility and (ii) if a public or private school
175 providing grades K through 12 education is located across the road from a sign, the measurement shall be
176 from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a
177 building or structure located on such real property across the road.

178 C. If, at the time the advertisement was displayed, the advertisement was more than 500 feet from
179 (i) a church, synagogue, mosque, or other place of religious worship; (ii) a public, private, or parochial
180 school or an institution of higher education; (iii) a public or private playground or similar recreational
181 facility; (iv) a substance use disorder treatment center; or (v) a dwelling used for residential use, but the
182 circumstances change such that the advertiser would otherwise be in violation of subsection A, the Board
183 shall permit the advertisement to remain as displayed for the remainder of the term of any written
184 advertising contract, but in no event more than one year from the date of the change in circumstances.

185 D. The Board may grant a permit authorizing a variance from the distance requirements of this
186 section upon a finding that the placement of the advertisement on a sign will not unduly expose children
187 to advertising regarding marijuana, marijuana products, or any substance containing a synthetic
188 tetrahydrocannabinol.

189 E. The distance and zoning restrictions contained in this section shall not apply to any sign that is
190 included in the Integrated Directional Sign Program administered by the Virginia Department of
191 Transportation or its agents.

192 F. Nothing in this section shall be construed to authorize billboard signs containing outdoor
193 advertising regarding marijuana, marijuana products, or any substance containing a synthetic
194 tetrahydrocannabinol on property zoned agricultural or residential, or on any unzoned property. Nor shall
195 this section be construed to authorize the erection of new billboard signs containing outdoor advertising
196 that would be prohibited under state law or local ordinance.

197 G. All lawfully erected outdoor signs regarding marijuana, marijuana products, or any substance
198 containing a synthetic tetrahydrocannabinol shall comply with the provisions of this subtitle, Board
199 regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto
200 by the Commonwealth Transportation Board. Further, any outdoor directional sign regarding marijuana,
201 marijuana products, or any substance containing a synthetic tetrahydrocannabinol that is located or to be
202 located on highway rights of way shall also be governed by and comply with the Integrated Directional
203 Sign Program administered by the Virginia Department of Transportation or its agents.

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